EIOPA-BoS-20/753-2
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**Solvency II review on IGS - Stakeholder comments**

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| **Comments to CP on Harmonisation of Insurance Guarantee Schemes** |
| **Institution** | **Reference** | **Comment** | **Resolution of comments** | **Public/ not public** |
| Actuarial Association of Europe (AAE) | General comments | Solvency II requirements, if applied in a consistent fashion across Europe, will ensure a high standard of prudential supervision and, by protecting consistently against the risk of insurer failure, ensure consistency of policyholder protection across Europe. The quality of supervision under Solvency II is an important factor to be considered in assessing the minimum standard of IGS required as well as lines of business and covers to be included in its scope.We agree that there should be a minimum degree of harmonisation of policyholder protection in the EU in case of insurance failure. We consider that maintaining the status quo is not sufficient as it could lead to material inconsistency of policyholder security from country to country. A European network of national IGSs would provide greater consistency and should be considered. Differences in supervisory practice, national systems and types of insurance business make the establishment of a single EU-wide IGS impractical. Eligibility conditions governing access to IGS should be clearly specified. IGSs should act as a source of resolution funding of failing insurers but should not in themselves act to prevent the insolvency of a distressed undertaking.  | EIOPA also agrees that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole. This would be a good supplement for Solvency II.Nevertheless, further work is still required in different areas. Some considerations may be taken into account in the next steps. | Public |
| Actuarial Association of Europe (AAE) | 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. | The main importance is for the IGSs to meet the objective and there can be several different legal structures which would achieve this. Forcing one specific legal structure would lead to further costs (especially for existing IGSs), which might be unnecessary. Leaving it to the Member States involves the risk of divergence between the systems but compare d to the alternative option the proposed approach is still preferable as long as policyholders and insurers are in the same position across jurisdictions. | Noted. | Public |
| Actuarial Association of Europe (AAE) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | A harmonized regulatory framework for recovery and resolution (RnR) is an important task in itself leading to a further integration of the insurance industry in Europe and could lead to further stability. The IGS should really be the last solution in case that recovery and resolution actions have failed. However, both initiatives should not be linked, with the risk of potentially slowing down the process altogether. With Resolution the IGS should only deal with protecting the customers. It should not be part ot the resolution funding. Resolution should not take into account an IGS and try to settle things with a possible Resolution Guarantee Fund. In Resolution creditors should get what they deserve taking into account that policyholders have in many cases precedence over other creditors (or equity) – i.e. an IGS guaranteeing the rights of the policyholders must not mean that creditors and equity get more in Resolution. If after Resolution policyholders suffer a loss, then the IGS should have its role. | Noted. However, certain flexibility should be given to Member States. Some existing national IGSs have other roles. | Public |
| Actuarial Association of Europe (AAE) | 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)?  | We agree that the primary objective of an IGS can be achieved by means of the two options proposed, depending on the nature of the policies: preferably a compensation for short – term policies and a continuation for long – term policies instead. In practice both options are required to meet the needs of policyholders | Noted. | Public |
| Actuarial Association of Europe (AAE) | 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. | We believe ensuring continuity should take precedence for the reasons we outline below. It isn’t offered by some existing IGSs however should be an option within a harmonised approach.Termination of contracts would in some cases put the policyholders in a very difficult situation as they might not be able to replace it in similar terms (long-term guarantees, medicals as part of underwriting etc.). They might also loose the confidence in the industry overall, resulting in not replacing his policy and by that weakening coverage levels. The importance of a continuation will equally depend on the product type but also on the personal situation of the customer, people close to retirement are particularly vulnerable to termination of their policy and should be protected by continuation options. | Noted. | Public |
| Actuarial Association of Europe (AAE) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | Key areas to take account are the policyholder’s protection, simplicity, speed and level of coverage (these are relevant in all variations of the geographic principles). The main challenges for the home country approach are with regards to the cross-border business where the practicalities of compensating the customers from other MS or third parties will be difficult (How can the customer be reached? How would they deal with language and cultural differences?). In addition, the potential longer-term solution for continuing the contract through the sale of the portfolio to an insurer could be more difficult if the business is cross-border. There may also be difficulty in that items may not be harmonized between the different insurance markets which could provide a challenge for an IGS covering all business of a cross-border entity.Markets are different also in other ways. For example some (large) markets are fairly diversified while other (smaller) markets are less so, meaning some undertakings govern a substantial market share. In these less diversified markets an IGS might not help the situation but make it worse: the problems of one larger player could create such a burden, especially in life/pension insurance, for the IGS and the whole market that the whole market would collapse (i.e. IGS could create systemic risk for a market). | In order to take into account the policyholders’ protection, simplicity, speed and level of coverage, EIOPA believes that Host IGS could operate as a “front office” in cross-border cases to facilitate information transfer, such as consumer identification, or communication in local language. | Public |
| Actuarial Association of Europe (AAE) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Yes- this would help to address potential operational issues as described in question 5. The possibility of having a “Front - Office ” option for the domestic IGS that could identify and compensate the affected policyholders in the domestic countries would represent a step forward for the protection of the policyholders. Indeed policyholders will avoid any communication with the foreign authority meaning no language issue or barrier at a difficult time for them. It does however create a need for the establishment of formal channels which each “front-office” IGS will use to link in with the “back-office” IGS. | Noted.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Actuarial Association of Europe (AAE) | 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? | In general the key advantage of the home-country approach appears to be the consistency with regulatory supervision. However, given the harmonization through Solvency II regulation this advantage might be less relevant than the following potential issues:* Difficulty of reaching customers and supporting customers cross-border
* Customers are not treated the same way in a country
* Maintaining a cross-border business might operationally be more complex.
* A potential longer-term solution of a portfolio sale could be more challenging with business in specific geographies.

Choosing a host-country principle would address the above while at the same time potentially increase the complexity for a given insurer, who has FoE or FoS business. However, the industry and the government of each country can be expected to have vested interest in supporting the IGS because they are directly affected by market implications from a failure of an insurer.Differences in the pension business provided by the insurance company during the decumulation phase might show the significant differences in host/country principles and might be technically difficult not only because of the languange barriers but also because of the lack of technical knowledge of the particular conditions of the pension schemes provided by the insurers in the respective Member states.  | Noted. | Public |
| Actuarial Association of Europe (AAE) | 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. | Fully agreed with “policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries” – this is really the core objective. We are of the opinion that from a client’s perspective the relevant lines of business are already covered with the first criterion. | Noted.  | Public |
| Actuarial Association of Europe (AAE) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Clearly defining the policies covered is one of the key items for which we believe further detailed work is required. In general, any policy with a material claim, which if not covered could provide for a material financial loss to the client (e.g. coverage of a house against fire) or an investment process is involved (e.g. pension, long-term annuity guarantees). Finally, products which medicals as part of the underwriting could present an important loss of coverage for the client if he is older and sicker at the time the insurer defaults (e.g. protection business). An example of a non-relevant insurance could be travel insurance for the luggage.Further analysis on the average cover and cost of life should be required, initially at country specific level and then at European level to agree a harmonised level of cover. Individual schemes can cover additional policies however this would be at their discretion. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Actuarial Association of Europe (AAE) | 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. | With the transition to the new framework the treatment of legacy cases in relation to existing IGSs needs to be dealt with in order to ensure the continued coverage of the customers. In the same way there should be a process to include new innovative products in the scope of the IGS if applicable and relevant. | Noted. | Public |
| Actuarial Association of Europe (AAE) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | We agree with the general philosophy of *natural persons (with exception for persons directly involved with the failed insurer such as Board’s member, directors) and micro and small-sized entities* being offered cover through their IGS as they are particularly vulnerable to failure of their insurance policies. People directly responsible for the result of the company should be excluded (e.g. directors) however their family/relatives should be applicable for cover. We do raise a concern in relation to the potential difficulty in defining what a small-sized entity is, for example in the context of a large bloc, a single value of turnover/ salary, may not be appropriate. Intentional causes of the insured event by the insured person or policyholder (insurance frauds). | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and micro-sized legal entities as defined by the European Commission. | Public |
| Actuarial Association of Europe (AAE) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Ultimately the objective is to protect the final customer and offering extended cover will do this. We appreciate that this will have cost implications so it may be something that isn’t offered above a certain level.Considering in addition the structure of such large legal persons and prototection offered, a careful analysis is recommendable before including a large legal person in the IGS.The treatment especially of large entities involved can be complex, especially in the cross border IGS services.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Actuarial Association of Europe (AAE) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | Given the difference in implications for the customer there should be different levels for Life and Non-Life, Solvency II compliant and Solvency II non-compliant entities. In case of a maximum required it appears difficult to harmonize this across countries given the different economic conditions and level of invested money in insurance contracts. This may be something that could be agreed on at country level with a harmonised minimum % of a policy’s value or % of the regular annuity outpayment to be covered requirement at European level. | EIOPA is not against compensation limits/caps.However, they need to be carefully designed. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| Actuarial Association of Europe (AAE) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | The level should depend on the volume and risk of the insurance business and be updated on a regular basis. The target level should take account of the funding methodology and the risk on balance sheets vs other European countries.It could be discussed whether the funding should be based on the home state principle (making it necessary for the home supervisor really to supervise all companies under its supervision – this is today not a reality with undertakings who have no business in the home market and who do only FOS business). Rules of compensation, however, could be according to the host state principle.  | As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Actuarial Association of Europe (AAE) | 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 (risk-based, fixed rate, other)? | The individual insurer should participate on a risk-based approach. With harmonized contract valuations and capital requirements under Solvency II there should be a relevant basis readily available.However, that being said, we would challenge as to why the funding method is to be prescribed given that the legal structure of the compensation schemes is to be left to member states, and the overarching aim is minimum harmonisation. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| Actuarial Association of Europe (AAE) | 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)? | The overall contribution should be consistent with the overall risk level in order to gradually fill up to the required value. Hence it should equally be isk based. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Actuarial Association of Europe (AAE) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | Agreed with what’s required as per the regulation, but we would add to this that the funding of the guarantee scheme should also be part of the disclosure to policyholders. Disclosure consistent with the requirements of Article 8(3)(e) of the PRIIPs Regulation seems to require sufficient information for policyholders on the schemes and the risks covered in case of a failure of the insurer  | Noted, no change needed. | Public |
| Allianz SE | General comments | Allianz SE, the parent undertaking of Allianz Group, welcomes the opportunity to comment on EIOPA’s Consultation Paper on Harmonization of National Insurance Guarantee Schemes.Allianz is taking a constructive approach to further enhance the current high level of policyholder protection in Europe already provided by Solvency II through a harmonization of national Insurance Guarantee Schemes, despite the implied risk of detrimental competitive distortions for well capitalised insurance groups such as Allianz Group.The proposed minimum harmonisation approach of national insurance guarantee schemes (IGSs) should be a scheme of last resort which protects consumers only. It should cover all classes of life-insurance and outstanding claims of non-life insurance according to compensation limits. IGSs should follow the home-country principle with limited ex-ante funding and risk-weighted contributions of insurers. Please find further details in the answers to the specific questions below.The European insurance sector recorded only few insolvencies during the past two decades (87 failures within 31 European countries between 1999 and 2016, with the majority of resolution cases being distressed non-life insurers). Furthermore, insolvencies in insurance have become even less probable since the introduction of Solvency II in 2016. The marking-to-market of insurers’ market value balance sheets means that solvency positions for insurers will at all times reflect expectations of future potential losses. Moreover, market valuations also reflect liquidity and market psychological factors, which tend to amplify market reactions. Mark-to-market losses will typically overstate ultimate realised losses. All this shows that Solvency II is substantially conservative and forward-looking in itself. Any given Solvency II ratio (without transitional measures) is a prospective, leading-indicator and any realised losses realize at a later time, if at all.We share the view that harmonized IGS are an important tool to foster insurance markets in the EU. We also see them as support for an even more economic and risk based group supervision approach, which not only should allow to consider diversification effects in the (group) SCR, but to also consider these in the group’s capital management. In this vein, Art. 242 (2) of Directive 2009/138/EC links the topics of enhancing group supervision and capital management within a group through the instrument of “group support” and IGS. We therefore urge EIOPA to also submit proposals for a review and better recognition of group support and/or centralized risk management. | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. Some considerations may be taken into account in the next steps. | Public |
| Allianz SE | 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. | We welcome the minimum harmonisation approach. This option allows to take account of national legal specifities, and to take advantage of existing IGS which were established according to national law. National legal specifities will need to be taken account of as long as the contractual regime for insurance policies has not been harmonised. | Noted. | Public |
| Allianz SE | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | IGS shall be a scheme of last resort to intervene only in near-insolvency situations. The default of an insurers must firstly be avoided by means of prudential supervision (e.g. reduction of policyholder benefits), or voluntary measures of the market (e.g. M&A), but not by an IGS in the first place. Any IGS intervention is to be applied only in near-insolvency or resolution situations (e.g., triggered by a breach of the Minimum Capital Requirement (MCR) under Solvency II) after other solutions (see above M&A, portfolio transfer) have failed and before the opening of insolvency proceedings.As such harmonised sector-wide recovery and resolution planning requirements are contributing to reducing the default probability (i.e. breach of the MCR) and to ensuring an orderly resolution processes, as such reducing the complexity and costs of IGSs. | Certain flexibility should be given to Member States. Some existing national IGSs have another role (i.e. not only paying compensation). | Public |
| Allianz SE | 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 | Noted. | Public |
| Allianz SE | 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. | The Continuity IGS may provide advantages in case of life insurance, where a mere compensation is insufficient to enable the policyholders to find a comparable protection in the market. But where no such advantages exist, the Compensation IGS is a leaner and less costly scheme. Due to the nature of the respective insurance segment, Allianz favours a Continuity IGS for life insurance and a Compensation IGS for non-life insurance. | Noted. | Public |
| Allianz SE | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | * The European network of national IGSs shall require the establishment of separate (national) IGS in each member state, and no mutual support or bail-out between national IGS shall be required. Only this option seems technically and legally feasible. Until a real harmonisation of the national regimes of prudential supervision has been reached (i.e. a truly harmonised application of EU law), the idea of an EU-wide IGS or of mutual support between national IGS cannot be discussed. But even assuming harmonisation will have been reached, a mandatory contribution of undertakings of one state for the default of competitors and supervisors of a different state seems to encounter severe legal difficulties according to national laws. This applies both to the funding by the industry as well as to a possible “last resort” financial support by member states.
* IGS shall be a scheme of last resort to intervene only in near-insolvency situations. A default must firstly be avoided by means of prudential supervision (e.g. reduction of policyholder benefits), or voluntary measures of the market (e.g. M&A), but not by an IGS.
* The stepping-in of an IGS must lead to the withdrawal of the troubled insurer from the market. Otherwise, an IGS were to support an insurer, which would continue to be a competitor.

Any IGS intervention is to be applied only in near-insolvency or resolution situations (e.g., triggered by a breach of the Minimum Capital Requirement (MCR) under Solvency II) and therefore before the opening of insolvency proceedings. | Noted. This is broadly in line with the advice. | Public |
| Allianz SE | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | We support the possibility of the (home-country) IGS of the host-country (i.e. the country, where insurance contracts have been written through FoS or FoE) to act as a front office with recourse to the IGS of the home-country (of the insurer that has written the insurance contracts through FoS or FoE), however only provided that no mutual (financial) support, pre-financing or bail-out between national IGS shall take place. | Noted.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.  | Public |
| Allianz SE | 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? | The geographical coverage should follow the home-country principle. As such, the national IGS should be organised along the supervisory passport principle. This means that an IGS of a member state protects all eligible policies underwritten by an insurer authorised in the respective member state, whether the policies are underwritten in such state or cross border in another member state. The alignment with the supervisory powers according to the passport or home-country principle enables the supervisor of the failed insurer to approve a portfolio transfer to the Continuity IGS to ensure the continuity of the contracts. Furthermore, this also leads to an alignment in terms of supervisory responsibility. The same should apply to Compensation IGS to avoid unnecessary complexity. | Noted. EIOPA agrees on the need to have an alignment in terms of supervisory responsibility and of intervention mechanisms of the national IGSs. | Public |
| Allianz SE | 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. | We don’t think that within a harmonised European IGS system the level of cross-border activity should be relevant for coverage by an IGS. The first criterion given in the consultation (policyholder hardship) is the relevant consideration for eligibility.  | Noted. | Public |
| Allianz SE | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | * IGSs should cover all classes of life insurance.
* Protection of non-life insurance including health shall be limited to outstanding claims of either: Insurance Creditors for which the insurer’s insolvency would lead to a severe hardship (to be defined as claim amounting to at least EUR 10,000 in Germany and equivalent amounts translated by purchase power to other member states), or insurance beneficiaries which are covered by mandatory third party liability insurance. Having in mind that the financial impact of a default of a non-life insurer is in general low for Insurance Creditors, the protection should be limited to severe cases. These are such, where the individual Insurance Creditor is personally extremely affected, or where insurance beneficiaries are affected in case of mandatory third party liability insurance, who are not responsible for the choice of the insurer
 | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Allianz SE | Q11) Which criteria should be used to determine/exclude the eligible claimants? | * IGSs are an instrument of consumer protection, and hence should only protect such Insurance Creditors, which are consumers. These are well defined by existing EU directives. Other natural persons can, and should, be made fully liable for the choice of an insurer. If an extension to further persons should nevertheless be politically aspired, the scope of IGS must in any case be limited to natural persons.

Member States shall be allowed to exclude consumers connected to the failed insurer (directors, managers, qualified shareholders of the failed undertaking etc.). | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Allianz SE | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Although we acknowledge that in some cases consumers, in particular employees, buy life insurance through a legal person, their employer, we still believe that a distinction based on formal criteria (natural vs. legal person) is necessary, as only this provides for a clear-cut definition and legal certainty.  | Noted. EIOPA’s advice clarifies further the eligible claimants and also the related policyholders and beneficiaries. | Public |
| Allianz SE | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | The IGS should allow member states to choose the following compensation limits: * life insuranceAllianz favours a Continuity IGS, aiming at the complete fulfillment of contractual obligations of the life insurance policies. Thus, no compensation limits are required. However, the respective national supervisory authority shall have the right to reduce contractually guaranteed benefits prior to a portfolio transfer to an IGS;
* non-life insurance (severe hardship)No coverage of unearned premiums. Coverage of claims through a Compensation IGS subject to a floor of EUR 10,000 (for Germany and equivalent amounts in other member states translated by purchase power) and retention of 10 %, and no cap
* mandatory third party liability insurancefloor: EUR 1,000 (with translation by purchase powert to equivalent amounts in other member states), no further limit.

Rationale:* For life insurance, compensation limits are not required due to the preferred solution of a Continuity IGS. The respective national supervisory authority shall have the right to reduce contractually guaranteed benefits prior to a portfolio transfer to an IGS, and in emergency situations even after such a transfer. This is justified to allow for a broad compensation of all Insurance Creditors and follows the group-balance concept within a community of policyholders. It is therefore recommended to part from the principle of “no creditors worse off than in insolvency” in this instance.

For non-life insurance, there is no cause to cover unearned premiums: None of the two core objectives of IGSs applies: fostering market stability and confidence is not necessary, since policyholders can only claim money if their policy has been triggered, e.g. a damage occurred. There is no run on (non-life) insurers. With regard to the second objective, consumer protection, we strongly hold that if at all, a protection would be necessary only in cases in which an existentially large damage occurred and can no longer be settled, but not with regard to the unearned premium itself. To this extent, there simply is no savings-part at stake which would justify an equal treatment with life insurance or the Deposit Guarantee Schemes in banking. | EIOPA is of the view that a minimum harmonised coverage level is necessary in the EU, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| Allianz SE | Q14) What should be the relevant criteria to determine the target level for national IGSs? | The target level for national IGS should be estimated by taking account of the capitalisation levels of insurers covered by each (home-country) IGS. Expected default rates should then be established that are consistent with the security level implied by Solvency II and existing capitalisation levels. Expected capital short falls should be determined and weighted by expected default rates to estimate the amount of additional funds needed to accommodate transfered run-off portfolios within a continuity IGS (life) or additional funds needed to pay out compensations for claims through a compensation IGS (non-life). | As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Allianz SE | 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 (risk-based, fixed rate, other)? | * Generally any funding should be based on risk-weighted contributions from all insurers subject to individually and ex-ante determined maximum total amounts that leave the individual insurer well capitalized. This requirements is essential to avoid systemic risk.
* The IGS shall require not more than an ex-post funding for Compensation IGS and a limited ex-ante funding for Continuity IGS. In order to keep the constant financial burden on the industry to a minimum, an ex-ante funding must be avoided where possible. Since a Continuity IGS (which is to take over an insurance portfolio) requires to have a certain degree of organisation and own funds, a limited ex-ante funding seems to be necessary. A (limited) ex-ante funding also helps to reduce the risk of a domino effect which could occur when contributions to an IGS during a crisis were to cause or further aggravate the problems of weak insurers. Furthermore, the contribution to an IGS should be treated as an investment (asset) on the balance sheet of the contributing insurer.
* The contributions should be risk-weighted by taking account of the insurers’ solvency ratio, without taking into account transitional measures. To lessen the systemic risk of IGS, the insurers’ contributions to the IGS should not be measured only according to absolute dimensions such as written premiums or technical provisions. Rather, the funding mechanism shall privilege insurers with a higher solvency ratio. This would allow, to some degree, to take account of the probability of default of insurers. Furthermore, it also allows to offset some of the competitive distortions of IGS.
* An upper limit to the annual level of contributions from insurers to the IGSs shall be included. This applies to both a limit for the contribution of the insurance industry as a whole as well as to a limit per individual insurer. The latter is especially required in case the national IGS allows for the supervisory authority to exclude financially weak insurers from the industry contribution. By doing so, the required industry contribution is then effectively allocated to a lower number of remaining insurers, increasing their financial burden. This should be avoided through the introduction of a limit per insurer.

Additional capital may be raised in case the ex-post funding for the compensation of policyholders proves to be insufficient. However, also in case of shortfalls, we favour the introduction of a cap per entity that leaves that entity will capitalized in order to avoid excessive allocation of losses to the remaining insurers. | 1. Noted. EIOPA is of the view that IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. In order to avoid the risk of contagion the ex-post fund raising should be constrained. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. EIOPA also believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or by the industry as a whole into IGSs to mitigate the risk of overburdening the industry.
 | 1. Public
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| Allianz SE | 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)? | We agree with EIOPA that further work is required on this issue. The build-up of the target coverage level should be spread over time to avoid market disruption. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| AMICE (Association of Mutual Insurers and Insurance Cooperatives in Europe) | General comments | AMICE welcomes the opportunity to provide feedback on EIOPA’s consultation paper on harmonisation of national insurance guarantee schemes.1. AMICE believes that there is no rationale for minimum harmonisation in the field of IGS. Following the extensive enhancements of the insurance regulation regime in recent years, adequate protection of policyholders is at the core of Solvency II. This new system of regulation protects through a system of two capital requirements which ensures the early detection of financial difficulties. The supervisory ladder of intervention in Solvency II allows for supervisory actions while there are still assets in the regulated entity to meet obligations to policyholders. Solvency II also contains provisions for the winding-up of insurers and national insolvency laws to complement these.
2. Historically, insurers have proved resilient in times of challenge and required little in terms of government support; this is even less likely in the future due to the new environment under Solvency II in Europe.
3. Insurance failures are very rare and given the general lack of interconnectedness do not affect other insurers or the payment systems, contrary to the systemic impact of failure in the banking sector.
4. Consumer protection needs are different in the insurance sector to the banking sector. The type of issues that bank guarantee schemes address does not exist in the insurance sector. Rules applied to insurance should fully reflect the important differences between the business models and risk profiles of the two industries, taking into account aspects such as long time horizon, illiquidity and contingent liabilities as unique characteristics of insurance, making it a distinctly different business model from that of banking. If a crisis does occur, insurers can typically be wound up in an orderly manner through run-off and/or portfolio transfers, in contrast to the situation with the banking sector.
5. National insolvency laws already provide sufficient safeguards as regards consumer protection through prudential rules, rules on winding-up and right of priority.

AMICE believes that existing tools and powers should be used before introducing any new regulatory framework on IGS. The introduction of further regulation will fail to solve the most serious challenge, i.e. the lack of or insufficient supervision in the early stages of an insurer’s irregular performance. A proper enforcement of Solvency II and high-quality supervision by national competent authorities remain the only ways to ensure a healthy insurance market.Moreover, EIOPA should better acknowledge that there remain different local and cultural approaches to insurance and therefore, there is no case for harmonisation in guarantee schemes.To conclude, we do not believe it is necessary to introduce a minimum degree of harmonisation in the field of IGS since Solvency II already provides a sufficiently robust prudential framework with policyholder protection at its core. | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. Some considerations may be taken into account in the next steps. | Public |
| AMICE (Association of Mutual Insurers and Insurance Cooperatives in Europe) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | AMICE does not believe it is necessary to introduce an additional regime since Solvency II already provides a sufficiently robust prudential framework with policyholder protection at its core.  | EIOPA set out the pros and cons and advises on harmonisation of recovery and resolution frameworks and IGSs. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | General comments | ANIA supports the status quo and does not deem necessary an EU initiative on IGS at this stage. Preserving the status quo is the most practical option. It avoids the difficulties associated with adopting an EU-wide approach to IGS and reaching a consensus on what such an approach should look like in practice. In addition, under the current system, Member States have adopted, or at least have the opportunity to adopt, the approach to IGS that suits national market characteristics and the institutional framework in a particular country. Put differently, there is flexibility for countries to implement (or not) an IGS, depending on their distributional preferences and taking into account the country-specific trade-offs when considering the costs and benefits of introducing and designing an IGS. A “wait and see” approach is also consistent with the view that insurance failures may be less likely going forward as insurance supervision at the EU level improves with the implementation of Solvency II—i.e., the view that policy decisions concerning EU-wide implementation of an IGS should wait until these changes are implemented and their impacts evaluated.Even a minimum level of harmonisation would create significant costs and involve complex challenges for which there may not be acceptable solutions. The focus and priority instead should be on ensuring that Solvency II is actually applied appropriately by all NCAs and there is coordinated supervision of FOS/FOE. National authorities should be allowed significant flexibility to choose the features that best suit their market, to reflect the important differences between member states regarding social welfare systems, winding-up process for insurers and insurance product lines.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 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 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. ANIA 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. IGS bears the danger of moral hazard as it cannot be excluded that IGS encourage less responsible conduct. With IGS in place, policyholders might be inclined to pay less attention to the insurance company’s financial solidity and choose their insurer solely on the basis of the lowest premium. Equally, insurance intermediaries might not necessarily offer their clients the products of a financial sound insurer, but rather those which come at the lowest price. Furthermore, a company’s directors and officers might be less prudent in their management behaviour if they know that consumers’ protection will no longer fully depend on their efficient management. Also, supervisors may be less inclined to intervene in time with an IGS in place, which may adversely affect the supervisory ladder described above.However, should a legislative inititiave on IGS be put forward, ANIA believes that a minimum harmonisation of national IGS is the most appropriate way forward, and, in its response, makes the following suggestions:* The role and the functioning of IGS should be left to the discretion of member states. National authorities should have a reasonable margin of authonomy to chose IGS characteristics that better suit the domestic specificities (such as social protection scheemes, insurance products, remboursement procedures, etc.).
* A preference would be for a home approach combined with host elements. A combination of both the home and host-country principles could better deliver equal protection to policyholders affected by the same insolvency event
* The scope of products included under minimum harmonisation should be as limited and focussed as possible, so as to allow national authorities to define it in consultation with local stakeholders according to their own market’s realities.
* Any minimum harmonisation should only cover consumers (natural persons) and it should be for member states to decide, in consultation with local stakeholders, whether a wider scope is justified.
* Ex-ante funding should not be imposed, any minimum harmonisation should leave IGS funding (ex ante or ex post) to be decided at Member States’ level. In any case, absolute caps on contributions to an IGS would be needed.
 | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. Some considerations may be taken into account in the next steps.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Nevertheless, a more detailed impact assessment will have to be carried out after progress is made on the potential work on funding, etc. Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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. | ANIA agrees that the legal structure of policyholder protection schemes should be left to the discretion of Member States. More generally, ANIA believes that national authorities should be allowed significant flexibility to choose the IGS 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. | Noted. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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)?  | ANIA 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. | Noted, however EIOPA’s view is that in order to achieve harmonisation of policyholders protection in Europe, it is necessary to define a common framework and agree on the role of IGS, which can’t be fully left at the discretion of the Member States. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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. | ANIA 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. | No change. EIOPA’s view is that in order to achieve a minimum of harmonisation of policyholder protection in Europe, it is necessary to agree on the role of IGS (it cannot be totally left to the discretion of the Member States). | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 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.
* With respect to the host-country principle, ANIA would point out that:
* Applying it in only a few jurisdictions 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 may be unfeasible for the host country IGS to know and apply exactly the rules of compensation of the home-country IGS.

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. Therefore, ANIA’s preference would be for a home approach combined with host elements, in which the home country provides the payment and the host country provides the “front office” customer interface. The Home country should be responsible for funding because this ensures alignment with supervision. However, the Host country is needed 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.  | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | ANIA’s preference would be for a home approach combined with host elements, in which the home country is responsible for funding and the host country provides the “front office” customer interface. The Home country should provide payment because this ensures alignment with supervision. However, the Host country is needed 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.   | Noted.Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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? | ANIA’s preference would be for a home approach combined with host elements, in which the home country provides the payment and the host country provides the “front office” customer interface. The Home country should provide payment because this ensures alignment with supervision. However, the Host country is needed 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.  | Noted. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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. | The criteria set out in paragraph 149 will lead to that almost all insurance products within EU will be covered by IGS, otherwise the arguments in favour of a European network of IGS will not be valid. The reason is that the type of insurance that fulfil the criteria differ between the Member States. This is because there are no EU-rules on what an insurance product is and what a specific insurance product should cover (bank deposits on the other hand are much more similar among the Member States). For example, in some countries home insurance also covers legal protection, liability and travel insurance while in others it does not. 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. The lack of an analysis of the criteria in paragraph 149 in the consultation paper and its practical implications on different insurance products in different Member States makes it impossible to draw conclusions on the implications for IGS. Therefore, under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. While ANIA cannot, for the reasons explained above, endorse a minimum harmonisation on any type of product, it would like to highlight the following elements that should be taken into account when deciding what types of products should be covered by IGS* The criteria for the coverage of specific policies, which could lead to considerable social hardship seems more relevant in cases where the insurance substitutes state-based pension and / or health care systems.
* If some financial sectors and products are not covered by protection schemes this may create an un-level playing field between relatively comparable financial products, such as investment-related life insurance and pensions.
* 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.
* When non-life is included under the scope, ANIA would suggest that existing well-functioning IGS for non-life at local level should be taken into account.
* While there is a logic to including compulsory non-life insurance in a national IGS, the reality is that the types of insurance that are compulsory vary greatly across member states. Therefore, including compulsory non-life under the scope of minimum harmonisation would be misguided.
* Moreover, since life and non-life insurance contracts differ significantly and are handled differently in the event of insolvency, ANIA believes that it would be preferable that life and non-life insurance are treated and administered by separate IGS entities.
 | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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. | No further comments.  | Noted. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Should minimum harmonisation be considered and because the primary aim of harmonising national IGS is effective consumer protection, ANIA believes that the IGS should cover consumers that are natural personson and that it should be at the discretion of member states, in consultation with local stakeholders, to decide whether a wider scope is justified.* ANIA 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).
 | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Should minimum harmonisation be considered and because the primary aim of harmonising national IGS is effective consumer protection, ANIA believes that the IGS should cover consumers that are natural personsonly and that it should be at the discretion of member states, in consultation with local stakeholders, to decide whether a wider scope is justified. | Noted. See previous reply. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | 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. ANIA 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 de minimis rule (minimum threshold for IGS intervention) 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;

absolute caps on total contributions are needed to avoid that the obligation to fund an IGS exposes the customers of the other remaining insurers in the market at a risk that would not have existed otherwise.  | EIOPA is not against compensation limits/caps.However, they need to be carefully designed. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | ANIA believes that decisions relating to IGS funding should be left to member states’ consideration, in consultation with local stakeholders. Minimum harmonisation should merely require member states to establish funding systems that would deliver adequate and 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: * Ex ante funding has several drawbacks. While there is a degree of science that can be applied to estimating the probability and impact of insurance failures, in practice, the timing and costs of failures are difficult to predict with any certainty. There is therefore a risk that any pre-funding arrangements will levy higher contributions from participating insurers than are actually warranted. While there are ways of mitigating this problem, such as by targeting a maximum level of accumulated funds, the risk would remain that such funds are never needed. Conversely, the scheme may prove to be under-funded and require increased contributions after failures occur. Under a post-funded arrangement, the size and timing of levies on insurers would be targeted to a known level. In particular, it may not be a proportionate response to introduce an ex ante system and build up a large standing fund if failures are unlikely to occur and are small when they do occur. In many EU Member States, the frequency of failures to date has been low, with some countries having experienced no failures at all in recent years.
* Importantly, the costs imposed on firms (and ultimately consumers) by an ex ante-funded scheme amount not only to the actual levies paid but include the returns that firms could have earned on the funds had these funds been retained within the firm. This raises the general issue of how a surplus fund should be invested by the IGS operator. If the fund is invested in safe assets, this is likely to increase the opportunity costs to firms relative to their cost of capital. However, if the fund is invested in risky assets, it would be exposed to market risk, and, depending on which assets were purchased by the fund, possibly also credit and liquidity risk.
* Experience has shown that funding on an ex-ante basis often leads to the multiplication of the tasks that the fund needs to run. 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.
* Ex-post funding has lower associated administration costs than ex ante funding, since no fund management is required and funds are kept within insurance companies, provided that no failures occur. This may be considered more desirable under the feasibility/practicality criterion. A pre-funded system and the potentially larger administration around it may also present some risk of ‘regulatory creep’—i.e., the expansion of another arm of bureaucracy beyond what is required.
* The main argument in favour of ex-post funding is that this will not result in contributions from insurers unless there is a failure, so insurers will have more funds at their disposal. 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.
* Further, insurers individually, and taken together as a sector, already hold considerable capital against even romote risk of failure. Ex-ante funding effectively increases this tying up of capital very significantly.
* 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 – See Q13) 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, this may signifcantly weaken the financial position of otherwise healthy insurers, thereby exposing their policyholders to risk.

As stated earlier in this response, ANIA believes that decisions relating to IGS funding should be left to member states’ consideration in consultation with local stakeholders and takes no position on what the best solution would be. However, ANIA would caution against imposing ex-ante funding under minimum harmonisation for the reasons explained above. Should ex-ante funding be considered, by a member state, ANIA would suggest doing so through decentralised funds (i.e. a company contributes to a fund that remains under its control until the funds are needed, as long as it can prove to the relevant authority that the required amount exists in the fund). | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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 (risk-based, fixed rate, other)? | The contribution basis depends on the type of funding used and, because ANIA 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. However, ANIA believes that contributions based on fixed rates make more sense in general. In case of ex-ante funding, ANIA also favours the introduction of upper limits to the annual level of contributions to the IGS, the determination of which must be a national competency (See also Q13). The existence of upper limits in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry. Each insurer can be considered as creating an expected cost to the scheme at some point in the future, based on the probability of the firm becoming insolvent, and the exposure or level of costs arising if a default were to occur. This expected scheme cost may change over time as the firm’s activities and risks evolve. One approach to funding an IGS would be to risk-weight levies such that each insurer’s contributions were proportionate or equal to the expected cost to the scheme. Firms assessed as posing greater risks of triggering scheme costs would be charged a higher levy. Although in principle possible with ex post-funded schemes, the economic advantages of risk-based levies are more likely to be realised if operated under a scheme that is funded on an ex ante basis. This is because under ex ante funding, the failed insurer would have contributed to the scheme before its failure, in proportion to the cost it was expected to impose on the scheme.Risk-weighted levies can be seen as having desirable incentive properties, since they may encourage firms to control their own risks. Risk-weighting may also facilitate more precise risk measurement of firms, which can help to control risk. In particular, if the establishment of an IGS is associated with concerns about moral hazard behaviour on the part of industry, these concerns can be addressed through risk-weighting. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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)? | ANIA favours the introduction of upper limits to the annual level of contributions to the IGS, the determination of which must be a national competency (See also Q13). The existence of upper limits in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 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, ANIA 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. ANIA also believes that any IGS proposal should explicitly prohibit any type of advertising about the existence of an IGS since doing so would create moral hazard.ANIA 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;”*  | Noted, no change needed. EIOPA stresses that the information should not be used for marketing purposes. | Public |
| ASSOCIAZIONE NAZIONALE FRA LE IMPRESE ASSICURATRICI (ANIA) | 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, please also refer to Q4 and Q5)? If so, what are those? | ANIA believes that this is the weakest part of the current EU supervisory system. Information and collaboration between home and host supervisors should be reinforced.  | Noted. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | General comments | Assuralia welcomes the opportunity offered by EIOPA to share views and concerns with regard to EIOPA’s draft response to the Call for Advice of the European Commission on Insurance Guarantee Schemes. Assuralia believes that there is no need for measures at EU level in order to harmonize national Insurance Guarantee Schemes.Assuralia agrees that policyholders should be protected against the effects of insurance companies becoming insolvent and not being able to fulfil the commitments they have taken up. However, such protection should first and foremost come from preventing insolvencies by means of an efficient and firm prudential supervision. In this respect, Assuralia would like to highlight the following points: * A wide range of measures are already put in place (both on a European and on a national level) to ensure that insurance companies are financially sound and are able to fulfil their contractual commitments at any time (for instance by requiring insurers to hold enough assets at any point in time).
* Moreover, Solvency II has significantly upgraded the supervision of insurance companies and, hence, has reduced the likelihood of insurance failures to a minimum.
* Also note that the financial situation of insurance companies is followed up closely by the national supervisory authority. The supervisory authority disposes of extensive powers to intervene at an early stage to prevent that financial difficulties would arise or would escalate.
* It is widely acknowledged that the risk profiles of insurers and banks differ fundamentally. Insurers can’t be subject to a “run” as banks can be, since in most cases policyholders cannot simply withdraw their money from the insurance policy on demand or are discouraged to do so (for fiscal reasons, because of the penalties in case of early termination, …). A liquidity crisis is therefore highly unlikely to occur in insurance.
* In the unlikely event of an insurance failure, there are already sufficient policyholder protection mechanisms in place (e.g. the priority of policyholder claims in liquidation).

Assuralia also fears that an EU initiative on Insurance Guarantee Schemes would create undesired side effects. A badly designed IGS may lead to disproportionate high costs for insurance companies, making them financially more vulnerable, and could eventually threaten the financial stability. With an IGS in place, policyholders might be inclined to pay less attention to the financial situation of an insurance company when purchasing an insurance policy (moral hazard). Also note that in Belgium several guarantee schemes exist already to ensure that policyholders do not suffer any losses in the unlikely event of an insurance failure (e.g. in motor insurance, in insurance covering accidents at work, in insurance covering liability in case of technological accidents, in life insurance). These existing guarantee schemes function properly. If an EU initiative would follow, Assuralia believes that it should be limited to a minimum harmonisation of the existing national IGSs. A single EU-wide IGS, requiring full solidarity between all countries in the EU, is not a realistic option and should not be considered as is also argued by EIOPA in it’s consultation paper. Should minimum harmonisation be considered, Assuralia favours the following policy options: * Establishing a European network of national IGSs with a minimum degree of harmonisation
* Role and functioning of IGSs: compensation of claims only (even in case of life insurance) without any role regarding a possible continuation of policies
* Geographical coverage: home-country principle
* Eligible policies: selected life insurance policies only / unit-linked life insurance and occupation pension insurance should be excluded
* Eligible claimants: natural persons only
* Funding: ex-post funding + upper limit to (ex-post) contribution by insurers and to the coverage level (claims paid by the IGS)
 | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Nevertheless, a more detailed impact assessment may have to be carried out after progress is made on the potential work on funding, etc. Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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. | Assuralia agrees that the legal structure of national IGSs should be left to the discretion of Member States. The existing guarantee schemes in Belgium are adapted to the Belgian situation and are all well-functioning.  | Noted. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Assuralia does not see a need for measures at EU level regarding IGS within the broader context of recovery and resolution. Assuralia considers an IGS as a “last-resort mechanism” providing compensation to policyholders for their losses in the event of an insurance insolvency. An IGS should not play any role in recovery and resolution or, more generally, in preventing an insurance insolvency. The existing measures to prevent an insurance company to become insolvent, are sufficient. An IGS does not hinder the use of these measures. On the contrary, it only comes into play at the moment that other protection measures are exhausted. Note that this is in line with the role and functioning of the life IGS existing in Belgium. | Some flexibility should be given to Member States. Some existing national IGSs have another role than paying compensation.Furthermore, EIOPA argues in its advise that, in order to achieve harmonisation of policy holder protection, not only IGS should be harmonised (to some extent), but also recovery and resolution regimes.  | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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)?  | An IGS should be solely set up with the aim to pay compensation to policyholders for their losses when an insurer becomes insolvent, as is the case in most of the existing IGSs. An IGS should not be used to ensure the continuation of insurance policies (neither by facilitating a portfolio transfer to another insurance company, nor by administrating the portfolio itself). This would change the core of its mission, bring about more complexity and might in many cases not be a feasible option.  | EIOPA’s view is that IGS should also help ensure the continuation of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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. | An IGS should be solely set up with the aim to pay compensation to policyholders for their losses when an insurer becomes insolvent, as is the case in most of the existing IGSs. Also in Belgium, the role of the life IGS is limited to compensating policyholders for their losses (instead of allowing the IGS to take over and to administer the insurance policies). Although the continuation of life insurance policies might be more beneficial for policyholders, it might be extremely difficult if not impossible to find another insurer willing to take over the portfolio of the failed insurer. If the risks involved are too significant (e.g. high interest rate guarantees in life insurance policies with a savings component, aggravated health risks in life insurance policies covering death), a portfolio transfer could jeopardize the financial soundness of the insurance company that took over the portfolio. Allowing the IGS to take over and administer the insurance portfolio neither seems to be feasible. An IGS lacks the means and the experience to do so.  | Noted, particularly on the operationalisation of the continuation of life insurance policies.  | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | As proposed by EIOPA in its consultation note, Assuralia is also in favour of the home-country principle. A national IGS should only cover insurance policies issued by insurance companies located in that country. The home-country principle is consistent with the approach with regard to prudential supervision: as the prudential supervision of insurance companies is the sole responsibility of the home Member State, it should also be the responsibility of the home Member State to deal with the consequences of an insolvent insurance company, wherever its activities are located. It would indeed not be fair that insurance companies in one country should pay for the failure of an insurance company that is located in another country and that possibly is subject to less stringent supervisory rules. Under the home-country principle, the following aspects should be taken into consideration: * As the IGS protection depends on the location of the insurance company offering the insurance policy, it is important that consumers are well-informed about the existence of an IGS and about the conditions of IGS protection when purchasing an insurance policy. This ensures that consumers can make an informed decision.
* Consumers may encounter difficulties when opening a claim file in the IGS of the home-country, for instance due to language issues. A possible solution could be to allow consumers to receive information about the procedure to follow from the IGS of their country of residence (“contact point”) and to allow them to open a claim file through this IGS (“serving hatch”). This requires however close cooperation between IGSs of different Member States.
 | EIOPA agrees that it is important that consumers are well-informed about the existence of an IGS and about the terms and conditions of the IGS protection when purchasing an insurance policy. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q6) Specifically, should the following options be added to the principles of the home-country approach: * the possibility 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”)? | The possibility that the IGS of the host-country would act as a “front office” could be an interesting option to further examine. Assuralia believes that the IGS of host-country should, in this case, only fulfil an administrative role (“contact point” for information about the procedure to follow, “serving hatch” to open a claim file). The host-country IGS should be able to pass on any administrative costs to the home-country IGS, which remains responsible for paying all costs related to the failure of the insurance company under his supervision. Assuralia does not favour the option where the IGS of the host-country would make payments to policyholers, with a right of recourse against the IGS of the home-country because of its complexity and the financial risks involved (for the host-country IGS and host-country policyholders).  | Noted. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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? | No further comments.  | Noted. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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. | The criteria set out in paragraph 149 could lead to the situation where the type of insurance policies covered by an IGS differ from Member State to Member State. One of the reasons is that there may be divergent opinions between Member States regarding the types of policies that could lead to “considerable financial or social hardship” in the event of insurance failure. Moreover, the level of hardship encountered may differ substantially from policyholder to policyholder according to their financial situation, the risks and amounts covered by their insurance policy, etc. Should minimum harmonisation be considered, Assuralia believes that an IGS should only cover selected life insurance policies, namely life insurance policies purchased by individual consumers where the insurance company provides a capital/interest rate guarantee as is the case in Belgium (see Q9 for further details). It should be at the discretion of Member States to decide whether a wider scope is justified. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Should minimum harmonisation be considered, Assuralia believes that an IGS should only cover selected life insurance policies, namely life insurance policies purchased by individual consumers where the insurance company provides a capital/interest rate guarantee. Assuralia believes that other types of life insurance policies, such as unit-linked life insurance and occupational pension insurance, as well as non-life insurance should remain out of scope: * Setting up an IGS does not seem to be justified for unit-linked life insurance policies. The risk for the insurance company to become insolvent is very limited if not non-existent. In these products, the investment risk is borne by the policyholder and the insurance company does not provide a guarantee. Moreover, even if the insurance company would be confronted with financial problems, the units invested in by the policyholder cannot be used for the liquidation of the insurance company. They remain with the policyholder. In such circumstances, the very little added value of an insurance guarantee scheme does not seem to justify the costs of setting it up and start funding it.
* Occupation pension insurance should not be covered by an IGS. Introducing an IGS for occupation pension insurance would create an unlevel playing field between insurance companies offering occupational pension schemes and other occupational pension providers such as pension funds (IORPs). It would not be acceptable that insurance companies would be required to fund a guarantee scheme on top of complying with stringent Solvency II capital requirements whereas IORPs would be excluded from IGS coverage even though they are not subject to the same solvency standards. Moreover, a guarantee scheme should focus on protecting consumers (natural persons). Employers have greater knowledge and experience than ‘ordinary’ consumers, are able to assess the financial situation of their insurer and to gain professional advice, and therefore do not need IGS protection.

Note that, when setting up the Belgian life IGS, Belgian government decided to exclude occupational pension insurance and unit-linked insurance for the reasons described above.* In contrast to life insurance, non-life insurance is characterised by a short duration (often a one-year policy) and lacks a savings element. In the case of insolvency of a non-life insurance company, the consumer can easily switch from the insolvent insurance company to another insurance company. Moreover, the number of policyholders affected by an insurance failure is rather limited (only those where the insured event occurred and the policyholder’s claim is justified).

Also note that in Belgium several schemes exist already to ensure that policyholders do not suffer any losses in the unlikely event of an insurance failure. Safeguards have been put in place in motor insurance (where the “Fonds Commun de Garantie Belge” intervenes), in insurance covering accidents at work (where the Federal Agency for Occupational Risks intervenes), in insurance covering liability in case of technological accidents (the so-called law Marghem), etc. These existing schemes function properly.Besides, an important harmonization of existing guarantee schemes is currently being carried out for motor insurance. It seems better to consider a possible extension to other types of non-life insurance on a national level, as the characteristics of other insurance products that may benefit from an insurance guarantee scheme usually are very specific and vary therefore greatly from Member State to Member State.  | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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. | No further comments.  | Noted. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Assuralia proposes to focus the protection of insurance guarantee schemes on natural persons only. We propose to exclude legal entities explicitly from the eligible claimants, even if it concerns micro- and small-sized legal entities. Legal entities are considered to have greater knowledge and experience, and are able to assess the financial situation of their insurer and to gain professional advice. Moreover, including certain legal entities would bring a high degree of complexity into the mechanism and would make it substantially more expensive. Because the size of legal entities is not static, keeping track of volatile criteria such as the number of employees or the annual turn-over also comes at a cost that is disproportionate to the added value of the insurance guarantee scheme. The inclusion of legal entities under the scope of an IGS may therefore ultimately be to the detriment of a swift and effective settlement of consumer claims.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Assuralia believes that an IGS should cover natural persons only. It should be at the discretion of Member States to decide whether a wider scope is justified. | Noted. See previous reply. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | In life insurance, IGS coverage should be based on the cash value (surrender value) of the policy as is the case in the Belgian life IGS.Assuralia supports the introduction of compensation limits. These limits have to be set at such a level that the costs of funding of the IGS remain manageable. Without reasonable compensation limits, the insurance companies would be faced with excessive costs putting them under considerable financial strain in the event of an insurance failure. Of course, it should be avoided that the failure of one insurance company puts other companies at risk. Member states should decide which compensation limits are adequate for the sustainability of their national IGS. They could consider, for instance, a maximum limit per claimant combined with an overall maximum limit for IGS intervention. In Belgium, the maximum coverage level is 100.000 euros per claimant for life insurance policies. | EIOPA is not against compensation limits/caps.However, they need to be carefully designed. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q14) What should be the relevant criteria to determine the target level for national IGSs? | Assuralia is in favour of ex-post funding, in which case the question regarding a target level for funding (minimum level of capital to be maintained in the scheme) does not arise. An ex-post funded IGS is a cost-efficient solution: * Contributions by insurance companies are only requested if necessary in the unlikely event of an insurance failure. As a consequence, insurance companies have more funds at their disposal which makes them more robust. An ex-post funded IGS also avoids that large amounts of money are blocked for a long period of time.
* Contributions to the IGS are computed according to actual need (outstanding claims), so insurance companies do not need to pay more than what is strictly necessary.
* Risks related to improper use of funds or bad management are ruled out. Funds cannot be transferred to government treasury and used for other purposes.

Assuralia acknowledges that an ex-ante funded IGS may enable the IGS to intervene more rapidly. However, whereas a fast payment or a fast release of funds is crucial in case of bank deposits, Assuralia believes that this is much less an issue in life insurance. A life insurance policy is characterised by a long-term duration. A policyholder does not invest his money in a life insurance policy if he needs to be able to use it at any time or on short notice. Besides, an ex-post funded IGS does not need to lead to an unreasonable payment term. To ensure a timely payment, it could indeed be an option to rely on government funds first and to recover those funds afterwards among insurance companies. Of course, the recovery of funds should then be spread over time to avoid overburdening the insurance industry. Should ex-ante funding be considered, Assuralia would suggest doing so by establishing a sector fund that is administered by the insurance industry and that is subject to supervison by the national supervisory authority. This option allows that the funds invested grow over time and avoids improper use of funds (transfer to government treasury and use for other purposes).  | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS.  | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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 (risk-based, fixed rate, other)? | As already mentioned, Assuralia is in favour of an ex-post funded IGS. Assuralia agrees that the introduction of upper limits to the annual contributions made by insurance companies is essential to mitigate the risk of overburdening insurance companies. This is also true in case of ex-post funding. Without appropriate upper limits, the failure of an insurance company could put the remaining insurance companies under considerable financial strain to cover for the costs of the failing company.If the government would bear a responsibiltity for the failure of an insurance company – for instance due to serious deficiencies in supervision – it seems fairer that the costs of the insurance failure are borne by government (public funds) rather than by other insurance companies.  | EIOPA is of the view that IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. In order to avoid the risk of contagion the ex-post fund raising should be constrained. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. EIOPA also believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or by the industry as a whole into IGSs to mitigate the risk of overburdening the industry.  | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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)? | As already mentioned, Assuralia is in favour of an ex-post funded IGS. Assuralia agrees that the introduction of upper limits to the annual contributions made by insurance companies is essential to mitigate the risk of overburdening insurance companies. This is also true in case of ex-post funding. Without appropriate upper limits, the failure of an insurance company could put the remaining insurance companies under considerable financial strain to cover for the costs of the failing company.If the government would bear a responsibiltity for the failure of an insurance company – for instance due to serious deficiencies in supervision – it seems fairer that the costs of the insurance failure are borne by government (public funds) rather than by other insurance companies. Should ex-ante funding be considered, it is important that the annual contribution is fixed at a reasonable level. The annual contribution in the Belgian life IGS is fixed at 0,15% of the provisions in life insurance which seems to be high in comparison to the contributions paid in many other life IGSs and in comparison to the target level put forward in the EC’s White Paper of 2010.  | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the advice. However, EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | When purchasing an insurance policy, consumers should receive information about whether their insurance policy is covered by an insurance guarantee scheme and, if so, to what extent. This ensures that consumers can make an informed decision, especially if the IGS protection would differ according to the place of residence of the insurance company (home-country principle).  | Noted, no change needed.  | Public |
| Assuralia, the representative body for insurance and reinsurance companies operating in Belgium | 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, please also refer to Q4 and Q5)? If so, what are those? | No further comments.  | Noted. | Public |
| Bank of Lithuania | General comments | 1. We agree that harmonization of insurance guarantee schemes would help to protect the interests of policyholders when the insurer is no longer able to fulfil its obligations.
2. However, such system must take into account the specificities of national insurance markets, especially the ability of small and concentrated national markets to fund such schemes, and to ensure the equal level of protection for policyholders and level playing field for insurers, where significant volume of activities are being carried through FOE and FOS.

Quantitative impact assessment should cover these particular aspects and suitable solutions should be proposed for such markets. | 1. Noted.
2. An assessment may have to be done once progress is made on the areas for follow-up after the final advice is published, such as on funding.
 | 1. Public
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| Bank of Lithuania | 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. | Yes. It can be important to take into account specificities of national markets, from the perspective of proportionality.  | Noted. | Public |
| Bank of Lithuania | 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. | Noted. | Public |
| Bank of Lithuania | 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. | Yes. For life or long-term non-life insurance policies it might be more difficult to find equivalent cover (on similar terms) with an alternative insurer. | Noted. | Public |
| Bank of Lithuania | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 1. There should be a harmonised level of protection across all Member States, also good cooperation and coordination among IGS in different Member States.

The IGS of the host-country functioning as a “front office” for the identification of the affected policyholders and making payments to them would help to reduce the inconvenience for these policyholders. | 1. Noted.
 | 1. Public
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| Bank of Lithuania | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Yes, these conditions should be. | Noted. | Public |
| Bank of Lithuania | 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? | 1. Please see the general comments. For the small and concentrated markets, with big share of FOE business, the home-country principle would be much more costly to implement than the host-country principle.
2. Also for policyholders it is more convenient when they can present their claims in their country of residence and in their language.

In addition, the proposals for harmonising IGSs should be consistent with the already existing framework of IGSs for Motor Third Party Liability insurance and developments in this field. | 1. Noted.
 | 1. Public
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| Bank of Lithuania | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Retail-like consumers: natural persons, and micro and small-sized entities, excluding professional consumers, entities connected and shareholders. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| Bank of Lithuania | Q14) What should be the relevant criteria to determine the target level for national IGSs? | National market specificities should be taken into account and suitable transition period should be given to ensure there will not be any disruptions to the market. | Noted. EIOPA’s advice already allows for some degree of flexibility regarding funding. The need to take into account a potential transitional period is addressed in the final version of the Advice. | Public |
| Bank of Lithuania | 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 (risk-based, fixed rate, other)? | The fixed percentage of premiums written in non-life insurance and the fixed percentage of technical provisions in life assurance should look appropriate. | Noted. | Public |
| BEUC | General comments | BEUC welcomes EIOPA’s Discussion Paper and Consultation Paper on the Harmonisation of National Insurance Guarantee Schemes, and urges the European Commission to adopt a legislative proposal under the Solvency II 2020 Review to harmonise IGS schemes across the EU. Consumers need to have full confidence that insurance firms will be able to compensate them in the event of a claim. IGS Schemes exist within certain EU Member States, but have not yet been established in all EU Member States. EIOPA’s Discussion Paper also demonstrates that rules between IGS schemes are not fully harmonised, and that there are important loopholes in the protections that consumers may receive. In particular, fragmented rules mean that individual policyholders are not equally protected even within the same EU Member States (depending on whether they purchase their policy from a domestic firm, or from a cross-border firm, a consumer’s protection in insolvency could differ depending on the rules of the relevant IGS schemes). Harmonisation of IGS schemes would ensure a level playing field between European countries, ensure equal protections for consumers while significantly benefiting policyholders and the financial stability of the insurance sector in the EU. In 2018, BEUC launched a [campaign](https://www.thepriceofbadadvice.eu/) on the Price of Bad Advice, which seeks to demonstrate the continuing inadequacy of financial advice in the EU. For this reason, BEUC believes that EIOPA should asses the merit of requiring IGS schemes in the EU to compensate insurance policyholders in the event that they were given bad financial advice, and they are unable to receive compensation from the insurance firm in question (for instance, because it has gone insolvent). BEUC notes that the Financial Services Compensation Scheme (FSCS) in the UK provides this protection to insurance policyholders, an important safeguard that has for instance ensured redress to consumers who were mis-sold PPI policies by firms that subsequently went bankrupt. In addition, BEUC notes that the Australian government has recently accepted a recommendation by a Royal Commission into Banking Misconduct to set up a Compensation Scheme of Last Resort (that will provide compensation to consumers who were given negligent financial advice by firms that subsequently went bankrupt). For our full recommendations, please consult our response below. | EIOPA concluded and also agrees that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole. | Public |
| BEUC | 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. | We agree with EIOPA that the legal structure of the insurance guarantee schemes should be left to the discretion of the Member States. The national IGSs should meet a minimum set of harmonised features and be adequately funded.  | Noted. | Public |
| BEUC | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | No comment.  | Noted. | Public |
| BEUC | 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, BEUC agrees that the primary objective of an Insurance Guarantee Scheme should be to ensure that consumers either receive compensation for their claims in the event of insolvency of an insurer, or that the IGS ensures the continuation of the insurance policy for the consumer.  | Noted. | Public |
| BEUC | 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. | Yes, BEUC agrees that the continuation of insurance policies should take precedence in cases of life insurance policies. The continuation of insurance cover might be more beneficial for insurance policyholders than pure compensation for their losses, in particular in cases where it might be more difficult for a consumer to find an equivalent cover (on similar terms) with an alternative insurer. For instance, the transfer of policies to another insurance undertaking is essential for health insurance and life insurance policyholders, who may not be able to find equivalent cover (in the event that their health is worse than at the beginning of their policy). BEUC considers that early intervention facilitating the transfer of policies to other companies should be preferred to the payout of compensation.  | Noted. | Public |
| BEUC | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | BEUC agrees that the geographical scope of national IGS should be harmonised on the basis of the home-country principle. However, we believe that policyholders and beneficiaries should be able to present their claims in their country of residency (see more below). Applying for compensation in your Member State of Residency would be more convenient for affected policyholders and beneficiaries, and facilitate swifter compensation. This is also relevant for proximity and language reasons. It will be easier for consumers to deal with IGS based in their own country, and in their own language.  | Noted. | Public |
| BEUC | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | We agree that the options proposed by EIOPA should be considered in addition to the principle of the home-country approach. Insurance policyholders and beneficiaries must be able to present their claims and receive payments in their country of residency, in order to ensure swifter compensation and convenience for consumers. To facilitate this, IGS of the host-country should function as a front-office for the identification of affected policyholders and beneficiaries. In addition, the IGS of the host-country should also be able to make payments to affected policyholders and beneficiaries, and have a right of recourse against the IGS of the home-country. This is the position also proposed by the European Commission in the (currently ongoing) review of the EU’s Motor Insurance Directive.  | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| BEUC | 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? | No comment.  | Noted. | Public |
| BEUC | 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. | To ensure a minimum level of equal protection of policyholders across the EU, it is essential to establish harmonised principles for insurance policies that should be eligible for IGS protection. BEUC believes that IGS schemes should be required to cover both life and non-life insurance policies. BEUC agrees with the criteria proposed by EIOPA, and calls for a careful assessment to be carried out to assess which non-life insurance policies should be included. The average losses associated with non-life insurance products may on average be smaller to policyholders (compared to life insurance) and may generally be limited to prepaid premiums. However, policyholders and beneficiaries of non-life insurance products with outstanding claims at the time of insolvency may well incur much more significant losses. Consumers need protection for both life and non-life insurance products. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| BEUC | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | BEUC believes that all types of life insurance products should be eligible for IGS protection. BEUC calls for a wide range of non-life insurance products to be eligible for IGS protection, and calls for a careful assessment to be carried out by EIOPA as to which policies should ultimately be included. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| BEUC | 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. | Yes. BEUC believes that insurance guarantee schemes should also be required to compensate insurance policyholders in the event that they were given negligent financial advice or mis-sold an insurance policy, and the responsible firm in question is unable to compensate the policyholder (for instance, because it has ceased operating, or the firm has gone insolvent, or is unable to compensate the consumer for any other reason). Consumers in Europe are too frequently exposed to bad or misleading financial advice. In 2018, BEUC launched our [campaign](https://www.thepriceofbadadvice.eu/) on the Price of Bad Advice, which seeks to highlight the continuing inadequacy of financial advice in Europe, including for insurance policyholders. Our web-map demonstrates that bad advice is one of the most significant risks insurance policyholders could potentially face when taking out an insurance policy. Insurance policyholders should not be held accountable for the poor financial advice which they receive, and consumers must be compensated for any negligent advice they receive. In the United Kingdom, the UK’s Financial Services Compensation Scheme (FSCS) provides compensation to insurance policyholders in case they were given negligent advice or mis-sold an insurance policy and the FSCS establishes that the firm or adviser is unable to meet the claim (for instance, because it is no longer operating or because it has gone insolvent). Compensation in losses is only triggered in the event of the default of the insurance firm. If a firm is still trading and has sufficient financial resources to satisfy a claim, the firm is expected to meet the claim itself. For instance, in the UK, there was widespread mis-selling of Payment Protection Insurance (PPI) products to consumers. Following a 2011 court ruling, firms who mis-sold PPI policies to consumers were required to compensate policyholders, and have paid back at least £33bn in compensation to affected consumers. However, in the event that the firm has ceased operations or gone insolvent, the UK’s FSCS is able to step in and ensure that compensation is paid to consumers for mis-sold PPI products. If a valid claim is made, the consumer could receive up to 90% of any financial loss that they may have suffered from negligent advice. The FSCS protection provides an important protection for consumers, as a large number of firms that mis-sold PPI products subsequently became insolvent, according to the FSCS (see a list of failed firms on the FSCS [website](https://www.fscs.org.uk/what-we-cover/ppi/)). In 2013/14, the UK FSCS [paid](https://www.fscs.org.uk/uploaded_files/20140702_annual_report_2013-14_press_release_.pdf) out £243m in PPI claims to consumers who were mis-sold PPI policies by firms that subsequently went insolvent, protecting more than 34,000 consumers. In 2018/19, the UK FSCS [continued](https://www.fscs.org.uk/globalassets/annual-reports-and-class-statements/fscs-annual-report-and-accounts-2018-19.pdf) to pay out compensation to consumers for mis-sold PPI policies, with £11m paid out to consumers for negligent advice related to these products.Similarly, in Australia, a *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* [recommended](https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf) to establish a ‘Compensation Scheme of Last Resort’. The Recommendation followed an earlier [review](https://treasury.gov.au/sites/default/files/2019-03/Supplementary-Final-Report-2.pdf) (into the dispute resolution and complaints framework) which found that Australian consumers were often not receiving the compensation they were due after having received inappropriate financial advice, because the firm either had become insolvent or was unable or unwilling to provide compensation to the consumer. The Australian Government agreed with the Royal Commission recommendation and will establish a Compensation Scheme of Last Resort, noting that: “For there to be confidence in the financial system’s dispute resolution framework, it is important that where consumers and small businesses have suffered detriment due to failures by financial firms to meet their obligations, *compensation that is awarded is actually paid*.“ The Compensation Scheme of Last Resort will operate as a last resort mechanism to pay out compensation owed to consumers and small businesses that receive a court or tribunal decision in their favour, but are unable to get compensation owed by the financial firm (for example, because the firm has become insolvent). EIOPA should assess the possibility for insurance guarantee schemes across the EU to provide protection to consumers in cases of negligent advice. A requirement for insurance guarantee schemes to compensate insurance policyholders and beneficiaries in case of bad advice and in the event that a firm has gone insolvent could provide an important last-resort protection for consumers.  | Noted. However, EIOPA’s current advice does not go in this specific direction. | Public |
| BEUC | Q11) Which criteria should be used to determine/exclude the eligible claimants? | BEUC believes that all natural persons should be considered eligible claimants for IGS protection.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| BEUC | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | No comment.  | Noted. | Public |
| BEUC | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | BEUC does not consider that compensation limits are appropriate for non-life insurance policies. Claims arising out of non-life insurance contracts can in limited cases be very high, and a lack of protection could have a significant impact on relevant policyholders. A compensation limit that is set too low could fail to adequately protect claimants who in certain cases could suffer very high losses.BEUC does not consider that compensation limits are appropriate for life insurance policies. Life insurance policies are not as easily transferable compared to bank account products. Deposits are much more liquid and can be easily transferred from one credit institution to another. Life insurance policies are generally long-term in nature. Unlike for bank accounts and investments, consumers are also less able to diversify their exposure across different providers for life insurance policies.BEUC calls for EIOPA to carefully assess potential levels of compensation limits. If maximum compensation limits are set, they should be set at a sufficiently high threshold. BEUC agrees that Member States should have the flexibility to increase the level of coverage in their jurisdictions and offer policyholders and beneficiaries a higher level of protection.  | EIOPA is not against compensation limits/caps.However, we agree there are policies for which limits are less appropriate. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| BEUC | Q14) What should be the relevant criteria to determine the target level for national IGSs? | No comment. | Noted. | Public |
| BEUC | 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 (risk-based, fixed rate, other)? | To ensure that IGS can provide sufficient protection to consumers in the event of insolvencies, it is necessary to ensure that they are appropriately funded. BEUC believes that IGS schemes should be funded on an ex-ante basis, with a role for ex-post financing in case of a lack of funds. The main advantage of ex-ante funding is that it enables IGS to rapidly intervene, and ensures contributions by all insurers (including the failed insurers). In addition, ex-post funding has a pro-cyclical impact if companies have to contribute in a crisis time; it also stimulates moral hazard in the sense that the failing company will never contribute for the losses it caused. Ex-ante funding will also assist in ensuring that consumers have access to swift compensation.  | Noted. | Public |
| BEUC | 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)? | BEUC does not have any major comments. The available funding of IGS schemes should be proportionate to their potential liabilities. A risk-based approach to ensure that insurance firms with a higher risk profile contribute more to IGS schemes may be appropriate. Risk-based levies can help to prevent an unfair burden being placed on soundly managed insurers, while giving incentives to riskier insurers to improve their financial soundness.  | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the Advice. | Public |
| BEUC | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | BEUC agrees with EIOPA’s advice. In addition, if harmonised rules are established to require insurance guarantee schemes to compensate individual policyholders in cases of negligent advice, consumers need to be sufficiently informed about their ability to seek redress through the relevant IGS schemes. Disclosure requirements and communication campaigns by national competent authorities and IGS schemes would be required to ensure that consumers are sufficiently aware of these protections.   | Noted, no change needed. | Public |
| BEUC | 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, please also refer to Q4 and Q5)? If so, what are those? | No further comments.  | Noted. | Public |
| BIPAR | General comments | BIPAR is the European Federation of Insurance Intermediaries. It groups 51 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe. Most intermediaries are small or micro enterprises, established near to the consumer in the High Street of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. Many intermediaries are SME type enterprises servicing SME’s in all sectors of the economy at regional or national level. These intermediaries follow increasingly their clients abroad when they export or import or set up branches or subsidiaries outside their national borders. Some intermediaries are large enterprises. They work Europe-wide or even globally serving a wide range of mainly business clients. Some intermediaries also handle reinsurance business.Intermediaries are at the cutting edge of the insurance distribution with different type of distributors such as insurtech. Insurance intermediaries usually work for both parties in the insurance contract, insurer and client. BIPAR welcomes the opportunity provided by EIOPA to comment on its **draft Technical Advice on the harmonisation of national insurance Guarantee schemes** which is a key issue to insurance intermediaries and their clients.BIPAR is of the opinion that mechanisms with similar or harmonized standards should be put in place in all EU Member States to protect private policyholders, as this would support a drive towards a single market and neutralise bias**.** We believe that recent developments like some EU countries where the national IGS will only compensate the customers of those countries, could pose a threat to the objective of creating a single market and to competition. BIPAR hopes that the review of the Solvency II Directive will at last lead to the establishment of a European network of adequately funded and sufficiently harmonised national insurance guarantee schemes. Despite CEIOPS 2010 13 Recommendations regarding the establishment of IGS at European level and the Commission proposal in its 2010 White Paper to come with a Directive to ensure that insurance guarantee schemes exist in all Member States and comply with a minimum set of requirements, despite recent cases of EU insurers’ failure and differences in European policyholders treatment, any developments at European level on IGS have remained a dead letter so far.  | Noted. Indeed EIOPA concluded and also agrees that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole. | Public |
| BIPAR | 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. | BIPAR is of the opinion that mechanisms with similar or harmonized standards, should be put in place in all EU member States to protect private policyholders by compensating for their claims in the event an insurance company becomes insolvent, **in particular in the framework of cross- border activities** **and failures.** These mechanisms are also important in helping to maintain consumer confidence in the sector. They would act as a mean of resolution funding and an additional layer of policyholder protection in the event of insurers’ failure. It should however be ensured that the existence of such a mechanism has no effect on the quality of the supervision and rules on solvency.As long as a European Network of national IGSs (minimum harmonisation) ensures an equal protection of consumers (policyholders and beneficiaries) and fair competition between undertakings (or a so-called “level playing field”), BIPAR believes that the legal structure of policyholder protection schemes should be left to the discretion of Member States. It is important that such mechanism should leave Member States some flexibility to chose among a number of techniques to find the best solution in each individual case. BIPAR agrees with EIOPA that this is important from the perspective of proportionality as some Member States already have a well-functioning mechanism in place. However, BIPAR believes that national scheme should not have a mixed structure and only cover insurance policies and not investments or mortgage arrangement for example to avoid unfair cross-subsidy. The possibility of using national IGS as a tool in the resolution of failing insurers should be considered carefully as this could seriously increase moral hazard. As mentioned by EIOPA in its consultation paper, focus in this respect should be put on more supervisory convergence: *“a consistent application of Solvency II across Member States reduces the risk of insurance failures and hence, the reliance of IGS protection”.* | Noted. EIOPA explains in its advise that from the perspective of proportionality, and because some Member States already have a well-functioning mechanism in place, the legal structure should be left to the discretion of Member States.  | Public |
| BIPAR | 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)?  | BIPAR believes that national IGS should be essentially designed to provide compensation to policyholders and beneficiaries for their losses in liquidation. BIPAR agrees that the transfer of portfolio or continuation of the policies seems to be a reasonable solution depending on the products and on what is practicable in the circumstances of a particular failure. It is absolutely preferable in the case of life and long-term life policies in term of consumer protection and where it is cost effective.Termination of insurance contracts could put policyholders in difficult situations as they may not be able to replace their covers at the same conditions. New policies must be arranged temporary for these policyholders by IGS.It should be guaranteed that the mechanisms do not result in moral hazard. | Noted. | Public |
| BIPAR | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | BIPAR believes that all policyholders/beneficiaries of a failed insurer should receive the same level of protection in their home country irrespective of the Member State the entity is regulated.The home Member State principle approach as described by EIOPA in its consultation paper would ensure that equal treatment of consumers (policyholder /beneficiary) is delivered without IGS having to be fully harmonised across countries. This would also allow for an insurer, its branches and services business to be covered by the IGS in the Member State where it is authorised. To this end, it is important that an alignment exists between supervisors and any compensation body. We believe that this principle could be significantly enhanced by giving the possibility of the IGS of the host country to function as a “front office” for the identification of the affected policyholders and beneficiaries. This will also facilitate communication on local language, the application of relevant local laws and equal treatment between policyholders. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| BIPAR | 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. | BIPAR believes that all classes of policies should be covered. It is clear that both forms on insurance (life and non-life) can have important consequences for consumers, in the event of the failure of an insurer. The financial consequences can be extremely serious: in case of a home burning down, a major liability claim following a motor accident, an insured pension, etc…. In this respect EIOPA proposed criteria for selecting the eligible policies could be a workable framework. Focus should be on areas where protection is most needed.Criteria would however need to be further specified in some EIOPA recommendations (potential degrees of hardship caused, replaceability of covers, etc…) while leaving some flexibility to member States. In this respect BIPAR believes that the existence of IGS in all EU Member States for unit-linked life insurance where policyholders and beneficiaries might experience significant financial losses as a result of insurers’ failures, should be seriously considered.BIPAR believes that IGSs should cover, at a minimum, all mandatory insurance liabilities across the EU. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| BIPAR | Q11) Which criteria should be used to determine/exclude the eligible claimants? | BIPAR believes that eligible claimants should be limited to personal consumers (both policyholders and other beneficiaries covered by the insurance contract) and small firms with a turnover under a fixed limit. EIOPA refers to micro and small sized entities and states that their meanings need to be further defined. In this respect reference could be made to the PSD2 and the Commission recommendation 2003/361/EC that includes the following a definition of ‘micro-enterprise’. It is defined as an enterprise which: (a) employs fewer than 10 persons; and(b) has a turnover or annual balance sheet that does not exceed €2 million.BIPAR furthermore believes that reinsurance should be excluded, as well as large risks. Member States should also be given the possibility to exclude or limit some insurance classes as full coverage for example marine or aviation or credit insurance, could seriously increase the running costs of an IGS.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission, indeed. | Public |
| BIPAR | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | BIPAR believes that the limits should reflect the current liabilities.With regard to the protection amounts and limits, BIPAR believes that full protection would increase moral hazard and that is why some limitations are necessary. The minimum coverage level should take into consideration the markets conditions and policyholders’ needs.  | Noted.EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| BIPAR | Q14) What should be the relevant criteria to determine the target level for national IGSs? | BIPAR would favour EIOPA proposal that is a combination of both fundings. BIPAR believes that IGS should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of lack of funds. Ex-ante funding offers more protection for consumers. The gradual build-up of the fund will probably not lead to price increases. They believe that ex-post funding however, could lead to sudden price increases for consumers. BIPAR believes that a levy collected on the premiums could allow a fair funding of IGS. It should take into account the national market specificities.  | Noted.  | Public |
| BIPAR | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | BIPAR agrees that consumers and policyholders should be clearly informed about the existence of IGS and the rules governing the entitlement to coverage. Article 8(3) (e ) of the PRIIPS regulation provides the needed and key requirements in this respect: 1/ whether the insurance policy is covered by an IGS and which one, 2/ conditions and potential limitations to the coverageBIPAR believes that there is no need for any additional information. BIPAR also believes that the provision of information to policyholders should not entirely absolve them of the responsibility to exercise appropriate caution in buying insurance products.  | Noted, no change needed.  | Public |
| BIPAR | 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, please also refer to Q4 and Q5)? If so, what are those? | BIPAR agrees with EIOPA approach   | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | General comments | As Germany’s most important NGO of consumer protection related to private insurances (withnearly 50.000 members) we would like to thank EIOPA for the opportunity to publishcomments on this consultation. In the same way we already contributed the two EIOPA consultations on RRPs and IGS in February 2017 and October 2018.We continue to support EIOPA’s objective to develop principles of a minimum degree ofharmonisation in the field of insurance guarantee schemes. This objective is clearly consistent with the objectives which are already implemented in other sectors of the financial industry (BRRD, FSB Key Attributes etc.). The ongoing and even enhanced “low for long” interest rate phase constitute a tremendous challenge for life insurers and their long-term liabilities and will continue to have a severe, more risky impact on their search for yield behavior. The increasing number of run-offs shows at the same that not all life insurers are willing or even able to cope with this situation. That is why we fully agree with the chosen policy options by EIOPA as outlined in Table 1 of this CP (Overview of policy options, p. 10). From our point of view EIOPA’s assessments on the different treatment of policyholders across the EU and its entailing consequences for the proper functioning of the internal are absolutely pertinent (chapters 2.2 and 2.3 of CP). Again we underline that “a more equal and effective protection of policyholders is THE fundamental argument in favour of a more harmonised approach to IGSs” (cf. EIOPA CP 18-003). New business-lines like the forthcoming Pan-European Pension Product PEPP will make equal cross-border level of consumer protection even more necessary. | Noted. This is broadly in line with the EIOPA’s proposal. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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. | We acknowledge that, due to very different supervisory pre-conditions at the national level (home of global companies or not, existence of an Insurance Guarantee Scheme or not,existence of pre-emptive Recovery and Resolution Plans or not, etc.), it appears to be appropriate that the legal structure of policyholder protection schemes should be left to the discretion of Member States. As EIOPA has shown, IGS already exist in more than half of the EU Member States (CP, p. 20). | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Obviously recovery and resolution and IGS are very closely linked. An EU-framework of RRPs, i.e. a kind of common “toolkit” available to all NCAs, constitutes the necessary comple­men­tary element to the proposed harmonisaton of national IGS - due to the two current main macro-economic drivers, “low for long” interest rate phase and enhanced cross-border offers of financial services (like PEPP), which call for a more equal and effective protection of policy­holders.For years now the risk of insolvency of single life insurers due to the ongoing low interest ratephase is again strongly increasing (cf. analysis of SFCR in 2017, 2018 and 2019 by the independent German actuary Carsten Zielke).<https://www.bundderversicherten.de/presse-und-oeffentlichkeitsarbeit/pressemitteilungen/conditions-of-german-life-insurers-despite-homage-to-solvency-under-tension>2019:<https://www.bundderversicherten.de/fbfiles/SFCR-Analyse-2018.pdf> | Noted.  | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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, we agree. | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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. | Yes, we agree. Providing compensation to policyholders for their losses in case of a liquidation of an insurer is the worst case scenario and will surely not work – at least not for life insurers. Effective protection of policyholders must therefore already start by ensuring the continuation of insurance policies. In Germany this has been the case in 2003 with “Mannheimer Lebens­versicherung” and the take over of its portfolio by the national IGS “Protektor”. | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | We support the home-country principle (cf. no. 112 and 113 of CP, p. 33). As long as the level of consumer protection is different in the EU Member States, consumers must at least benefit from the level of protection already achieved in their home country.But the home-country principle should be completed by the requirement for EU branches toparticipate in the host-country IGS, unless they are covered by their home-state IGS thatprovides equivalent protection. It should clearly be regulated, which institution (EIOPA, NCA, IGS etc.) is entitled to decide on the equivalence of this protection. | Concerning the eligible policies, which will be covered by the national IGSs at harmonised level, EIOPA is of the view that the insurers will have to contribute to the Home country, since EIOPA advises to introduce a harmonised minimum coverage level for all EU claimants for selected policies. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | * 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.

* Yes. See above. This will of course require clear, comprehensive and formalised communication and cooperation between home- and host-country IGSs.
 | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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? | No, we do not see any case where the host-principle should be preferred. We fully agree with the drawbacks of the host-principle outlined in no. 117 and 118 of CP (p. 33). Notwithstanding the Solvency II regulation has to be implemented no matter in which EU Member State, big or small, an insurer is located with its headquarter(cf. our comment on Q 5). | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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. | Yes, we agree. Life insurances and motor insurances should be covered at minimum, because these two insurance classes are most spread among EU citizen, and – obviously – they cover fundamental risks (private retirement provision and traffic accidents). | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Cf. our comment on Q 8. | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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. | The German model of private health insurances based on the calculation of life insurances is a special feature which - as far as we know - does not exist in any other EU member state. That is why the model of the national IGS for health insurances “Medicator” cannot be generalized. | Noted. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | This depends on the insurance classes which the IGSs will provide coverage for. Usuallynatural persons prevail in consumer protection. For the IGS coverage the only criteria should be whether the contract is valid or not. Therefore there should not be any other restrictions with regard to the inclusion on policyholder / claimants eligibility. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | This depends on the coverage being offered. If a large legal person falls under the insurance supervision by an NCA, it should be included – if not, not. For ex. in Germany there are a lot of occupational pension providers which are not under the NCA supervision regime neither by solvency II nor by IORPs II directives. | Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | At a minimum all mandatory insurance liabilities should be covered by the IGSs at national level. If there are any limits, the amounts covered for these liabilities should correspond to the highest level of amounts already fixed in each of the member states. | Noted. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | We fully agree with EIOPA’s preferred options pointed out in no. 194 and 195 of CP (p. 55). The exact target levels for the funding of IGSs 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. | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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 (risk-based, fixed rate, other)? | For the life insurance sector a combination of ex-ante and ex-post funding is necessary. For the other insurance classes an ex-post funding seems to be sufficient. The basis for the contributions of the insurers should be risk-weighted, because it will constitute an additional criteria for the necessary prudential risk-management of the insurers (cf. no. 207- 209 of CP, p. 57-58). | Noted. EIOPA is of the view that IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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)? | The IGSs should only be funded by insurers, because it is their responsibility to guarantee anassets and liabilities management which is successful in the long run. The power of IGSs to require additional contributions from insurers or raise additional capital in case of shortfall is an absolutely necessary condition for any IGSs. If they fail, tax payers must definitely only be the last resort, but not in the frame of an IGS. Cf*. our comment on Q24 of EIOPA DP-18-003* on the German IGS Protektor and its limits:The German example unfortunately shows that the legal limit of obligatory contributions of lifeinsurers for the national IGS (“Protektor”) is not sufficient for any possible case of “big” failure.Currently following to the legal provisions the total of assets of the national IGS amount to 937millions Euro (in 2015). The IGS has the right to ask for additional contributions in case ofresolution, and due to additional voluntary measures by the life insurances a total sum ofabout 9,4 bn Euro may be accumulated (following to “Protektor” website).But this high absolute figure has to be compared to other figures. Following to the 2018Statistical Yearbook of GDV (Association of German Insurers) in 2017 the German life insurers(without IORPs) booked 86,5 bn gross premiums with 84,1 million contracts. The annualpremium equivalent amounted to 7,6 bn Euro in 2017 (all figures in table 30). The total sum oftheir asset allocations amounted to 909,2 bn Euro in 2017 (figure 45).Allianz Life Insurance alone booked over 20 bn Euro gross premiums and the total sum of itsasset allocations amounted to more than 201 bn Euro in 2017. Allianz represents 23% of theentire German life insurance market.These figures show that the maximum sum of total assets which the national IGS will have atits disposal (9,4 bn Euro) are less than half of the annual gross premiums of Allianz Leben, lessthan 5% of the total asset allocations of Allianz Leben and a little bit more than 1% of totalasset allocation of the German life insurance sector.These proportions make it seriously understandable why the additional capital reserves(“Zinszusatzreserve” - ZZR) amount to about 60 bn Euro at the end of the year 2017 (cf. BaFinYear Book 2017, p. 25). Since 2011 the German life insurers are legally obliged to build up thisadditional capital reserves in order to be able to fulfill their long-term guarantees despite theongoing low interest rate phase. Already now these additional capital reserves are six timeshigher than the possible total sum of asset allocations of the IGS, and they will still growalthough probably at a reduced rate.The establishment of the ZZR clearly shows that the national IGS will not be able to handle anycase of “big” failure, at least with the current assets at its disposal. This conclusion has to bedrawn despite the fact that Protektor is directly linked to the KfW Group, a national bankspecialized in credit lending mainly for infrastructure investments. This link implicitly provesthat even the national legislator does not exclude at all that in a worst case scenario the taxpayers will be the last resort for life insurance policyholders. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | It should explicitly be prohibited to make any type of advertising by an insurer about the existence of an IGS. Of course this does not minimize the legal information duties of insurers as stipulated in national insurance contract law and/or in the PRIIPs KID with regard to the solvency regime (section: What happens if a PRIIP manufacturer is unable to pay out? Cf. no. 221-223, 249-250 of CP). | Noted. EIOPA stresses that the information should not be used for marketing purposes. | Public |
| Bund der Versicherten (German Association of Insured – BdV) | 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, please also refer to Q4 and Q5)? If so, what are those? | We fully agree with EIOPA’s assessments as pointed out in no. 224 – 228 and 251 of CP (p. 60, 63). | Noted. | Public |
| Confederation of Norwegian Enterprise (NHO) | General comments | 1. The Confederation of Norwegian Enterprise (NHO) [in Norwegian Næringslivets Hovedorganisasjon] is Norway’s largest organisation for employers and the leading business lobbyist. Our current membership of 27 000 companies ranges from small family-owned businesses to multinational companies in most sectors.
2. The NHO is the leading voice of business and industry in Norway. Having expert knowledge and an extensive business network, the NHO plays an important and constructive role in Norwegian society.
3. Our main objective is to create and sustain conditions that safeguard the competitiveness and profitability of business and industry in Norway, and thereby maintain the basis for a good standard of living, sound economic growth and sustainable development.

*Insurers bankruptcy effects individuals, businesses and third parties. NHO is a keen advocate for protection of consumers, individuals and businesses, and believes that this is important in order to maintain trust in the market participants and to achieve a level playing field among insurers. The initiative for a common European regulation for guarantee schemes is an important step to achieve the above goals.*  | 1. Noted.
 | 1. Public
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| Confederation of Norwegian Enterprise (NHO) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | It is important to keep in mind what is the consumers best interest. To be able to direct claims in your own language in your own jurisdiction is far more valuable and easier than finding the relevant IG for your chosen agent and cross border insurer. EIOPA seem to draw the conclusion that the common supervisory structure will be able to coordinate the different IG's and that it is a burden for cross border insurers to be members of several IG's. If EIOPA is of the opinion that consumer protection is its DNA it will not rest the conclusion on what is best for cross border insurers. Insurers should not be given larger consideration than consumers in the case of guarantee schemes. | 1. The policyholders protection is the primary goal of EIOPA’s proposal. The home country approach seems to be the most appropriate approach for protecting policyholders’ interest, ensuring consistency with the responsibility for the prudential supervision. In particular, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE). | 1. Public
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| Confederation of Norwegian Enterprise (NHO) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Having the opportunity to use the national IG as a front office for a claim can ease the consumers effort when an insurer fails. However, such organisation will be difficult to operate for the national IG and understand for the claimants when the regulation is a minimum regulation. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Confederation of Norwegian Enterprise (NHO) | 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? | See Q5 | Noted. | Public |
| Confederation of Norwegian Enterprise (NHO) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | NHO support that individuals and businesses should be able to draw coverage from the IG. However, we cannot support that not all businesses will be included. There seem to be an understanding that larger companies have resources and competence to foresee that some insurers are on the edge of bankruptcy. In many cases not even the supervisory authority is able to foresee some of the failures. EIOPA should not have higher standards for larger companies than for the national supervisor. NHO is of the opinion that all indivuduals and all enterprises should be covered by the relevant IG.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and micro-sized legal entities as defined by the European Commission. Larger legal entities are excluded from the minimum harmonisation, but Member States could always choose to increase coverage to a wider scope of claimants. | Public |
| Confederation of Norwegian Enterprise (NHO) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | If the scope of the IG expands to life insurance and pension all claimants must have equal coverage. If an employer's coverage should be determined on the bases of the employers enterprise category it will be perceived as biased and unfair. | Noted, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | Public |
| Czech Insurance association (Česká asociace pojištoven) | General comments | **Introductory remarks**The Czech insurance market has been **stable and shown a high solvency ratio** over the years. Any major shortcomings either resulting from FoS or from a national insurance company having gone bankrupt have not affected the Czech consumers as **no bankruptcy of an insurance company occurred in recent more than 20 years**. Moreover, no state support for insurance industry was needed in the whole modern history of Czech insurance market after its demonopolisation. Therefore, the industry being represented by the Czech insurance association, believes that **any further EU harmonisation imposing an obligatory insurance guarantee scheme is not necessary**, for following reasons.**First and foremost**, the stability and fitness of the Czech insurance market is uncontested by all relevant stakeholders, including Ministry of Finance and the NSA, Česká národní banka, so that any further regulation protecting policyholders is not needed. Such an initiative would only intervene as preventive measure, which would correct the shortcomings that are only hypothetical and whose presumption are not based on any concrete data or examples relevant to our market. Consequently, imposing a compulsory fund that represents a **heavy financial and administrative burden**, is **disproportional** and not based on any holistic impact assessment. Even a minimum level of harmonization would create significant costs and involve complex challenges for which there may not be acceptable solutions would create significant costs and involve complex challenges for which there may not be acceptable solutions. **Second**, we believe the current regulatory framework established by **Solvency II** and the recent changes in the European supervisory authorities´ framework were designed to cope with any situations of failure and therefore should be **tested**. In our day to day cooperation with other markets, especially the CEE region, we have realized that 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. The **insurance failures** referred in EIOPA´s paper date before the Solvency II started to apply and are **no longer relevant**. If EIOPA believes the conclusions drawn from insurance failures still apply, then it would lead to a conclusion that Solvency II was an inadequate regulatory framework, a conclusion it is hardly justifiable.**Third**, the focus of EIOPA and ultimately of NCAs should lead to **regulatory convergence** by ensuring the Solvency II is comparatively applied by all NCAs. Moreover, we believe there is a room for improvement, especially when there are signs of FoS failures, to build an **enhanced cooperation** between the supervisors. In all network of regulators in the EU, such cooperation starts with the enhanced and regular exchange of information that is a prerequisite for any preventive coordinate action.**Finally,** the Czech insurance market believes that any further considerations on going forward the EU legislation protecting the consumers shall be in principle based on a **sound impact assessment**. Unfortunately, such exercise is heavily missed in the current public consultation. We therefore invite EIOPA and the European Commission who holds the exclusive power of legislative proposal, to carefully and thoroughly **test** the needs of all markets to have an insurance guarantee scheme. And only if the EU legislator comes to the conclusion that a harmonized approach is needed, any scenarios on the specific settings have to be tested (i.e.the geographical scope or product coverage). We believe such an exercise is a prerequisite for any efficient and balanced EU legislation and there needs to be a thorough assessment of the effects of Solvency II on policyholder protection before anyproposals on harmonisation of IGS could be considered. **Designing an IGS: risk of moral hazard and need for a thorough impact assesment**The Czech insurance association would like to draw EIOPA´s attention to the fact, shared by all major EU markets, that if not properly designed an IGS bears the danger of moral hazard.**A moral hazard** that has multiple faces, first an IGS encourage less responsible conduct from policyholders that might be inclined to pay less attention to the insurance company’s financial solidity and choose their insurer solely on the basis of the lowest premium. Equally, insurance intermediaries might not necessarily offer their clients the products of a financially sound insurer, but rather those which come at the lowest price. Finally, an insurance guarantee scheme financed by fixed ex-ante contributions, does not, in our view, motivate for a good customer-based behavior among insurance companies. We believe that the **only line of business where the guarantee schemes make sense are motor liability insurance** where it is necessary for damaged persons to obtain compensation in any cases even under bankruptcy of an insurer. However this aim is now being harmonized by Motor insurance directive proposal. Czech legislation adopted the corresponding guarantee fund in Czech legislation 19 years ago, i.e. definitely earlier before proposal of harmonization on EU level. In any scenario, the Czech industry association firmly believes that if the EU legislator evaluates and demonstrates the need for a EU harmonised approach, a new legislative environment shall only lead to **minimum harmonisation** and leave to national authorities a **significant flexibility** to choose the features that best suit their market, to reflect the important differences between member states regarding social welfare systems, winding-up process for insurers and insurance product lines.**Disclaimer**The position reflects the particularities of the Czech market and except the above mentioned arguments the Czech insurance association subscribes to the Insurance Europe´s position. | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided recent examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored. | Public |
| Department of Finance - Ireland | General comments | Our comments are broadly speaking aligned with the comments we made last year on the EIOPA paper titled “Discussion Paper on Resolution Funding and National Insurance Guarantee Schemes”. As you will be aware, we have a host IGS, and maintenance of such an arrangement is our preference. However, we recognise that there is considerable support for home arrangements, so our comments reflect this to some degree.We do not have a life IGS and therefore are still considering our position in this area.We also agree with one of the key questions that recovery and resolution arrangements need to be dealt with in parallel with IGS ones.Finally, it should be noted that as the evolution of policy in this area and in the recovery and resolution area is ongoing, the views outlined below are preliminary in nature and therefore we reserve the right to update our perspective on these matters as the debate further develops.  | Noted. | Public |
| Department of Finance - Ireland | 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. | Yes. Ireland agrees that there is a need for minimum harmonisation amongst member states regarding cross-border insolvencies of insurers. It is also our view that, where adequate national procedures already exist, these should be respected and accommodated within any new framework in order to avoid unnecessary disruption to domestic markets by changing what many consumers are used to and, indeed, what may be best practice in that member states legal system. Therefore, we agree with the EIOPA advice that the specific legal structure be left to member states and arrangements to accommodate payment of compensation to injured parties in the event of an insurer insolvency should be left to the discretion of Member States. | Noted. | Public |
| Department of Finance - Ireland | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Yes. We agree to the parallel development of the topics recovery and resolution. We acknowledge the merit of a resolution and recovery regime being in place as the first port call of call when an insurance company is failing to ensure an orderly resolution as set out in paragraphs 74 and 75. Our view is that the IGS should be a fund of last resort. However the scope and structure of any recovery and resolution regime will be a critical point for Ireland as will the practical application of the proportionality principal in that context. | Noted.  | Public |
| Department of Finance - Ireland | 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)?  | Ireland agrees that the IGS should be set up as a mechanism with the primary aim to protect consumers by paying compensation as promptly as possible to policyholders in the event of an insolvency. This is particularly important in a non-life context. Ireland does not have a life IGS and therefore we do not have a clear policy position on this issue at the moment. However, we recognise that ensuring the continuity of policies is very important in the context of long term type life/pension policies where people’s long term savings are invested and are at stake in an insolvency situation. Therefore, we can see the merit in facilitating the transfer of such policies to a bridge institution or another company in the event of an insolvency. We also see considerable overlaps with any resolution regime in such circumstances. However this is an issue which we are still considering.  | Noted. | Public |
| Department of Finance - Ireland | 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. | Yes we can see the merits in EIOPA’s view that the continuation of policies is most relevant in life and for some long-term non-life insurance policies, where reasonably practicable and justified in terms of costs and benefits. Again, as mentioned immediately above, we would see the potential for considerable interaction with a resolution regime to facilitate such continuation. However, as mentioned above we have yet to develop a clear policy position on this matter.  | Noted. | Public |
| Department of Finance - Ireland | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 1. Ireland’s preference would be for host-based arrangements. However we acknowledge the position of EIOPA and many Member States that a home-based scheme is more advantageous from a supervisory perspective.
2. Ireland is willing to consider home based arrangements, if the cost of contributing to insurance guarantee schemes does not differ materially across member states (either for the firms or consumers) and if compensation arrangements do not bring about any competitive disadvantages to countries with smaller domestic markets in the event of a large liquidation.
3. In our view swift compensation can only be assured if there are adequate funding arrangements in place for the IGS regardless of whether it is home- or host-based.
4. We acknowledge that this is a complex issue and that there is no one-size-fits-all solution. We strongly believe that the issue of funding needs to be addressed in order to provide reassurance to all Member States that the arrangement will operate effectively and that they will be recouped where they pay out on behalf of a home authority.

We recommend that each IGS is funded on an ex-ante basis up to a target level. Ex-post contributions should be put in place where there is insufficient funds. | 1. EIOPA is of the view that a home-based scheme is the most appropriate for protecting policyholders’ interest, thus ensuring consistency with the responsibility for the prudential supervision. More specifically, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.
2. At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).
3. EIOPA is of the view that the funding mechanism should be harmonized at EU level, establishing common criteria on how the national IGS is funded with very minor discretion to Member States. The ex-ante funding mechanism proposed by EIOPA should ensure the availability of sufficient funds, considering that the appropriate target level for the funding of IGSs should be defined across Member States, taking into account the national market specificities. The ex-ante contribution by insurers should be possibly complemented by ex-post funding arrangements in case of capitals shortfalls. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.
 | 1. Public
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| Department of Finance - Ireland | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 1. Ireland notes that option ii is currently being explored through the Motor Insurance Directive- (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”))
2. What is key here is that there is certainty that the host will be reimbursed by the home country in the event of a pay-out.

Any discussions on the home/host issue should include the source of funding and we refer to Article 157 of Solvency II which precludes MS from applying an indirect or fiscal charge on insurance outside of its jurisdiction. This makes it difficult to operate a home scheme in our view.It is also our opinion that the continuation of policies in the case of life insurance may be difficult with the proposed front and back office principles in a home-country approach.  | 1. Noted.
2. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.
 | 1. Public
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| Department of Finance - Ireland | 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? | 1. Our preference is for a harmonised scheme of national IGSs to be based on the host-country principle.
2. We believe that a national host-based IGS is best placed to serve its own consumers and can work more efficiently within its own legal system. On the other hand one potential issue with home-based schemes is that where injured parties are compensated by a body of the Member State of their residence and the final debtor is the home state of the insurance undertaking which issued the policy, the national rules of each compensation body may differ. Which MS rules should apply? There is the risk of arbitrage here where different limits apply in different Member States.

That said, if we are to consider home based arrangements, it would be important that the cost of contributing to insurance guarantee schemes should not differ materially across member states (either for the firms or consumers) and that compensation arrangements should not bring about any competitive disadvantages to countries with smaller domestic markets in the event of a large liquidation.  | 1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which seems to be the most appropriate approach for protecting policyholders’ interest, ensuring consistency with the responsibility for the prudential supervision as well. In particular, the home-country principle prevents that policyholders of the same insurer are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.
2. At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).
 | 1. Public
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| Department of Finance - Ireland | 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. | 1. Yes we do believe that the two major criteria for selecting eligible policies which should be subject to IGS are the significant ones as:
2. (i) the primary purpose of an IGS is to prevent financial and social hardship for policyholders and beneficiaries and
3. (ii) as is happening with motor insurance in the Motor Insurance proposal, it is important that lines of business with a high market share in cross border business are captured. Based on our experience with the collapse of a number of FOS motor insurers, this is particularly relevant to Ireland.
*
 | 1. Noted.
 | 1. Public
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| Department of Finance - Ireland | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | 1. The current Irish IGS covers all non-life insurances (except health and dental). The reason for the exclusion of life is that it is a much lower-risk business model (bulk of our business is unit linked). Health and dental insurance in Ireland are also subject to different rules.

Our recommended approach would be to support an Insurance Guarantee Scheme for Non-life policies which covers natural persons and micro enterprises. We have yet to fully develop our position on life policies.  | Noted. 1. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice.
 | Public |
| Department of Finance - Ireland | 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. | 1. We agree with EIOPA’s advice in paragraph 171 that national IGSs should cover natural persons and micro- and small-sized legal entities (i.e. policyholders and beneficiaries). The meaning of micro- and small-sized entities needs to be further defined.

The Irish IGS covers all natural persons and selected legal persons in cases where the ultimate beneficiary of a payment is a natural person. A sum due to a commercial policyholder may not be paid out of the Fund unless the sum is due in respect of a liability to an individual. As the main aim in our IGS is consumer protection, we would support maintaining a similar arrangement. | 1. Noted, please refer to eligible claimants section.
 | 1. Public
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| Department of Finance - Ireland | Q11) Which criteria should be used to determine/exclude the eligible claimants? | The Irish IGS covers all natural persons and selected legal persons in cases where the ultimate beneficiary of a payment is a natural person. A sum due to a commercial policyholder may not be paid out of the Fund unless the sum is due in respect of a liability to an individual. As the main aim in our IGS is consumer protection, we would support maintaining a similar arrangement. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Department of Finance - Ireland | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | 1. Where the beneficiaries of large corporates and legal groups are ultimately consumers, we believe that consumers should be protected.

The Irish IGS covers all natural persons and selected legal persons in cases where the ultimate beneficiary of a payment is a natural person. A sum due to a commercial policyholder may not be paid out of the Fund unless the sum is due in respect of a liability to an individual. As the main aim in our IGS is consumer protection, we would support maintaining a similar arrangement.In the non-life context the wording we use in our legislation to cover this is as follows:*“An amount due to a body corporate or unincorporated body of persons may not be paid out of**the Fund**under subsection (1) or (5A)(d) unless the sum is due in respect of the liability of the body to an individual or in respect of the liability of an individual to that body.“* | 1. Noted.
2. EIOPA’s advice clarifies further the eligible claimants and also the related policyholders and beneficiaries. The example mentioned in your 1st paragraph falls into the scope of EIOPA’s Advice.
 | 1. Public
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| Department of Finance - Ireland | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | 1. At the outset, it should be noted that we agree with EIOPA’s advice of a minimum harmonised coverage level for claimants. The coverage level should be set so that it does not leave policyholders and beneficiaries exposed to considerable financial or social hardship, while bearing in mind the costs of funding of IGSs.
2. Where insurance is compulsory (e.g. motor insurance) we believe a strong argument can be made for a coverage level of 100%. In this regard it should be noted that in Ireland third party motor claimants receive 100% protection.

In relation to other non-life products, we currently provide for 65% of the claim or €825,000 whichever is the lesser. We believe that this represents a good starting point for considering this issue. | 1. Noted.
 | 1. Public
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| Department of Finance - Ireland | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. While our preference is for a host scheme, should a home scheme be agreed, it is our view that the funding approach be harmonised in order to provide certainty for consumers and insurers. This can be achieved, we believe, while still allowing flexibility at the national level as to how an IGS operates.

Whether a home or host arrangement is put in place, we agree with the advice in paragraph 213 that IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. However, in order to avoid the risk of contagion the ex-post fund raising should be constrained. 1. In our view, an ex-ante IGS that is funded before any insurer becomes insolvent is the optimal solution. This could be done by putting a levy on industry in order to fund it.
2. The exact target level as per the EIOPA paper requires further consideration.

In the context of a home arrangement, a good example of a similar type of arrangement is the Deposit Guarantee Scheme (DGS) Directive (2014/49/EU). It is a home-based minimum harmonisation directive, which requires banks to finance the scheme. We consider this a model which could be adapted for insurance. | 1. Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice.
 | 1. Public
 |
| Department of Finance - Ireland | 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 (risk-based, fixed rate, other)? | 1. As a general principle some certainty around contribution levels is important. What is key particularly in a home scheme approach is that there is generally equitable approach funding across the Union thus preserving a level playing field across the single market. Any such mechanism should ensure insurance companies would be treated uniformly across the EU.
2. We recommend that each IGS is funded on an ex-ante bass up to a target level. Ex-post contributions should be put in place where there is insufficient funds.

Each insurer’s contribution should be linked to a flat element of their Gross Written Premium as well as an element taking into account their risk.  | Noted. | Public |
| Department of Finance - Ireland | 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)? | 1. While IE favours a host-based scheme, we recognise that there are many others who see a home based scheme as better aligned to the supervisory framework. In an attempt to be constructive, Ireland can consider a home based arrangement if it is ex-ante funded in such a way that it ensures that a similar cost applies regardless of where the insurer is located. This is essential if we are to preserve a level playing field across the Single Market.

It is important that the cost of contributing to insurance guarantee schemes should not differ materially across member states (either for the firms or consumers) and that compensation arrangements should not bring about any competitive disadvantages to countries with smaller domestic markets in the event of a large liquidation.  | 1. Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice.
 | 1. Public
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| Department of Finance - Ireland | 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, please also refer to Q4 and Q5)? If so, what are those? | As per our response to Q5 in our view swift compensation can only be assured if there are adequate funding arrangements in place for the IGS regardless of whether it is home- or host-based. We acknowledge that this is a complex issue and that there is no one-size-fits-all solution. We strongly believe that the issue of funding needs to be addressed in order to provide reassurance to all Member States that the arrangement will operate effectively and that they will be recouped where they pay out on behalf of a home authority. We would have some reservations that cross-border compensation arrangements should be home-based. While our preference would be for host-based arrangements, if we are to consider home based arrangements, it would be important that the cost of contributing to insurance guarantee schemes should not differ materially across member states (either for the firms or consumers) and that compensation arrangements should not bring about any competitive disadvantages to countries with smaller domestic markets in the event of a large liquidation.  | Noted, no change needed.  | Public |
| Dutch Association of Insurers  | General comments | Level playing field in insurance: 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.Different levels of IGS protection across the EU are not necessarily indicative of the level of *policyholder* protection across the EU. This is also influenced by other factors, such as the presence and the design of a recovery & 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 *policyholder protection* across the EU, rather than on the level of protection that an *insurance guarantee scheme* offers, as an isolated matter.Cross-sectoral distortion of the level playing field: 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 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-sectorial level playing 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.[[1]](#footnote-1) 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 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 revery 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 an 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 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.  | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.The fact that there are already existing national IGSs in place cannot be ignored.Furthermore, the consultation paper provided recent examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps. | Public |
| Dutch Association of Insurers  | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | 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.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.  | Noted. | Public |
| Dutch Association of Insurers  | 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)?  | 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. 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 faciliate a return to going concern) can also be borne by an insurance guarantee scheme.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 over a long period of time, and pays out to poliyholders 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.   | Noted.  | Public |
| Dutch Association of Insurers  | 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. | 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 detoriated health, aging, or risk not being able to obtain new insurance at all.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.  | Noted. | Public |
| Dutch Association of Insurers  | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 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. Transparency about the limitations of insurance guarantee schemes. | Noted. | Public |
| Dutch Association of Insurers  | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 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.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 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. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Dutch Association of Insurers  | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | 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.1. 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).
 | EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | General comments | It has come to our attention that there is conflict of interest in implementing the regulation on the IGS and Solvency II. It is a matter of regulator and supervisor to assure that the insurance industry is able to fulfil its obligations towards the customers including the claimants at any point in time. The original and ultimate reasoning behind the implementing Solvency II regulation is to assure the policyholder protection as a minimum against the ultimate extreme scenario expected to arrive once in 200 years time horizon. For this purpose the insurance industry consisting of more than 5000 service providers all over Europe have invested tremendous resources in building up risk management system (including ORSA), new supervisory reporting infrastructure, management standard (fit&proper, outsourcing) and capital adequacy measurement systems (SCR, MCR, internal model based assessment opportunities).Based on concrete examples, some of which are included in the Consultation Paper, it is evident that the goal foreseen by implementing Solvency II is not achieved. One could even add to the list presented some more dramatic failures in implementing the regulation in practice (e.g. Bulgarian insurers developing FOS business etc). At the same time most of the insurers and markets have well prepared themselves against the extreme scenarios. As an example to the high level of preparation one could refer to the SCR ratios published by various insurance companies in Europe. Considering this background it is first of all important for the regulator and supervisory authorities all over Europe to keep the image of respected authorities, what in practical terms means that the currently existing regulatory framework shall be implemented on equally well functioning way across the whole EU and only thereafter, based on concrete practical experiences to come up with the new initiatives, one of which might be IGS implementation. Otherwise the level playing field, transparency and customer protection goals can not be achieved.So far, based on practical examples it has become evident that the current regulatory framework does not work. So, before generating another layer of legislative acts on top of not working legislations is first of all not of assistance to anybody, but brings in additional cost burden and risks which at the end are beared by policyholders through higher insurance premiums without any benefit.The question is, which practical problems and in which scale the regulator intends to solve with this new initiative? If the initiative is driven by wish to promote cross- border insurance, then the regulator seems to ignore with this initiative the differences between cultures, best practices, tehcnologicla differences and legislations by countries and regions. In comparison to the deposit guarantee schemes in the banking here we are talking about completely different risks which vary country by country. For instance in non- life insurance the party who is really expected to suffer from the failure of insurance service provider is not the policyholder. Often, especially in the liability insurance areas the most seriously hit person is the private person with physical damage caused by policyholder or insured. This is not contractual party in the insurance contract who needs protection, but it can be whoever, wherever, depending on the insurance contract territorial scope and/or the origin of the victim. Compensation amounts in such cases may easily reach to the level of millions of euros. In case failure to provide service by any major insurer the outcome towards such victims is huge and primarily these persons need additional protection against insurance company failure. In such cases there might be nobody around to help them out. Luckily in most of the cases such schemes already exist in Europe. For instance, as it was rightly pointed out in the Consultation Paper, there is currently well functioning motor insurance IGS network all over EU in existence. It is not excluded that the need for some particular IGS is evident in some countries, but this must be in good balance between state and private sector with the clear target to protect the weakest, i.e. the victims with serious damages. Normally such schemes are needed as an additional element of protection in the overall framework of social security, where the member state has decided to impose mandatory insurance (e.g. Workmen Compensation insurance in some markets etc).Also it is important to stress that in case the insurance company failure is not economically damaging to the customer there must be free and transparent market for the customers to make proper coice between the service providers. Also for this context several legislative acts are introduced already (e.g. IDD, PRIIPS etc.). The question is, what and why is still needed for policyholder protection? For the lines other than the ones linked with the social insurance one might also ask, where is the border and why there is not always level playing field in the financial and insurance sectors. For instance several member states offer bonds as an investment opportunity also for private persons. We have seen recently that the country with AAA rating failed to fulfil its obligations in face of bondholders. Why the regulator is not looking for protecting the financial interests of such private persons in some form of guarantee scheme, but is concerned about life insurance services (obviously related also to the contacts with the investment component in them). We come to the detail related to financing also below, but in general considering the argument at the beginning it is of ultimate importance to say that in any IGS introduced on top of Solvency II there must be member state financial contribution included in general financing besides insurance industry. This is fair because the state has responsibility for implementing regulations it has developed and consequently has to carry the cost in case of market failures too.One may also ask, whether the current legislative framework (Solvency II) is necessary at all, if it does not work according to the expectations. One way of thinking might lead to the conclusion that perhaps the IGS solution should fully or partially replace Solvency II. We are not of opinion that this is a good way forward. Instead of at least theoretically risk- based, risk- driven regulatory framework the risks related to insurance service providers are reduced substantially. The same can not be said about the home- based IGS, because it is practically impossible to assure well functioning risk based financing of such infrastructure (see details below). Few examples of insurance company failures do not justify to replace Solvency II, but home based IGS implementation on top of Solvency II does not reduce the probability of failures. In contrary- after the next failures, when the current regulatory framework is not implemented in practice, one might consider already the next levels of IGS on top of the currently planned IGS infrastructure. We also note that the proposed IGS would increase dramatically moral hazard of insurers under financial pressure and would thus be counter-productive for the stability of the insurance system. To conclude, we:1. support **only country- specific IGS in case of mandatory insurances carrying an element of social insurance**, especially in such cases where the state financial contribution is also involved in the scheme and where the persons covered by such mandatory insurance schemes are most vulnerable group in society (e.g victims of bodily injury accidentst, disabled, elderly people and survivor families),
2. do not agree on imposing new additional IGS as long as the current regulatory framework does not work,
3. ask regulator and supervisors to implement the current, already existing legislation before developing the new one. So far this is not the case in practice,
4. are of opinion that the IGS, if needed, must be member state specific and set up according to the local needs, because there is a huge difference between the countries on how claims are handled and risks are managed driven again by cultural differences, technological differences, best practices, local legislation and difference in costs,
5. are of opinion, that establishing pan- European IGS infrastrure by ignoring country specific risks does not bring any benefit, but may mean higher costs and risks for the policyholders and societies,
6. are of opinion that as long as the regulator requires IGS on top of Solvency II there is a conflict of interest and the regulator must in such a situation also be able to contribute financially in the IGS scheme,
7. are of opinion that setting up home based IGS on top of currently functioning host based IGS brings simply another layer of IGS because for the reason of protecting victims in the country of accident the host based IGS must remain in function in any case,
8. ask to analyse the balance between additional costs beared by insurers (and transferred on policyholders through higher premium) and benefits out of this new initiative and only then, in case the clear evidence about the practical effect due to new IGS regime is in place to come back to the preparation of new IGS infrastructure.
 | EIOPA disagrees with the view that there is a conflict of interest.EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored.Furthermore, the consultation paper provided recent examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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. | Yes we agree. In order to explain one may need to compare the current deposit guarantee schemes with the insurance guarantee schemes in existence. The risks covered are completely different. With the deposit guarantee scheme the amount of monetary loss is more- less clear immediately after the bank failure and it does not depend on the residence location of service provider, residence of client or any other additional aspect one may imagine.With insurance, especially in the non- life insurance area the loss amount to be compensated depends always on country of accident, insurance best practices, local legislation, technologies used in insurance etc. In practice the probability of several identical loss events taking place is very small. Each and every claim must be handled individually in order to come up with the monetary amount to be compensated to the client. One simple practical example to this is claims handling in the area of simple motor own damage insurance. Market best practice in Estonia is that in case of motor own damage insurance loss event the customer turns directly towards the car repair service, which organises the rest of the claims handling for the client. There is practically no any cash payment involved. The motor vehicle will be repaired completely up to the highest safety standards. Customer does not usually even know, how much does repair cost but can be confident that the vehicle is properly repaired. Based on our information, however there are markets in the EU, where instead of financing the repair work customer receives cash compensation. As a result it is not always obvious, whether the amount of compensation is sufficient to have high quality repair done and whether this is expected to be done at all. By first glance the situation may look quite the same in monetary terms but in reality it is not. First because in case of cash payments there is an opportunity to economize on compensation by insurers, secondly the risk of fraud is getting much higher and third the level of disputes between customers and insurance companies is exposed to be much higher too. This all aggregates to the different levels of claims related costs which again is transferred to the difference of insurance premiums.As a result of major differences between legislation, best practices and cultures the set-up of IGS should be based on member state own decision. | Noted. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | No. Similarities between deposit guarantee scheme and insurance guarantee scheme are nearly non- existent. | Noted (the question does not address DGS). | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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, in case the scope of cover is limited to the approach proposed in my general comments to the current paper above. Specifically the need for IGS may be justified in case when there is clear link to the social protection of population and especially when also state is involved somehow in financing such a scheme.In practice it means obligatory liability insurances where victim may have serious bodily injury and consequently need various monetary support from treatment up to the premanent disability pension (compensation paying element) or some elements of pension insurance when the person is not able to cover his/ her financial needs any longer by herself due to age, disability etc (continuity of policies element).  | Noted. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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. | Yes. See the explanation to the Q3 above. | Noted. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | There are markets like Estonia where up to 30% of the total market share is in hands of various cross- border service providers (FOE and FOS together). The markets like us see this change being extremely dangerous on the EU level. We are aware about the background to it. From one hand there is a well working example in the form of deposit guarantee schemes in place on the EU level and additionally also many regulating aspects are set up on home- country basis. Nevertheless we, as practically functioning IGS in the environment of very high share of FOS/FOE service providers, see the danger related to this change very closely. Whenever there is a change to switch the concept to the host- based direction, we are confident that both policyholders as well as claimants/ beneficiaries are not only better protected, but the whole system is economically bearing much less costs on insurance directly and on the society indirectly. We as host- based MTPL guarantee fund know for exactly the risks and behaviours of each and every insurance service provider acting in our market. Consequently we can react to the adverse developments pretty quickly by informing all the parties involved, arrange smoothly compensations to the victims based on local law, technology, best practices and cultural specifics. However, in cse of home-based approach all IGS´s would need to set up reporting, monitoring and financing arrangements for all member states their member companies are active. It would result in endless amount of parallel tasks that is highly inefficient and costly to operate. On top of that, as very likely the arrangement would also include host guarantee schemes for initial payments, in practice it would also mean that in case of home-based IGS, also host IGS would need sufficient reserves for failures of in home countries, although the paid sums would be eventually repaid pay the home IGS. This is financially not reasonable. Should the future IGS would like to avoid the latter, in case of home- based IGS the insurance company failure would mean the IGS of insurance company head office would need additionally advisory and claims handling networks across all the areas of its activities- it is not possible to handle insurance claim without knowing the specifics of each and every particular claim. For this one needs additionally the staff who is competent in local languages, tehcnologies, legislation and best practises in order to continue service based on locally accepted high claims handling standards comparable to other insurance service providers in particular market. In reality this brings the society the higher costs with questionable benefits. So, in practical terms many, if not all home based IGS may need their representatives in all the other member states. Of course it may not be most efficient to establish representatives on this way but both in terms of financing, risk management as well as customer service point of view we either speak of double- layer system establishment. In case of host- based IGS one layer is enough but when establishin home based IGS in addition the host based IGS is still needed. One reason is already explained- the victim/ client need help and service in her home country in its own language based on the legislation and practices valid in its respective home country. Another reason is that in order to assure equal treatment of victims especially seriously influenced (bodily injuries, illnesses, age causing very high monetary amounts in total claim) by loss event/ payout (in case of pension) each and every member state most probably wants to assure that all such clients are well served in their respective markets. This leads to the conclusion that the host base IGS must be in place in addition for assuring that all the clients receive their compensations and then it is already a matter of handling counterparty risks between market participants and various IGS in various countries. So, to conclude: as a result of introducing the home based IGS the establishment of two- layer IGS is a must. Two- layered IGS is more costly and less effective. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Yes. The reasons are already explained under Q5. | Noted. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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? | See the comment on Q5. Especially dangerous to the clients is the situation exactly in statutory lines. There the host-based scheme must be seriously considered in order to assure equal treatment of potentially seriously hit victims (liability lines) and policyholders (pension).s | Noted.1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring the link with the responsibility for the prudential supervision. In particular, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).  | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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. | See the general comment.  | Noted.  | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See the general comment. | Noted. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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. | 1. See the general comment.
 | 1. Noted.
 | 1. Public
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| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | See the general comment. The main purpose of IGS should be to protect additionally in addition to the protection already foreseen by implementing the solvency II those clients who are protected by statutory lines as a part of social insurance scheme. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | 1. No.
 | 1. Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered.
 | 1. Public
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| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | No one minimum is needed. Countries are very different and one element between several is also the price level of goods and services which differs from market to market. For instance- to give again very simple example, the price for the car repair in Tallinn is probably in times different from the car repair in Luxembourg but this cost element constitutes biggest part of average claim in simple motor own damage insurance. The same applies to the rest of the lines- besides other elements already described the one size fits all can not work in case of insurance. Every market, every claim, every client is different in insurance world. | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.  | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. This should be left to the member states to define.
 | 1. Noted. EIOPA’s advice already allows for some degree of flexibility regarding funding. For other policies, the maximum coverage in terms of a percentage cap could apply.
 | 1. Public
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| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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 (risk-based, fixed rate, other)? | 1. By choosing between the bad options, the principles should be left for each member state to be defined. We have to note, that home-based approach would automatically trigger the question of level playing field and would cause forum shopping for insurers as companies would be tempted to register their head offices in member states where the contribution rate is lower. At the same time unified contribution level would result in situation where some countries would have insufficient level of reserves while other would be overfunded.
 | 1. Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.
 | 1. Public
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| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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)? | 1. Risk based. See explanation above.
 | 1. Noted.
 | 1. Public
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| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | Not necessarily. The moral risk must be handled. | Noted, no change needed.  | Public |
| EKsL (Estonian Insurance Association), LKF (Estonian Motor Insurance Center) | 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, please also refer to Q4 and Q5)? If so, what are those? | In fact the only real need for IGS is related to these persons, either claimants of third party insurance or insureds in the pension systems where the person is in major economic risk due to service provider inability to fulfil its obligations.In most of the cases such victims may appear in the insurance services which are closely linked to the state social insurance (motor third party liability insurance, workmens compensation insurance, pension insurance, some private health insurances). For everybody else the material damage related to the disappearance of insurance provide can not be so critical and can not bring the person into the economic ruin situation. Especially in the non- life in case the person has not suffered under the accident. In these cases the person has a choice to re- arrange her insurance cover with the other insurer and the economic loss is limited to part of insurance premium only (which in non- life lines is normally not on the level which might be economically damaging for the policyholder).In the life insurance side the service part carrying death risk element can be an issue for the survivors but the policyholder has freedom to choose reliable and financially stable partner based on the massive package of information to be provided to her based on various regulations like Solvency II, IDD, PRIIPS etc. etc. On this basis person, potential policyholder has full package of information to choose the most reliable partner. No additional measures like IGS are necessary to implement in respect of such cases. | Noted, no change needed.  | Public |
| FFA-French Federation of Insurers | General comments | First, it is important to reiterate that a strict respect of prudential rules by insurance undertakings, properly supervised by NCAs, remains the only way to ensure a healthy market. An effective and harmonised implementation of Solvency II should remain the main focus of supervisory authorities.Having said that, due to the current context of multiple failures of undertakings operating on a FOS basis, FFA believes every Member State should have a national guarantee scheme or a compensation mechanism for the protection of policyholders in the event of a failure of an insurer.Today, because of a lack of harmonisation among IGSs, some companies operate without any coverage in case of insolvency, leaving consumers without protection. In this context, a minimum harmonisation of the rules regarding geographical scope among IGSs should be considered. As a consequence, in case of an EU initiative on IGSs, FFA would support the establishment of a European network of national IGSs, with minimum harmonisation (i.e. option 2 of EIOPA consultation paper) In our opinion, a single EU-wide IGS (option 3) is neither acceptable nor feasible considering that each NCA must remain accountable for the supervision of undertakings registered in its own Member State (Artice 30 of the Solvency II Regulation), wherever these undertakings operate. It should be the responsibility of the home Member State to deal with the consequences of an insolvent insurer.  | Noted. | Public |
| FFA-French Federation of Insurers | 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. | Yes, FFA believes that the legal structure of schemes should be left to the discretion of Member States. | Noted. | Public |
| FFA-French Federation of Insurers | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | No, IGSs should not play any role in recovery and resolution. The mission of IGSs should not include the prevention of insurance failures. An IGS should remain a “last-resort mechanism” providing additional protection after all resources from the insurance undertaking have been exhausted (i.e. after insolvency or resolution). | No change needed. EIOPA argues in its advise that, in order to achieve harmonisation of policy holder protection, not only IGS should be harmonised (to some extent), but also recovery and resolution regimes. | Public |
| FFA-French Federation of Insurers | 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)?  | No, national IGSs should be solely designed to provide compensation to policyholders for their losses in liquidation. The intervention of the insurance mechanisms must be curative and not preventive, i.e. exclusively limited to the funding of the gap between the benefit due to the customers and the ressources of the insolvent undertaking. | EIOPA’s view is that IGS should also help ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| FFA-French Federation of Insurers | 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. | No, FFA believes IGSs should not play any role regarding the continuation of the policies. Once again, national IGSs should be solely designed to provide compensation to policyholders for their losses in liquidation.For life insurance, decisions on continuation or no continuation of policies, and conditions of continuation, are taken by NCA and liquidator according to national legislation. | EIOPA’s view is that IGS should also help ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| FFA-French Federation of Insurers | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | The home country principle should be adopted at EU level (with no possibility for Member State to adopt another rule) in order to be sure that all IGSs have to comply with the same conditions of intervention.The home-country principle for IGSs is a logical consequence of the financial supervision of insurance and reinsurance undertakings, including business under FoS and FoE, which 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. It is fair that the costs of failure is paid by the industry in the Member State responsible for the supervision of the insurers.The home country principle is the only way to make NCA and member State accountable for their control which must be exercised in the same way for domestic and cross-border activities.Additionally, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS. | Noted. | Public |
| FFA-French Federation of Insurers | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | From a consumer point of view, a mechanism of “front office” (a kind of “one-stop-shop”) could be useful in order to facilitate customer identification and communication in local language.However, the payer must always be the IGS of the country who has authorized and who is responsible for the supervision of the insolvent undertaking. | Noted.  | Public |
| FFA-French Federation of Insurers | 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? | No, the home-country principle shall always prevail for all lines of business (failure of motor insurers should be dealt with by the Motor Insurance Directive). | Noted. | Public |
| FFA-French Federation of Insurers | 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. | According to FFA, the scope of national IGSs regarding the eligible policies could be left to each member State. Indeed, criteria as set out in paragraph 149 (considerable financial or social hardship for policyholders and beneficiaries, high market share) depend on national market specificities. Nevertheless, irrespectively from the national scope of IGSs, **every IGS should cover the cross-border activities of the undertakings registered in their home country**. In case of a failure, the home country IGS should intervene in the same conditions as the IGS of the host country. All consumers of a member State should be treated in the same way, whatever the nationality of the insurer.  | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| FFA-French Federation of Insurers | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See answer to Q8. | Noted. | Public |
| FFA-French Federation of Insurers | Q11) Which criteria should be used to determine/exclude the eligible claimants? | FFA believes IGSs should only cover consumers that are natural persons (see EU definition contained in Directive 2011/83/EU, art.2.1: „c*onsumer means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession*“). | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| FFA-French Federation of Insurers | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | 1. Any extension of the scope to large legal persons should be decided at Member State level, in consultation with local stakeholders.
 | 1. Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered.
 | 1. Public
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| FFA-French Federation of Insurers | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | FFA believes that the absence of a global intervention limit is only possible if the State funds the guarantee scheme. As the financing of the guarantee scheme is based on private companies, it is necessary to provide for **the principle of a global multiannual intervention limit** for IGS which ensures that the solvency of the contributing companies is not affected.As for the amount of this overall limit, it could be expressed as a percentage of the solvency margin of the insurance undertakings.FFA also asks that the potential future text establishes the principle of an individual limit of compensation per insured or beneficiary.Finally, compensation can only be considered within the limits of contractual guarantees.**Regarding amounts, this issue should be left at Member State level**. Regarding cross-border activities, the minimum coverage should take into account the compensation level of the host country. | Funding considerations may be taken into account in the follow up work to the final Advice. | Public |
| FFA-French Federation of Insurers | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. Decisions relating to IGS funding should be left to Member States’ consideration. If the timing of funding would have to be harmonised, FFA is in favour of an ex-post funding.
 | 1. Noted. EIOPA’s advice already allows for some degree of flexibility regarding funding.
 | 1. Public
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| FFA-French Federation of Insurers | 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 (risk-based, fixed rate, other)? | 1. For the FFA, decisions relating to IGS funding should be left to member States’ consideration.
 | 1. Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.
 | 1. Public
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| FFA-French Federation of Insurers | 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)? | 1. Idem.
 | 1. Noted.
 | 1. Public
 |
| FFA-French Federation of Insurers | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 1. If the geographical scope of IGSs regarding FOS activities is not harmonised the client must be informed about the existence of an IGS. In these conditions, FFA believes that insurers should disclose, before the contract is concluded, to their policyholders whether their insurance policy is covered by an IGS or not and, if so, specify which one. Insurers should also provide information about the basic rules governing the entitlement to coverage under such scheme. Nevertheless, this should not result in an information overload for consumers, as this would threaten the purpose of disclosure requirements.
 | 1. Noted, no change needed.
 | 1. Public
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| FFA-French Federation of Insurers | 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, please also refer to Q4 and Q5)? If so, what are those? | - Mobilize EIOPA as the coordinator of national authorities regarding FOS activities; the main objective is to achieve the effective implementation of the Solvency 2 provisions and the amended Regulation 1094/2010 establishing EIOPA, through a real harmonisation of supervisory practices at European level.- Strengthen cooperation between national supervisory authorities and with EIOPA through formalized mechanisms for mutual information on the specificities of national regulations. | Noted. | Public |
| Finance Finland  | General comments | Finance Finland does not support the idea of harmonizing insurance guarantee schemes (IGS) and strongly supports the option of maintaining the status quo. IGSs are in place for some lines of business (depending strongly on the MS) but EU-wide harmonization would deliver many problems.The idea of harmonizing insurance guarantee schemes seems to reflect the developments in the banking sector. It should be better recognized that consumer protection needs are different in the insurance sector, and also the contagion risk is very different from the banking sector.The risk of moral hazard caused by IGS should not be taken lightly. Insurance market is all about assessing risks and moral hazard can influence this mechanism.IGSs could increase the risk of contagion since IGSs would increase the interdependence between the insurers. The introduction of IGSs to small and highly concentrated markets could lead to severe contagion risk and thus financial instability. The majority of European insurance markets show a high concentration, i.e. the top 4 insurers having 70–80 % of market share. Should sound companies be required to fill in funding gaps if a larger insurance company collapses, it could signifcantly weaken the financial position of otherwise healthy insurers, thereby exposing their policyholders to risk. So IGSs can actually have a negative effect on the financial stability.The need for IGSs has been reduced considerably because of the introduction of Solvency II in 2016. Yet the current idea of IGS relies on an analysis based on pre-Solvency II failures and near misses. It should be remembered that even before Solvency II there were very few failures and even fewer resulting in any losses for policyholders. Before any iniatitive on IGS or recovery and resolution, an in-depth assessment of the effects that Solvency II has had on the risks in insurance companies and on policyholder protection is required.Solvency II is meant to form strong protection against insolvency and it already provides very high levels of policyholder protection and safeguards. There should not be duplicative regulation on aspects which are already dealt with in Solvency II. In addition, consumers are already well protected in many Member States since they have high priority in creditor hierarchy in national legislations.It seems extremely difficult to design even minimum harmonization of IGS since there are significant differences in insurance markets between Member States. The role of different lines of insurance business varies considerably between different Member States. These differences in insurance markets are caused e.g. by different kinds of social security systems which they are built upon. Therefore, many common lines of business (e.g. health insurance, voluntary pensions, workers’ compensation) play very different roles in different societies and the need for IGS and their requirements are significantly different, too. Current IGSs vary significantly across Europe but work generally well within their local context and laws. What may seem to be a workable solution for one market can be detrimental to other – and can even compromise the existing national IGSs by lowering their standards if they are harmonized.The role of life insurance is especially different between Member States depending on how the (main) pension cover is organized. In Finland by far the biggest part of people’s pension cover is delivered by statutory pension funds (statutory earnings-related pension insurance) which are not considered as life insurers – and these statutory funds already have an IGS with the protection level of 100 %. This means that life insurers play a smaller role in pensions (only supplementary pensions) and thus the need for IGS is significantly smaller for life insurance products in Finland. | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided recent examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations. Solvency II is not a zero- failure regime and the fact that there are already existing national IGSs in place cannot be ignored. | Public |
| Finance Finland  | 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. | Finance Finland agrees that the legal structure of policyholder protection schemes should be left to the discretion of Member States. More generally, Finance Finland believes that national authorities should be allowed significant flexibility to choose the IGS 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. | Noted.  | Public |
| Finance Finland  | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | IGS should not be used to prevent or reduce risk of company failure and IGS should play no role in recovery and resolution. IGS should remain a “last-resort mechanism” only for providing additional protection after all resources from the insurance company have been exhausted (i.e. after insolvency or resolution). It should be up to 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. Therefore, Finance Finland agrees with EIOPA’s position, stated in Paragraph 86, that the mission of IGS should not include the prevention of insurance failures.Before proceeding with any iniatitive on IGS or recovery and resolution, an in-depth assessment is required on the effects that Solvency II has had on the risks in insurance companies and on policyholder protection. | No change needed. EIOPA argues in its advise that, in order to achieve harmonisation of policy holder protection, not only IGS should be harmonised (to some extent), but also recovery and resolution regimes. | Public |
| Finance Finland  | 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)?  | National IGS should be solely designed to provide compensation to policyholders for their losses in liquidation. But also here, 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. | Noted, however EIOPA’s view is that in order to achieve harmonisation of policyholders protection in Europe, it is necessary to define a common framework and agree on the role of IGS, which can’t be fully left at the discretion of the Member States.EIOPA’s view is that IGS should also ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Finance Finland  | 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. | National IGS should be solely designed to provide compensation to policyholders for their losses in liquidation. But also here, 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.It might be extremely detrimental to transfer the portfolio of the failed insurer to another insurer. If the risks involved are too significant (e.g. high interest rate guarantees in life insurance policies with a savings component, aggravated health risks in life insurance policies covering death), a portfolio transfer may actually jeopardise the financial soundness of the insurance company that takes over the portfolio. | EIOPA’s view is that IGS should also help ensure the continuity of insurance policy, even if the risks linked to portfolio transfer should be taken in consideration. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. . | Public |
| Finance Finland  | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 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. The home country should provide all the funding, because this ensures alignment with the model of the EU supervision. The home country would be responsible for deciding on how the IGS is funded e.g ex-ante/ex-post funding, how contributions are allocated to each insurer in their market, contribution caps, etc.Even though the home-country principle is logical it has proven very difficult to be carried out in practice in cross-border situations. These difficulties stem from the principle itself and all the work and especially costs related to resolving those problems cannot be avoided even if there was some kind of front office etc. | EIOPA is of the view that the funding mechanism should be harmonized at EU level, establishing common criteria on how the national IGS is funded with very minor discretion to Member States. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Finance Finland  | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | The home-country principle is logical when deciding which IGS should bear the ultimate financial burden because in cross-border situations the solvency supervision remains the home country’s responsibility. Yet also some aspects of the host-country principle are extremely important. Especially in cases where there already are IGSs which offer 100 % protection level (usually statutory “social security-like” insurances) businesses operating in the same geographical area within the field of social security-like insurance cover should have the same obligation to offer 100 % protection level.About the possibility of the host IGS operating as a “front office”: Even if the host-country IGS was to operate as a “front office” that would not make the practical difficulties associated with the home-country principle disappear. All the burdensome work and costs related to resolving those problems cannot be avoided even if there was some kind of front office etc.About the possibility of the home IGS operating as a “back-office”: The “back office” would be much too burdensome and unfeasible to implement due to its complexity and the financial risks involved for the host-contry IGS and host-country policyholders.  | Noted.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Finance Finland  | 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? | Under the host-country principle, all policyholders within the same Member State are evenly protected regardless of the insurer’s location. The host-country principle is thus most suitable when determining the level of compensation for statutory (“social security-linked”) lines of business - especially in those countries where the coverage level already may be as high as 100 % for those products. | Noted.1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring consistency with the responsibility for the prudential supervision. More specifically, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).  | Public |
| Finance Finland  | 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. | The criteria set out in paragraph 149 will lead to a situation in which a wide variety of insurance products within EU will be covered by IGSs because the type of insurance that fulfil the criteria differ between the Member States. This is because there are no EU-rules on what an insurance product is and what a specific insurance product should cover (bank deposits on the other hand are much more similar among the Member States).For example, in some countries home insurance also covers legal protection, liability and travel insurance while in others it does not. 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.The lack of an analysis of the criteria in paragraph 149 in the consultation paper and its practical implications on different insurance products in different Member States makes it impossible to draw conclusions on the implications for IGS.The product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. | Noted.However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Finance Finland  | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. The following considerations should be taken into account when deciding what types of products should be covered by IGS:* In general the criteria for the coverage of specific policies, which could lead to considerable social hardship seems more relevant in cases where the insurance substitutes statutory or state-based pension and/or health care systems. Especially the role of life insurance varies greatly between Member States depending on how the main pension cover is organised.
* There are also other significant differences between 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. In unit-linked life insurance, the investment risk is borne by the policyholder and the insurance company does not provide any guarantee. For this reason unit-linked life insurance should be excluded from IGS.
* Non-life insurance is characterised by a short contract duration and, in the case of insolvency of a non-life insurance undertaking the consumer can easily switch from the insolvent insurer to another insurer. In non-life insurance, unlike in the case of bank deposits or investments, compensation must only be paid if the insured event occurred. Consequently, the affected number of policyholders is considerably smaller in relation to the total insured portfolio. This all reduces the need for an IGS.

While there is a logic to including some compulsory non-life insurance in a national IGS, the reality is that the types of insurance that are compulsory vary greatly across Member States. Therefore, including all compulsory non-life products under the scope of minimum harmonisation would be misguided. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Finance Finland  | 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. | 1. Since life and non-life insurance contracts differ significantly and are handled differently in the event of insolvency, life and non-life insurance should not be administered by same IGS entities.
 | 1. Noted. However, EIOPA’s Advice does not go in this specific direction.
 | 1. Public
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| Finance Finland  | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Should minimum harmonisation be considered and because the primary aim of harmonising national IGS is effective consumer protection, Finance Finland believes that the IGS should cover consumers that are natural persons only and that it should be at the discretion of Member States, in consultation with local stakeholders, to decide whether a wider scope is justified. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Finance Finland  | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | 1. Any minimum harmonisation should only cover consumers (natural persons) and it should be for Member States to decide, in consultation with local stakeholders, whether a wider scope is justified.
 | 1. Noted. See previous reply.
 | 1. Public
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| Finance Finland  | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | Member States should decide which compensation limits are adequate for the sustainability of their national IGS. They may provide for:* a de minimis rule (minimum threshold for IGS intervention) 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;

absolute caps on total contributions are needed to avoid that the obligation to fund an IGS exposes the customers of the other remaining insurers in the market at a risk that would not have existed otherwise. | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| Finance Finland  | Q14) What should be the relevant criteria to determine the target level for national IGSs? | Finance Finland believes that decisions relating to IGS funding should be left to Member States' consideration, in consultation with local stakeholders.1. When considering the timing of funding both ex-ante and ex-post funding have their disadvantages.

Ex-ante funding easily acts the same way as a new tax, and this should be avoided. Experience has shown that funding on an ex-ante basis often leads to the multiplication of the tasks that the fund needs to run. This means 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. In the case of a market downturn and possible hardship for insurers caused by the downturn, the ex-ante IGS fund would face the same difficulties at the same time.Ex-post funding reduces the abovementioned management costs and avoids investment risks. Contributions to the IGS fund will be computed according to actual need (outstanding claims/policies concerned). But also ex-post funding has severe disadvantages. In ex-post funding the failing company will not have contributed to the fund and this leads to the main disadvantage of an ex-post funding which is the risk of **moral hazard**.In concentrated markets, as is the case for the majority of the Member States (i.e. the top 4 insurers having 70–80 % of market share) 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 larger insurance company collapses, this may significantly weaken the financial position of otherwise healthy insurers, thereby exposing their policyholders to risk.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 – see Q13) 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. | Noted. EIOPA’s advice already allows for some degree of flexibility regarding funding.EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.EIOPA recommend that the structure and governance of the funding arrangements are left to Member State discretion. | Public |
| Finance Finland  | 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 (risk-based, fixed rate, other)? | The details of IGS funding should be left to Member States' consideration, in consultation with local stakeholders.Written premiums is not a suitable calculation basis especially for unit-linked life insurance. Calculation should be risk-based and linked to the solvency of the company. Solvency II regime includes tools for the assessment of actual risks.Additionaly, any contributions should also be refundable, which means that some kind of “payback mechanisms” should be considered for cases where the basis of the contribution to the fund does not exist any longer or declines significantly (e.g. life insurance stock is partially/completely sold).1. Finance Finland also favours the introduction of upper limits to the annual level of contributions to the IGS, determined by national competency. The existence of upper limits in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry.
 | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. EIOPA also believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs to mitigate the risk of overburdening the industry.  | Public |
| Finance Finland  | 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)? | Finance Finland favours the introduction of upper limits to the annual level of contributions to the IGS, determined by national competency. The existence of upper limits in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Finance Finland  | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | Finance Finland believes that any IGS proposal should explicitly prohibit any type of advertising about the existence of an IGS since doing so would create moral hazard.Finance Finland points 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;”* |  | Public |
| Finance Finland  | 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, please also refer to Q4 and Q5)? If so, what are those? | Many of the problems related to IGSs seem to more or less relate to cross-border situations. There should be an assessment of those characteristics of cross-border business that seem to induce the need for IGS. There should be ways to tackle those problems at a much earlier stage. Solvency II toolkit promotes early intervention and requires effective group supervision through a college of supervisors. Main risk factors indicating future problems usually include: fast growth, considerably low prices, low reserve levels, unusual terms and a narrow range of products. | Noted. | Public |
| Finance Watch  | General comments | There is a need to harmonise Insurance Gurantee Schemes (IGS) in the EU to help increase policyholder protection. In setting out minimum criteria for harmonisation the current best practices in place should be assessed and incorporated from the different existing national guarantee schemes. When drawing upon precedents from different existing schemes the guiding principle must be to ensure proper protection of policyholders. A harmonised framework should represent a genuine benchmark of best practice rather than a lowest common denominator.It is, however, also important to look at the systemic level, i.e. the potential impact on IGSs of the failure of large insurers. As outlined in the ESRB 2017 paper 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, paragraph 19). 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. | Noted. | Public |
| Finance Watch  | 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. | EIOPA does not seem to justify its reasoning to consider ‘proportionality’ in the case of legal structures under paragraph 78. This seems to be a misplaced conclusion to a rationale for best practice. From the comment made EIOPA has identified best practices, but rather than set these practices as a benchmark, concludes that a proportionate approach to minimise the burden on the insurance sector would be more appropriate. There is no empricial, quantitative assessment of that potential burden, however. It is not possible, therefore, for stakeholders to compare the expected burden on the industry with the potential reduction of burden on the policyholder for any given level of IGS protection. The principle of proportionality can only be justified on the basis of a full cost-benefit analysis, including an assessment of potential costs to policyholders and to society at large. This detailed assessment should be undertaken by EIOPA and its results shared as part of a public consultation before a conclusion is drawn.It would be desirable and appropriate for EIOPA to first identify a limited number of equally effective IGS structures of before opening that choice to national discretions and proportionality. The examples provided by EIOPA so far, however, rather indicate positive elements and shortcomings. The best practice principle would seem to be more appropriate therefore, rather than a proportionality approach to ensure a positive, reasoned result for policyholder protection.Ultimately any difference in legal structures must be justifiable to be credible. So far the reasoning given does not seem sufficiently supported by analysis based on empirical evidence and the proposal therefore lacks credibility. | Noted. EIOPA explains in its advise that from the perspective of proportionality, and because some Member States already have a well-functioning mechanism in place, the legal structure should be left to the discretion of Member States. At a later stage EIOPA could identify best practices and provide guidance.  | Public |
| Finance Watch  | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | EIOPA should look further than IGS and consider filling the gaps left by the Solvency II Directive, in particular around early intervention, through putting in place a comprehensive recovery and resolution framework. This should include the obligation for insurance groups, except for the very smallest, to prepare formal, ex-ante recovery and resolution plans. This framework 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 in particularly important given the possible cross-border contagion triggered by failures. EIOPA and the ESRB have already rightly identified 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 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.EIOPA should, therefore, 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. | Noted. | Public |
| Finance Watch  | 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. Of the possibilities outlined, option 2.4 seems the most appropriate. Full consideration should be given to the other potential roles for IGSs in line with paragraph 90 and figure 3 and as indicated in paragraph 105 of the advice. EIOPA should aim to work on the basis of the current best practice available to establish principles for the appropriate level of harmonisation. This is the most likely approach to secure a good outcome for policyholder protection depending on the specific circumstances that the IGS is faced with.  | Noted. | Public |
| Finance Watch  | 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. | Whilst in principle the point made under paragraph 107 is correct IGSs must have necessary tools at their disposal to ensure they can decide on the best outcome for policyholders and to help ensure financial stability. In this context it is extremely important for EIOPA to work towards consistent implementation and enforcement of a recovery and resolution framework as well. | Noted. | Public |
| Finance Watch  | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 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 paragraph 85 of EIOPA-CP-18-003. 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, and vice versa. It could also, in an extreme crisis scenario, overburden the "home-country" IGS. | Noted. 1. The home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE). The link with the responsibility for the prudential supervision should help to avoid the extreme scenario of the overburding of the Home IGS. | Public |
| Finance Watch  | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Finance Watch supports the position that policyholders and beneficiaries must be able to present claims and receive payments in their country of residency, in order to ensure swifter compensation and convenience. To facilitate this, IGSs of a host-country should function as a front-office for the identification of affected policyholders and beneficiaries. In addition, the IGS of the host-country should also be able to make payments to affected policyholders and beneficiaries, and have a right of recourse against the IGS of the home-country.  |  | Public |
| Finance Watch  | 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? | The "host-country" approach may be easier to implement and coordinate, 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 paragraph 82 of EIOPA-CP-18-003. | Noted.1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest, ensuring consistency with the responsibility for the prudential supervision. In particular, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).  | Public |
| Finance Watch  | 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. | IGSs should be used to ensure that all life and non-life contracts are covered by a guarantee scheme. If the option of covering all life and only selected non-life insurance contracts is chosen, a detailed cost-benefit analysis, including clear break-downs of the expected costs and impact on the industry and policyholders, must be presented to justify such differential treatment. Under all scenarios any increases in the cost of premiums for certain 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.It is not clear under paragraph 149 what would constitute “considerable financial or social hardship” for policyholders and beneficiaries or why it should be considerable to warrant coverage. This term should be specified in more detail using both qualitative and quantitative criteria. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Finance Watch  | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | IGSs should be used to ensure that all life and non-life contracts are covered by a guarantee scheme. If the option of covering all life and only selected non-life insurance contracts is chosen, a detailed cost-benefit analysis, including clear break-downs of the expected costs and impact on the industry and policyholders, must be presented to justify this such differential treatment . Under all scenarios any increases in the 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.It is not clear under paragraph 149 what would constitute considerable financial or social hardship for policyholdersand beneficiaries or why it should be considerable to warrant coverage. This term should be specified in more detail using both qualitative and quantitative criteria. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the Advice. | Public |
| Finance Watch  | 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. | 1. Finance Watch supports the position that IGSs should also be required to compensate policyholders in the event that they were given negligent financial advice or mis-sold an insurance policy, and the responsible firm in question is unable to compensate the policyholder (for instance, because it has ceased operating, or the firm has gone insolvent).
 |  | 1. Public
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| Finance Watch  | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Exclusion criteria for compensation as outlined in the EIOPA advice under paragraph 172 and in paragraphs 153 and 154, would also represent a positive step forward and could help to increase citizens’ confidence in IGSs. In analogy to the scope of DGSs in banking, IGSs should, at least, cover all natural persons and selected legal persons, in particular micro-, and small enterprises as EIOPA indicated in the advice under paragraph 171. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| Finance Watch  | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | 1. IGSs should, at least, cover all natural persons and selected legal persons, in particular micro-, and small enterprises as EIOPA indicated in the advice under paragraph 171. 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. As part of this approach it would be worth considering additional coverage of all lines of compulsory insurance for legal persons.
2. The argument that it may be excessively costly to provide such cover should also be the subject of a detailed 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.
 | 1. Noted. See previous reply.
 | 1. Public
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| Finance Watch  | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | The coverage level should be set at a sufficiently high threshold to ensure compensation where needed: 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 appears 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. | Noted.EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| Finance Watch  | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 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 in line with paragraph 213 of the advice.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 in line with paragraph 214 of the advice.1. However, the position outlined in paragraph 215 of the advice and paragraph 210 on a non-specfic burden to the industry is not justified or evidenced in the paper. If EIOPA has relevant evidence of IGSs having caused a burden to the industry that information ought to be disclosed to justify the inclusion of 215 and the upper limit advice. This should at the very least include a full analysis the potential reduction of burden on a policyholder if a level of protection through an IGS is ensured.
 | Noted.As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Finance Watch  | 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 (risk-based, fixed rate, other)? | 1. 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 quality. The methodology for calculating contributions should be legally harmonised at the EU level.
2. There is ample evidence from the banking industry that risk-based measures are highly susceptible to subjective judgment and, in the worst case, manipulation. A combination of a risk-neutral, size-based variable minimum contribution (floor) and an additional risk-weighted element would therefore seem to be the most appropriate solution. This would 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 continously and prudently.
 | 1. Noted.
 | 1. Public
 |
| Finance Watch  | 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)? | 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. This would 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 continously and prudently.1. The risk-based element of contributions should be 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 quality. The methodology for calculating contributions should be legally harmonised at the EU level.
 | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Finance Watch  | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 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 requirements 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 by policyholders without having read it as part of the contract terms and conditions. | Noted. | Public |
| Finance Watch  | 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, please also refer to Q4 and Q5)? If so, what are those? | The advice outlined in paragraphs 227 and 228 is important to mitigate “home-host” issues, which are most likely to arise with large, cross-border groups. EIOPA should have a cross-border mediation and monitoring role to ensure the success of a harmonised approach. This is also important in general for necessary introduction of a harmonised EU recovery and resolution framework for insurers, which 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. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | General comments | The German Association of Private Health Insurers (PKV) welcomes EIOPA’s discussion paper on proposals for Solvency II 2020 Review. Generally, we would like to refer to the statements filed by the German Insurance Association (GDV) which is fully supported by us. The Association of Private Health Insurers (PKV) is not in line with the advice to harmonize national insurance guarantee schemes as level and scope of guarantee schemes have to be consistent with the legal frame in the Member States. The consideration of different lines of business is of atmost importance. For the design of the IGS, it is crucial what kind of needs the policyholder has in the case of insolvency of an insurance company. A uniform design for all IGS is difficult, so that a fundamental harmonisation due to different configurations is unrealistic.Aside from that we ask you to consider our following statement:In addition to the German IGS “Protektor Lebensversicherungs-AG”, the Guarantee Scheme “Medicator AG” has been assuming the duties of the statutory and at the same time voluntary security fund for substitutive private health insurance since 2006. Germany has made use of the option under Article 206 of the Solvency Framework Directive and has authorized substitutive private health insurance as a substitute for social security. The substitutive private health insurance is pursued on a similar technical basis to that of life insurance. In the dual German system of social and private insurance, substitutive private health insurance forms an essential and integral part of protecting the entire population against illness. Because of their strong involvement in the social security of the population, the insurers are subject to a strong regulation and socio-political compulsion. The insurers are members of Medicator on a compulsory basis. Medicator is in this respect an integral part of the protection of the population in the event of illness in Germany. In the event of a claim, Medicator will continue the existing health insurance contracts after a transfer of the stock and the investments available to the non-performing insurer. The insurance cover and possible ageing reserves remain so for the insured. In order to fulfill its tasks, Medicator receives (ex-post) contributions from member companies based on ageing reserves and premium income.Regarding the timing of the funding of IGSs we would like to underline the suitability and appropriateness of an ex-post scheme. Other funding schemes might be considered for lines of insurance business in which it is highly probable that the event of default results from liquidity squeeze. This does not apply to substitutive private health insurance. The current (ongoing) insurance coverage and the benefit processing of insured events can be met by the ongoing insurance premiums which persist in the event of default. In case of loss in premium in the context of events of default, the insurance benefits can be offset to the premiums. Furthermore, it needs to be considered that the capital tied by ageing reserves, which might be the most probable event of default, will not be disbursed to the insured person. | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. Some of these considerations (e.g. funding) may be taken into account in the next steps. | Public |
| German Association of Private Health Insurers (PKV)  | 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. | Yes. With view on the special status of substitutive private health insurance, which is build on national characteristics of social security systems, it is very important that Insurance Guarantee Schemes reflect the market environment in the Member states. As an example of the different lines of business and their security requirements, the substitutive private health insurance in Germany should be taken into consideration. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) which is supported by us. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | 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)?  | The focus should be on the protection needs of the policyholder. Whether this objective can be achieved by compensating policyhoders and/or continuing contracts depends on the particularities of national markets and products. For insured persons with a lifelong contract as with substitutive private health insurance similar to life insurance a compensation makes no sense. The continuation of the contracts is of utmost importance to the policyholder. In the event of a claim, Medicator will continue the existing health insurance contracts after a transfer of the stock and the investments available to the non-performing insurer. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | 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. | The basic design should consider national characteristics as well as the peculiarities of substituitive health insurance similar to life technique. The focus should be on the protection needs of the policyholder. The continuation of the contracts is of utmost importance to the policyholder. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | We are in favour of the home-state-principle. Also, especially because the substitutive private health insurance is offered exclusively by German insurers. National IGS can assess and rely on the quality of their national supervisory authorities. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 1. Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) which is supported by us.
 | 1. Noted.
 | 1. Public
 |
| German Association of Private Health Insurers (PKV)  | 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? | See our answer to Q5.  | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | 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. | 1. For potentially harmonized IGS, two requirements must be satisfied. For the type of policies, a relevant market must be present. In addition, there must be a security requirement for the policyholder.

Furthermore, Member States should have the possibility to set up their own IGS for other type of policies or to continue existing IGS, even if there may be several IGSs in a Member State. | 1. Noted.
 | 1. Public
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| German Association of Private Health Insurers (PKV)  | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See our answer to Q8. | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | Q11) Which criteria should be used to determine/exclude the eligible claimants? | In our view, an IGS should only cover natural persons, i.e. consumers. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| German Association of Private Health Insurers (PKV)  | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | No. | Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | Public |
| German Association of Private Health Insurers (PKV)  | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | The security requirement for the policyholder is crucial (see also our answer to Q8). | Noted. | Public |
| German Association of Private Health Insurers (PKV)  | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. For substitutive private health insurance there should be no target level at all. However, a portfolio transfer should be possible.
 | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the current drafting. 1. EIOPA’s advice envisages IGSs having the flexibility to either compensate policyholders or continuation of policies to facilitate portfolio transfer where such action delivers better outcome for the consumer.

As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| German Association of Private Health Insurers (PKV)  | 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 (risk-based, fixed rate, other)? | Risk-weighted contributions should be given preference. The Member States should have the right to vote on the specific structure of the ISG. Generally, the design of the IGS should reflect the kind of risk the policyholder is exposed to and should avoid unnecessary and costly upfront capitalisation. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| German Association of Private Health Insurers (PKV)  | 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)? | See our answer to Q15. | Noted.  | Public |
| German Association of Private Health Insurers (PKV)  | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 1. Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) which is supported by us.
 | 1. Noted.
 | 1. Public
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| German Association of Private Health Insurers (PKV)  | 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, please also refer to Q4 and Q5)? If so, what are those? | With view on the special status of substitutive private health insurance, which is build on national characteristics of social security systems, it is not appropriate, to create a transnational compensation mechanism.This is especially true against the background that a cross-border market for substitutive health insurance because of these national peculiarities does not exist. | Noted.  | Public |
| German Insurance Association (GDV) | General comments | The German insurers are grateful for the opportunity to respond to EIOPA on this consultation.As already stated in our comment on the Discussion Paper on resolution funding and national Insurance Guarantee Schemes in 2018, we strongly welcome the decision not to propose a single EU-wide IGS. This would require a maximum degree of regulatory harmonization, which is deliberately not intended in order to reflect the particularities in local markets.However, the GDV does not agree with the advice to harmonize national insurance guarantee schemes. The German Insurers believe that harmonization is not warranted because the level and scope of guarantee schemes need to be consistent with the legal environment in the Member States. In addition, we would like to comment on EIOPA’s rationale for its advice as follows:* In contrast to EIOPA’s view, the GDV does not consider the heterogeneous IGS-coverage in Member States and the different level of policyholder protection in the event of an insolvency as an impediment for the proper functioning of the internal market. In particular, we do not see an obvious competitive advantage for insurers that are covered by an IGS over insurers whose policyholders would not have access to IGS protection. However, as EIOPA points out, the setup and maintenance of IGS generate costs which are ultimately borne by policyhoders. They are free to decide whether they are willing to accept a higher risk to suffer losses in insolvency in exchange for lower premiums offered by insurers situated in a Member State without an IGS. Therefore, the existence or non-existence of IGS does not create an unlevel playing field which would require a legislative intervention.
* Moreover, there is no unlevel playing field with other sectors in terms of IGS, especially compared to banks. On the one hand, banks and insurers are not competing against each other due to their different business models. On the other hand, the decision to harmonize deposit guarantee schemes was also motivated by the systemic relevance of the banking sector, e.g. the paramount importance of an effective banking system for preserving financial stability in the EU. EIOPA admits that traditional insurance activities are generally less systemically important than the activities on the banking side. In addition, the liquidity risk on insurers, in the form of mass lapses by policyholders, is perceived much more contained compared to the liquidity risk of banks. Thus, the reasons to establish harmonized deposit guarantee schemes in the banking sector can’t justify the same approach in the insurance sector.
* The GDV fully subscribes to EIOPA’s view that the introduction of Solvency II is a strong argument against the need for harmonisation of national IGSs. It is undisputed that Solvency II has significantly reduced the likelihood of insurance failures in the future. At the same time it is also true that Solvency II has not fully eliminated this risk and will probably not do so in the future. However, this is not the ambition of the Solvency II-framework. It is neither intended nor designed to ensure a “zero-failure” environment. That is why Chapter III 2009/138/EC includes provisions about winding up-proceedings, in particular stipulating the precedence of insurance claims over other claims. This also means that there is no guarantee that policyholders won’t suffer any loss at all - but it ensures that they are adequately protected in any event, including insolvencies. Therefore, we don’t see a regulatory loophole that must be addressed by introducing legislation to harmonize national IGSs.
* In this context, we would also challenge EIOPA’s assumption that policyholders necessarily benefit from harmonization. The existence of IGS does not have an impact on the crisis management measures imposed by the competent authorities. For instance, they can cut insurance claims with durable effect irrespective of whether or not IGS-cover is available if deemed appropriate. In other words: there is no guarantee that policyholders are always better off with IGS compared to a regular insolvency proceeding.
* Furthermore, we question EIOPA’s conclusion that –with reference to the recent cases of Alpha and Qudos– failures of insurers cannot be avoided even in a Solvency II-environment. This statement implies that insolvency was an inevitable result. However, the case studies set out in the consultation lack a detailed description of the factors that eventually ended up in bankruptcy. Consequently, stakeholders cannot assess whether gaps in regulation or inadequate enforcement by supervisory authorities are to be blamed. If the latter, convergent application of regulatory requirements and not harmonization of national IGS is key to improve policyholder protection.
* EIOPA argues that minimum harmonised features for national IGSs would help to avoid the potential issues with cross-border activities via FoS and FoE. The GDV believes that the opposite is true. The reliance on harmonized IGS is more likely to promote hazardous and negligent behavior of undertakings. The most suitable and effective way to avoid these issues is to ensure strong and consistent supervision by competent authorities in the home state of cross-border players. Guarantee schemes should and must not compensate for the lack of supervisory convergence.It is worth to note here that upcoming legislative changes in the course of the ESA-Review will foster information exchange and cooperation between supervisory authorities and EIOPA. In particular, notification requirements in case of significant cross-border activity or a crisis situation as well as conditions for setting up cooperation platforms will apply from January 2020 on. The effects of these measures should be monitored and analyzed before revisions on IGS are envisaged.
* Finally, the German insurers are very concerned that EIOPA considers IGS as an important tool in the resolution process. In particular, resolution authorities should be encouraged to boldly exercise their powers knowing that policyholders are likely to recover potential losses from an IGS. We strongly oppose this view. As a measure of last resort to protect policyholders, IGS must be kept strictly separate from the resolution process. Consequently, industry-funded IGS must not –directly or indirectly–be misused to keep struggling competitors in business or to finance their orderly resolution.

Having said this, the GDV responds to the following questions, which are targeted on features for a harmonized IGS-regime, on an auxiliary basis only. These comments do not impair the positions set out above. | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided recent examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.  | Public |
| German Insurance Association (GDV) | 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. | Yes. It is very important that IGSs reflect the market environment in Member States. The legal framework for national IGSs must grant flexibility and refrain from stipulating detailed requirements in terms of legal structure. This also applies for other features such as funding. | Noted. | Public |
| German Insurance Association (GDV) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | No. By their very nature, IGS should only intervene as a measure of last resort once all other (principally prudential) measures have failed to resolve the crisis situation. IGS are designated to ensure the claims and liabilities of policyholders in a winding-up situation to the extent possible. The concept of recovery and resolution is also related to preserve financial stability while guarantee schemes are exclusively targeted on policyholder protection. IGSs shall not be used to restore viability of insurers in difficulties. Otherwise, the solidly funded and managed competitors would be held accountable for the failures of single, less risk-sensitive insurers. Therefore, we agree with EIOPA’s position stated in Paragraph 86, that the mission of IGS should not include the prevention of insurance failures. | Some flexibility should be given to Member States. Some existing national IGSs have another role than paying compensation. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| German Insurance Association (GDV) | 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)?  | In principle, indemnifying policyholders for incurred or imminent losses should be the default role of any IGS. Whether this objective can be achieved by compensating policyhoders and/or continuing contracts depends on the particularities of national markets and products.To this extent we agree with EIOPA’s position stated in Paragraph 103. However, contrary to EIOPA’s advice, the GDV believes that this assessment should be left to the discretion of Member States. | Noted, however EIOPA’s view is that in order to achieve harmonisation of policyholders protection in Europe, it is necessary to define a common framework and agree on the role of IGS, which can’t be fully left at the discretion of the Member States. | Public |
| German Insurance Association (GDV) | Q4) Do you agree that the continuation of the policies should take precedence in case of life and some long-term non-life policies? Please explain your reasoning. | There is a common understanding that the continuation of contracts/policies is likely the more suitable concept for life insurance. However, EIOPA should refrain from considering continuation requirements for some long-term non-life policies. Firstly, it remains unclear which kind of contracts EIOPA is referring to. Non-life contracts predominantly have a short, often annual duration. Secondly, the risk of non-life insurance contracts is, irrespective of their duration, limited to unregulated losses and premiums already paid. Most of the non-life policyholders do not have a viable interest in their contracts, but fulfillment of his/her outstanding claims. This risk would be adequately covered by a compensation scheme only. Accordingly, we oppose the advice stated in Paragraph 106, which implies a preference for the continuation scheme if the IGS is sufficiently funded. |  EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| German Insurance Association (GDV) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | The most convincing aspect in favour of the home-coutry principle is the full alignment with the architecture of financial supervision in Europe. The cohort of protected policyholders corresponds to the business activities supervised by the national competent authorities due to the prudential home-state principle. Consequently, national IGS can assess and rely on the quality of their supervisory authorities, wheras IGS based on the host-country principle may incorporate risks from incoming insurers situated in Member States with a less intensive financial oversight. In contrast to EIOPA, we don’t consider potential difficulties to locate and identify policyholders abroad as a drawback. We fully understand EIOPA’s intention to ensure a timely payout of policyholders in case of insolvencies. However, on the one hand policyholders usually have the contractual obligation to keep their contact information up to date. On the other hand it it is to be assumed that policyholders usually keep them up-to-date in their own interest. In addition, we assume thatsimilar problems may arise from domestic policyholders.  | Noted. | Public |
| German Insurance Association (GDV) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | The GDV understands the “front office”-option as a tool to accerlerate the reimbursement procedure. We agree with this objective, but request EIOPA to reconsider the necessity of regulation. For the reasons stated above, it is fair to assume that the insurer has the information required to identify and inform the policyholders concerned in most cases. If, however, additional measures must be taken in single cases the host IGS may encounter the same difficulties as the home IGS. Therefore, practical issues and questions like these might be, if considered necessary, better addressed in Memorandums of Understanding instead of stipulating legal requirements. In any case, the role of the host IGS should – if at all - be limited to non-financial support and should not include financial support. | Noted.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| German Insurance Association (GDV) | 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? | No. The GDV is in line with EIOPA’s preference for the home-country principle. A possible harmonization framework for national IGS should not promote home-country and host-country based IGS at the same time as this may result in lack of protection for policyholders and multiple burdens for the insurers. | Noted. | Public |
| German Insurance Association (GDV) | 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. | The GDV believes that harmonization should, if deemed necessary, only be considered for policies under the scope and supervision of the business line life. These policies regularly qualify for the criteria set out in Paragraph 149 (i), irrespective of whether these policies are sold cross-border in considerable numbers. In addition, the cross-border market share is not suitable to detect policies in the non-life sector as well. First of all, we don’t see why the cross-border market share is supposed to be relevant in this context. The eligibility of policies for IGS should be assessed on the grounds of the impact a failure would have on the the policyholder, not on his country of residence. Secondly, a harmonized IGS-framework would affect all Member States although increased cross-border activities may only take place between a small number of markets.  | Noted.However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| German Insurance Association (GDV) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Only life. See Q8). | EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| German Insurance Association (GDV) | 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. | 1. We support EIOPA’s decision not to include compulsory non-life products. The mandatory nature of policies do not justify to treat them differently in terms of IGS-protection compared with other non-life products. In addition, there is no common understanding, let alone a European framework for which policies are considered to be compulsory. Thus, the inclusion of mandatory insurance in the scope of a harmonized framework for national IGS would inevitably fail to ensure consistent policyholder protection.
 | 1. Noted. EIOPA considers different options to operationalise the home country principle approach. We see compulsory insurance as a relevant part to consider.
 | 1. Public
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| German Insurance Association (GDV) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | IGS should be restricted on the protection of natural persons only. This would also include beneficiaries and policyholders insured via consortium and group insurance contracts. Contrary to EIOPA’s view, there is no empiric evidence for the assumption that micro- and small-sized legal entities are to be treated like retail-type customers and financially more vulnerable than corporate policyholders. These entities can also be expected to consult insurance brokers and to assess the financial soundness of insurers.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| German Insurance Association (GDV) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | 1. No. Given the variety of corporate pension concepts and models in the EU it should be left to the discretion of Member States whether to include them in the scope of a national IGS.
 | 1. Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered.
 | 1. Public
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| German Insurance Association (GDV) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | Irrespective of which types of contracts are covered by an IGS, policyholder protection must be weighed up against the common interest of financial stability. Furthermore, IGS-protection should protect policyhoders against material losses arising from an insurance failure. Consequently, there can’t be an indefinite commitment to every policyholder that claims are fully served and losses are fully reimbursed as this may overburden insurers and jeopardize their ability to cover risks for consumers and the economy. Therefore, a harmonized framework must provide for liability retentions and caps. Depending on the eligible contracts and whether the IGS compensate claims and/or ensures the continuiation of contracts, the framework should establish* minimum loss amounts in order to prevent the IGS to get destabilized by a vast number of cases with minor implications and

liability limits, either measured by ultimate loss amounts and/or restrictions on the call for additional cover. | EIOPA is not against compensation limits/caps.EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| German Insurance Association (GDV) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | In terms of funding timing, the GDV believes ex-post funding should be the default rule, potentially complemented by a certain level of ex-ante funding to cover operational costs. Ex-ante funding would tie up considerable amounts of capital not available for policyholder needs in the regular business. However, we acknowledge that ex-ante financing in life insurance might be reasonable , whereas the situation is completely different in property/casuality insurance. Due to the limitation to unregulated losses and premiums already paid (usually one-year-contracts), it can be assumed that an IGS for property/casuality insurance will require significantly less capital than IGS in life insurance. We do not believe locking up capital by choosing ex-ante financing in property/casuality insurance is really necessary. Ex-post financing in terms of property/casuality insurance would be appropriate and sufficient.Apart from that, we agree with EIOPA that the determination of the target level is closely related to the characteristics of the national markets. Therefore, it is hardly suitable for harmonization and should be left to the discretion of Member States to the extent possible. | Noted. | Public |
| German Insurance Association (GDV) | 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 (risk-based, fixed rate, other)? | The relevant criteria largely depend on role and function of the corresponding IGS. Many contributions methods are linked to the technical provisions. A harmonization should delegate futher details to the discretion of Member States, as the accounting rules applicable are not fully harmonized in the EU. To make the financial burden manageable, the annual contributions should be risk-based and subject to a cap. Accordingly, a reasonable timeframe for gradually financing the target level should be granted. | Noted. | Public |
| German Insurance Association (GDV) | 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)? | See Q15). | Noted. | Public |
| German Insurance Association (GDV) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | The GDV agrees that policyholders need to know whether guarantee mechanisms are available in case of insolvency, as this information is likely to inform their decision to sign on with a certain insurer or not. Whether Art. 8 (3) (e) of the PRIIPs regulation may serve as a blueprint for all insurance products here remains to be thoroughly assessed. In any case, duplication of transparency requirements and information overload must be prevented. | Noted. | Public |
| German Insurance Association (GDV) | 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, please also refer to Q4 and Q5)? If so, what are those? | Cross-border cooperation might be helpful to assist policyholders to enforce their legitimate interests. However, cooperation requirements or agreements must refrain from effectively establishing a collective responsibility of all national IGS. Such requirements may end up in a factual EU-wide IGS. This has to be prevented as it would only promote moral hazard. | Noted, no change needed.  | Public |
| Gibraltar Insurance Association | General comments | The Gibraltar Insurance Association (“GIA“) is the industry body representing insurance companies and intermendiaries in Gibraltar. We have over 80 members and work closely with the competant authority in Gibraltar (the Gibraltar Financial Services Commission) and the Government of Gibraltar. Our members provide a diverse range of insurance prodcuts in the UK and throughout the wider EU and EEA. The general opinion of the GIA is that the legislation governing the insurance sector is sufficiently distinct from one member state to the next that full harminisation of insurance guarantee schemes may not appropriately reflect the risks that member states and their policyholders and intermediaries face, and therefore we favour guidance on the establishment of national guarantee schemes, but ultimately a minimum level of harminisation which will enable member states to adapt their guarantee scheme to meet the needs of their citizens.The GIA strongly favour the concept of host state schemes for the following key reasons:* Host states can better manage the scheme to protect the specific needs of their citizens.
* Policyholders and beneficiaries will take greater comfort that the scheme which covers all their eligible insurance products is managed and controlled within their own member state and communications are in a language which they can understand.

The size of host state schemes will reflect the size of the insurance market, and importantly will not discriminate against insurance companies in smaller jurisdictions, which may lead to limitations on policyholder choice. | The advice provided recent examples and cross-border cases with undesirable outcomes for policyholders as a result of the current fragmentations. This is one of the reasons for endorsing the home country principle. | Public |
| Gibraltar Insurance Association | 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. | The GIA agrees that the legal structure of policyholder protection schemes should be left to the discretion of Member States. More generally, the GIA believes that national authorities should be allowed significant flexibility to choose the IGS 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, insurance product lines, different legal systems and levels of court awards. | Noted. | Public |
| Gibraltar Insurance Association | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | The GIA believe that the management of recovery and resolution processes should be undertaken by insurance entities in conjuction with their home state regulator in order to seek to prevent and mitigate the incidence of insurance company failures. The existance or absense of any national guarantee scheme should have no bearing on this process, and any link may introduce its own moral hazard.  | EIOPA argues in its advise that, in order to achieve harmonisation of policy holder protection, not only IGS should be harmonised (to some extent), but also recovery and resolution regimes. | Public |
| Gibraltar Insurance Association | 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)?  | The GIA believes 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. | Noted. However EIOPA’s view is that in order to achieve harmonisation of policyholder protection in Europe, it is necessary to agree on the role of IGS. | Public |
| Gibraltar Insurance Association | 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. | As per Q3. | Noted. | Public |
| Gibraltar Insurance Association | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | While recognising that the role of prudential supervision of insurance companies applies at the home state, the GIA believes that the home-country principle in relation to insurance guarantee schemes suffers a significant number of disadvantages to policyholders, as follows:* Under a host state scheme, policyholders will need to be aware of and understand the protection afforded in just one territory, their own, which is controlled and managed within their own territory. By contrast, a home state scheme will require policyholders to be aware of and understand the differences across many different jurisdictions (both EU and EEA) which may apply for their different insurance products. This will therefore have a significant impact on the policyholder.
* Linked to the above, home state schemes would inevitably find difficulties in communicating with affected policyholders due to the many different languages in the EU and EEA. This is not a problem in a host state scheme.
* The nature of insurance distribution means that it is very different to other sectors of financial services, for example the banking sector where there is less intermediation. Insurance is often sold through intermediaries which may be in a different territory to that of the insurer, which may further lead to policyholder misunderstanding about the guarantee scheme applicable to their insurance product.
* The management of a host state scheme, being under the control of the host state who will understand the nature of the insurance risks written within it, will be much easier to manage than a host state scheme where the adminstrators will need to have detailed understanding of all EU and EEA territories risk coverage in order to properly fund the scheme. For example, a motor insurer in an EU territory writing both UK and Greek motorists will face very different exposures due to the very different legal systems around motor insurance in these jurisdictions – a home state scheme will need to understand and levy appropriately for these different exposures whereas a host state scheme will only need to understand and apply levies based on their own.
* The size of (and therefore the protection afforded by) a host state scheme will naturally adjust depending on the size of the market.

Linked to the above, if a home state scheme is applied, this will inherently lead to greater security provided by insurance companies in larger jurisdictions (simply due to the number of insurance companies contributing to the scheme), which will lead to competitive advantages to those based in larger territories. It is not unreasonable to therefore see a scenario where there is convergence of insurance activities in a smaller number of larger jurisdictions which will significantly impact on availability of insurance products and thus policyholder choice. | 1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest and ensuring consistency with the responsibility for the prudential supervision. More precisely, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.
2. At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).
 | 1. Public
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| Gibraltar Insurance Association | Q6) Specifically, should the following options be added to the principles of the home-country approach: * the possibility 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”)? | As per Q5, the GIA consider the host state approach to be optimal as it reduces distortion in the insurance market and aids policyholder choice. | Noted. | Public |
| Gibraltar Insurance Association | 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? |  As per Q5. | Noted. | Public |
| Gibraltar Insurance Association | 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. | The GIA support the principle that guarantee schemes should offer protection where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries. However, while individual jurisdictions continue to have differing legislative regimes and different policyholder behaviours towards insurance products, then we feel it is best for individual member states to assess the scope of their guarantee scheme and therefore the nature of eligible policies.For this reason, we support the option to leave full discretion member states to select eligible policies for their guarantee scheme. | EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries.EIOPA does not support leaving full discretion to select eligible policies. | Public |
| Gibraltar Insurance Association | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | As per Q8, the GIA support the principle of leaving a large degree of national flexibility to ensure that the best solution is found for every market. Insurance products may or may not compliment national social security schemes, for example, and therefore the level of social hardship from an insurance company failure may change from one jusirdiction to the next.  | See answer to Q8. | Public |
| Gibraltar Insurance Association | 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. | No further comments | Noted. | Public |
| Gibraltar Insurance Association | Q11) Which criteria should be used to determine/exclude the eligible claimants? | As noted in Q5, the GIA believe that the level of intermediation in the insurance sector means that it is important to protect individuals, which in many cases will not be well placed to full assess the financial strength of their insurance company. Furthermore, there will also be some insurance products where the beneficiary has little or no oversight into the selection process, such as with insurance backed guarantee products.Beyond this, individual member states will have different legislation and different classes or compulsory insurance which will mean that other classes of claimants may need to be included in the insurance guarantee scheme.As such, while the GIA support that national guarantee schemes should cover policyholders or beneficiaries which are natural persons at a minimum, we also support the principle of allowing full discretion to member states to assess who are eligible claimants. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Gibraltar Insurance Association | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | As per Q11. | Noted. See previous reply. | Public |
| Gibraltar Insurance Association | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | The GIA believe that member states should decide which compensation limits are adequate for the sustainability of their national guarantee scheme.  | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| Gibraltar Insurance Association | Q14) What should be the relevant criteria to determine the target level for national IGSs? | While the benefits to policyholders and beneficiaries of ex-ante funding are clear, this must be weighed against the management costs and investment risks, which for smaller jurisdictions may significantly outweigh any benefits from the ex-ante funding approach. In practice, we believe that a mixture of ex-ante and ex-post funding may be optimal for many guarantee schemes as this allows immediate liquidity to be maintained and ensures the failed insurance company has contibuted in some way to the costs of failure. However, this may not be appropriate for all member states, particularly where the scheme will be small with limted participators. The GiA therefore believe that decisions relating to funding should be left to member states.  | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the advice. EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS.  | Public |
| Gibraltar Insurance Association | 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 (risk-based, fixed rate, other)? | Given the position of the GIA in relation to Q14, the GIA also believe that the choice of contribution basis should also be left to individual member states.  | In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| Gibraltar Insurance Association | 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)? | No further comments | Noted. | Public |
| Gibraltar Insurance Association | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | The GIA believe that disclosure to policyholders as to whether their policy is covered by a guarantee scheme, if so, then which one, and what the key conditions and limtations are, is of significant importance. However, this should be disclosed in a way that is concise, understandable and does not lead to confusion on behalf of the policyholder or beneficiary. | Noted, no change needed.  | Public |
| Gibraltar Insurance Association | 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, please also refer to Q4 and Q5)? If so, what are those? | No further comments | Noted.  | Public |
| Insurance & Pension Denmark | General comments | 1. Insurance & Pension Denmark (IPD) supports the general intention of providing security to consumers in the event of the bankruptcy of an insurer.

However, IPD finds that on a number of points there is insufficient data to justify EIOPA’s proposal for minimum harmonisation of national insurance guarantee schemes with respect to non-life as well as to life insurance products. Thus, no analyses are available on:* the number of insolvent insurers in the EU that would have become insolvent notwithstanding the Solvency II rules (Gable Insurance, for instance, which became insolvent in 2016 had not implemented Solvency II),
* which types of insurers and insurance products face the greatest risk of insolvency,
* the principal reasons for the insolvencies (misconduct, unexpected developments in the market, Capital Market developments etc.),
* what losses have the customers of the insolvent insurers sustained and
* what could have been done to avoid the insolvencies through effective supervision/supervisory collaboration, recovery measures and resolution of insurers without actual insolvency, cf. point 73 of EIOPA’s consultation paper which states that harmonisation of national IGSs should not be regarded in isolation but within the context of recovery and resolution of insurers.

Moreover, IPD believes that the full implementation and consistent application of Solvency II in all Member States to a large extent will minimize the risk for bankruptcies in the insurance sector. Also, EIOPAs Supervisory Convergence Plan 2018-2019 which IPD fully supports will additionally support efforts towards a high level of supervision in all Member States with focus on insurers which constitute high risks for bankruptcies. Finally, the fully implemented tools included in the ESA’s review from 2019 pull in the same direction. 1. Against this background it is at this point time difficult for IPD to support EIOPA’s recommendation for minimum harmonisation of IGSs.
2. If, however, EIOPA in its opinion to the European Commission makes a recommendation for minimum harmonisation of IGSs, IPD, in its response, makes the following suggestions:
* Minimum harmonisation of IGSs should only be introduced in the field of non-life insurance because of the very complex nature of life-insurance products and great differences between the products across Europe
* Based on the recent experiences of the Danish IGS, harmonisation of IGSs in the field of non-life insurance should be based on the host-country principle
* If, however, it is decided to base harmonisation of national IGSs on the home-country principle it is crucial, in order to solve the problemes which arise in case of a FOS-insurer‘s bankruptcy, that new obligations are introduced for intermediares rather than or in addition to the “front office“ solution proposed by EIOPA
* If minimum harmonisation is introduced in the field of life insurance and since life and non-life insurance contracts differ significantly and are handled differently in the event of insolvency, life and non-life insurance should be treated by separate IGS entities. In this respect IGSs for life insurance could be based on the home-country principle.
1. Moreover, IPD 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. Moreover, the chosen solutions for the individual components of the proposed IGSs should be designed with a view to providing the best security to the consumers. In the opinion of IPD this is not true of all of EIOPA’s specific proposals for minimum harmonisation. For further details see the comments below on the specific proposals.
2. It is accentuated several places in the consultation paper that establishing IGSs will mean added costs for the European insurance industry. Since, however, the IGSs are indirectly funded by contributions from the policyholders, it is of the utmost importance to IPD that EIOPA in its advice to the Commission will stress that the introduction of guarantee schemes within the field of insurance is bound to result in added expenses for the consumers that need to be balanced against the advantages of establishing and running the IGSs. In this respect and in order the avoid that expenses get out of control the IGSs should only be funded on an ex-post basis if they are to cover life insurance.

Furthermore, it is crucial to have in mind, when establishing a minimum set of common principles,that IGSs bears the danger of moral hazard as it cannot be excluded that it encourages lessresponsible conduct. Hence, with an IGS in place, policyholders might beinclined to pay lessattention to the insurance company’s financial solidity and choose their insurer solely on the basisof the lowest premium. Equally, a company’s directors and officers might beless prudent in theirmanagement behaviour if they know that consumers’ protection will no longer fully depend on theirefficient management. 1. Finally, as EIOPA itself points out several times in the consultation paper, a number of important questions regarding the specific drafting of requirements of the organization and coverage of IGSs have yet to be settled. One such is the important question of which insurance products are to be covered by the IGSs. IPD attaches paramount importance to having all key questions clarified in the basic EU regulation at Level 1 and not at Levels 2 and 3.
 | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.1. Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored.
 | Public |
| Insurance & Pension Denmark | 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. | Yes. | Noted. | Public |
| Insurance & Pension Denmark | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | 1. Policyholders and claimants should be protected against the detrimental consequences of an insurer becoming insolvent and unable to fulfil its contractual obligations. Ensuring solvency of insurers is the most effective form of consumer protection. An insurance guarantee scheme should serve as a last resort protection mechanism. It is important that there is an efficient supervisory regime in place and this was created by Solvency II. The Solvency Capital Requirement (SCR) requires Insurers to meet quantifiable risks on their existing and expected portfolio and ensure a level of capital is in place to meet their obligations to policyholders. A sound and sensible supervision of these standards is indispensable. The cooperation of European national competent authorities is crucial. Only through a strong and reliable system of supervision and cooperation can effective consumer protection be ensured.
2. In this context IPD believes that further analysis should be carried out on the extent to which, a recovery and resolution framework in conjunction with Solvency II, could contribute to further limiting the risk of insolvencies in the insurance industry. In this context it is, however, of paramount importance to IPD that IGSs should not play any role or cover costs related to recovery and resolution of insurers.
 | No change needed. EIOPA argues in its advise that, in order to achieve harmonisation of policy holder protection, not only IGS should be harmonised (to some extend), but also recovery and resolution regimes.  | Public |
| Insurance & Pension Denmark | 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)?  | National IGSs should be solely designed to provide compensation to policyholders for their losses in liquidation, that could lead to considerable financial or social hardship. 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 IGSs 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. IPD, however, 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. | EIOPA’s view is that IGS should also help ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Insurance & Pension Denmark | 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. | Please refer to the answer to Q3. | Noted. | Public |
| Insurance & Pension Denmark | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 1. Under the rules in force until the end of 2018, the Danish Guarantee Fund for Non-life Insurers was based on the home-country principle, mainly because it is aligned with the provisions that the home-country supervisor is responsible for the authorisation, prudential supervision and liquidation of insures. However, in light of the experiences from the bankruptcies of Gable Insurance in Liechtenstein and the Danish insurers Alpha Insurance and Quodos that among other things resulted in great practical problems to the disadvantage of consumers across the EU, the Danish Parliament with the support of consumer organisations decided to change the geographical coverage of the IGS. Hence, as of 1 January 2019 the Danish IGS has been based on the host-country principle.
2. Since IPD has no experience with insurance guarantee schemes in the field of life insurance the comments below only relate to non-life insurance. As to IGS for life insurance please refer to the comments under the “general comments”.
3. In fact, the insolvencies of Alpha and Qudos that had issued policies against risks in a large number of EU/EEC countries via a great number of local agents and subagents (in the case of Alpha Insurance 90% of its business - about 1 million policies) have among other things shown that:
* agreements needed to be made with all the foreign agents and subagents of the Danish FOS-insurers, because they were in possesion of all the customer data; i.e. only the agents and subagents were able to identify the customers of the FOS-insurers, they held data about the issuede insurance policies etc.,
* communication between consumers (about one million) in ten countries speaking eight different languages and the Danish IGS was a very big and difficult task for all parties,
* it was a challenge for the Danish IGS to understand the products sold abroad (many of which are not even sold in Denmark) and in that respect to determine whether they fell within the scope of the Danish IGS,
* several hundred lawsuits against the Danish IGS filed by frustrated consumers that were not familiar with the coverage of the Danish IGS had to be handled abroad,
* it was a challenge to uncover the interaction of the Danish IGS with guarantee schemes in other Member States and
* because of differencies between welfare systems etc. across Europe rules of compensation differ widely in the various EU countries (the Danish IGS has for instance recently paid out £26 million to a claimant involved in a traffic incident in the UK)

All in all the experience of the Danish IGS is that the home-country principle does not provide good consumer protection in the event of the bankruptcy of a FOS non-life insurer. Moreover, it must be born in mind, that the home-country-principle has turned out to be extremely time-consuming and expensive for the Danish IGS, which is also to the detriment of the consumers, because they fund the IGS via their premiums paid to the insurance companies. Finally, rules on the applicable law and venue call for the host-country princilple from a consumer’s point of view.This is why IPD finds that minimum harmonisation based on the host-country principle is most appropriate when it comes to coverage of non-life insurance products. 1. As to the design of the current Danish IGS it is important to note that the European-Commission, cf. Article 189 of the Solvency II Directive, has accepted that the Danish IGS requires all foreign insurers operating in Denmark on the basis of the freedom to provide services (FOS) or the freedom of establishment (FOE) to contribute to the compensation scheme. This means that the final costs of policyholder compensation in case of failures of incoming insurers is borne by the Danish IGS. Hence, the drawback of the host-country principle experienced by France, cf. point 118 of EIOPA’s consultation paper, is eliminated; ie. that the consequences of having no recourse mechanism, could result in a reduction of coverage, hence, a decrease in the protection. Moreover, such a system has the advantage of preventing the failure in one country having a contagion effect in a different jurisdiction. Also, the host approach ensures that all consumers in a market have access to the same level of security and that they can communicate with the IGS in their own language. Furthermore, all products marketed in a country are subject to a comparable guarantee system and, thus, equal competition.
2. IPD’s experience of recent non-life insolvencies has proven that neither cooperation between national IGSs nor between supervisory authorities is enough to solve the problemes that arise in case of a FOS- insurer‘s bankruptcy when the IGS is based on the home-country principle. The fact that about 90% of the policies were distributed via an extensive network of of local agents and subagents across Europe proved that in such cases neither the supervisory authorithy nor the national IGSs in the host country can facilitate customer identification of the failed insurer etc. As mentioned above all relevant information to deal with the bankruptcy lies with intermediaires, that in fact own the data They are not obliged by law to cooperate and neither the supervisory authorities nor the IGSs have the authority to get the necessary information. Hence, the “front office“ solution proposed by EIOPA does not solve the problems that the home-country principle gives rise to. The only solution is to introduce new obligations for agents and subagents in case of an insurer‘s bankruptcy; ie. introducing and harmonising the principles for cross-border cooperation and coordination between national IGSs is not considered to be adequate to slove the problems encountered by the Danish IGS. Furthermore, it needs to be made clear that the existing differences of insolvency laws and procedures across Member States might expose consumers to legal situations and processes which are unfamiliar and not common in their Member State.

Finally, differences between the covered lines and the resulting variety of products and niche market segments to be covered a home-based system will not be able to provide consistent cover without major insecurities for consumers and the funding of the scheme itself. If a home-based system is the envisaged solution, a harmonisation of the covered product lines is necessary. This is also why IPD believes, that the approach taken in the draft Motor Insurance Directive, is not a good argument in favour of the home-country principle. In fact motor insurances are almost 100% harmonised, the insures are represented in the countries where they sell insurences etc.  | 1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring the link with the responsibility for the prudential supervision. More specifically, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE). As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.The criteria proposed by EIOPA in the Advice should allow to reasonably select the policies to be covered by the national IGSs at harmonized level. | 1. Public
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| Insurance & Pension Denmark | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | IPD’s experience of recent non-life insolvencies has proven that neither cooperation between national IGSs nor between supervisory authorities is enough to solve the problemes that arise in case of a FOS- insurer‘s bankruptcy when the IGS is based on the home-country principle. The fact that about 90% of the policies were distributed via an extensive network of of local agents and subagents across Europe proved that in such cases neither the supervisory authorithy nor the national IGSs in the host country can facilitate customer identification of the failed insurer etc. As mentioned above all relevant information to deal with the bankruptcy lies with the. intermediaires, that in fact own the data. They are not obliged by law to cooperate and neither the supervisory authorities nor the IGSs have the authority to get the necessary information. Hence, the “front office“ solution proposed by EIOPA does not solve the problems that the home-country principle gives rise to. The only solution is to introduce new obligations for agents and subagents in case of an insurer‘s bankruptcy; ie. introducing and harmonising the principles for cross-border cooperation and coordination between national IGSs is not considered to be adequate to slove the problems encountered by the Danish IGS. Moreover the proposal for a host country IGS to assist the IGS of a home country as ”front office” and pay out compensation to the policyholders will require considerable resources for the host country IGS and presupposes familiarity with guarantee schemes in all the countries which are home to insurers doing business in the host country concerned (even for a small country like Denmark the proposed model will imply that the Danish IGS would have to deal with potentially 20 IGSs across Europe). In this respect IPD believes that it is crucial that it is the IGS of the home country and only this IGS that is in charge of settling claims: i.e. it must be the IGS of the home country that dertermines the eligble claimants and the coverage. Only the home IGS can decide what is subject to its own underlying provisions. Assigning an IGS of a host country with the power to define which products under which conditions are subject to the payment of the home scheme creates a massive uncertainty, allows for penalizing and protective measures and gives room for arbitrary behavior. Also the assesment whether a claim is eligble needs to be made in the country where the finansial liability is. Hence, the front office function of the host IGS should only serve as a point of contact for supporting consumers and the home IGS in communication with and identifiation of eligible claimants, if at all possible.  | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Insurance & Pension Denmark | 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? | Please refer to the answers to Q5 and Q6 | Noted. | Public |
| Insurance & Pension Denmark | 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. | Minimum harmonisation of IGSs should only be introduced in the field of non-life insurance because of the very complex nature of life-insurance products and great differences between the products across Europe. In this respect IPD supports the minimumcriteria for selecting the eligible policies as set out by EIOPA in the field of non-life products; it is important to note that certain non-life products may involve a long-time perspective, e.g. third-party liability insurance covering personal injury, accident insurance, accidental damage to buildings and occupational injury insurance. | Noted. However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Insurance & Pension Denmark | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | IPD does not support the introduction of IGSs in life insurance – only in non-life insurance. The background is principally, that: * important data is missing in the consultation on the nature of and sequence of events pertaining to the bankruptcies to be handled by the IGSs. This makes it impossible to design an appropriate system of IGSs within the field of life insurance.
* life insurance products are very complex and differ between Member States. This makes it even more difficult to put together a system capable of embracing all products in a relevant way.
1. While there is a logic to including compulsory non-life insurance in a national IGS, the reality is that the types of insurance that are compulsory vary greatly across member states. Therefore, including compulsory non-life under the scope of minimum harmonisation would be misguided.
2. If IGSs should cover specific life policies as proposed by EIOPA, it is important to limit the guarantee schemes to insurances with guaranteed indemnities. Therefore, the guarantee schemes should not cover market-rate-based products. Also, occupational pensions offered by insurance companies should not be under the scope of an IGS, for level playing field considerations (as IGS requirements will not apply to pension funds either). On the other hand it makes sense to include IORPs and PEPPs in the schemes; since they are not part of Solvency II they should be treated and administered by separate IGS entities.

Finally, IPD believes that under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. | EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Insurance & Pension Denmark | 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. | No further comments. | Noted. | Public |
| Insurance & Pension Denmark | Q11) Which criteria should be used to determine/exclude the eligible claimants? | 1. Should minimum harmonisation be considered and because the primary aim of harmonising national IGS is effective consumer protection, IPD believes that the IGS should cover consumers that are natural persons only. However, some categories of natural persons, such as directors, managers and other persons responsible for, or connected to, the failed undertaking should be excluded from this group of consumers.

Finally, it should be at the discretion of member states, in consultation with local stakeholders, to decide whether a wider scope is justified. | Noted. 1. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission.
 | Public |
| Insurance & Pension Denmark | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? |

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| 1. Any minimum harmonisation should only cover consumers (natural persons) and it should be for member states to decide, in consultation with local stakeholders, whether a wider scope is justified.
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 | 1. Noted, however, EIOPA’s Advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered.
 | 1. Public
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| Insurance & Pension Denmark | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. IPD believes that decisions relating to IGS funding should be left to member states’ consideration, in consultation with local stakeholders. Minimum harmonisation should merely require member states to establish funding systems that would deliver adequate and effective consumer protection if an insurance company fails.
2. As to the timing of the funding of an IGS, IPD considers a mix of measures to be appropriate as to IGS for non-life products. The basis should be an ex-ante fund with a cap. In cases where the outstanding liabilities exceed the available capacity of the fund, an excess mechanism (ex-post funding/risk-mitigation technique) shall cover the remaining liabilities. This is how the Danish Guarantee Fund for Non-life Insurers is designed.
3. There are considerable advantages in operating the funding of IGS to a certain degree on an ex-ante basis such as that it ensures that the necessary organisational structures and funding can be put in place in advance and not have to be funding when an insolvency occurs and any future insolvent insurers also contributes to the funding.
4. If, however, IGSs are to cover life insurance and since the IGSs are indirectly funded by contributions from the policyholders the IGSs should only be fundend on an ex-post basis in order the avoid that expenses get out of control.
 | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the Advice. 1. EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Appropriate target levels ensure that the fund is adequate. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.
 | Public |
| Insurance & Pension Denmark | 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 (risk-based, fixed rate, other)? | 1. The contribution basis depends on the type of funding used and, because IPD 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.
 | 1. Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.
 | 1. Public
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| Insurance & Pension Denmark | 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, please also refer to Q4 and Q5)? If so, what are those? | 1. As mentionend under Q5) and Q6) IPD’s experience of recent non-life insolvencies has proven that neither cooperation between national IGSs nor between supervisory authorities is enough to solve the problemes that arise in case of a FOS-insurer‘s bankruptcy when the IGS is based on the home-country principle. There is a need to introduce new obligations for agents and subagents etc. in case of a FOS-insurer‘s bankruptcy, because all relevant information to deal with the bankruptcy lies with the agents and subagents etc.; in fact they own the data.

Moreover, IPD finds that it should be possible for an IGSs that have paid compensation to be subrogated to the rights of policyholders in the insolvent estates of insurers.  | 1. Noted, no change needed.
 | 1. Public
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| Insurance and Reinsurance Stakeholder Group | General comments | 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 * Harmonisation of application of SII
* Strength of cross border (FoS/FoE) supervision
* Recovery and Resolution framework
* Ranking of policyholder rights on insurer failure

The IRSG has different opinions as to the appropriate level of prescription of IGSs. The two options favoured are * Maintain status quo, and
* European network of sufficiently harmonised IGSs - minimum harmonisation

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 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 * 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 mimimum 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.The IRSG proposes that NCAs should be explicitly required to clarify their approach to IGSs. | Differences within the IRSG noted. Some of the issues and challenges highlighted may be part of the follow-up work.  | Public |
| Insurance and Reinsurance Stakeholder Group | 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. | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | 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. | The advice emphasizes the parallel harmonization of supervision and recovery and resolution frameworks.  | Public |
| Insurance and Reinsurance Stakeholder Group | 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 | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | 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. | Yes. 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.).  | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | * Ability of home-country regulator to access host-country market information
* 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
* 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
* Language and cultural differences

  | Noted.EIOPA also is of the view that the level of minimum coverage ensured by all the national IGS should be the same in each EU country with reference to the selected eligible policies. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Insurance and Reinsurance Stakeholder Group | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | * 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.
* 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.
 | Noted.Some differences in views are also noted. | Public |
| Insurance and Reinsurance Stakeholder Group | 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? | 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? | EIOPA’s assumption is that each national IGS should receive a contribution by the insurers which is proportional to the business made also in the FOS and FOE activities.  | Public |
| Insurance and Reinsurance Stakeholder Group | 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. | 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 possible, in order to focus protection on areas of most need. | Noted.  | Public |
| Insurance and Reinsurance Stakeholder Group | 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.  | Noted. Some of this considerations may also be taken into account in the follow up work. | Public |
| Insurance and Reinsurance Stakeholder Group | 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. | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Some members consider that any mimimum harmonisation should only include consumers (natural persons), as these are most at risk from insurance failure.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Insurance and Reinsurance Stakeholder Group | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | See Q11 above. | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | Some criteria which may be applied include:* Whether the appropriate approach for the affected business is continuation of cover, refund of premium or payment of claim.
* Nature of affected business, e.g. Life or Non-Life, i.e. the approach needs to reflect the heterogeneity of types of business
* Economic conditions and level of insurance business in Member State

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. | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | Q14) What should be the relevant criteria to determine the target level for national IGSs? | The IRSG agrees that target levels for the funding of IGSs 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.  | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions.  | Public |
| Insurance and Reinsurance Stakeholder Group | 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 (risk-based, fixed rate, other)? | 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.  | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.  | Public |
| Insurance and Reinsurance Stakeholder Group | 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. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Insurance and Reinsurance Stakeholder Group | 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 provison 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.  | Noted. | Public |
| Insurance and Reinsurance Stakeholder Group | 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, please also refer to Q4 and Q5)? If so, what are those? | No. See questions 4 to 7. | Noted. | Public |
| Insurance Europe | General comments | Insurance Europe supports the status quo and opposes an EU initiative on IGS. This is because the IGS currently in place vary significantly across Europe but work generally well within their local context and laws. Some Member States currently have arrangements equivalent to an IGS that protect policyholders in the same way, whereas other Member States do not have an IGS but consider that policyholder protection is nevertheless sufficient.Even a minimum level of harmonisation would create significant costs and involve complex challenges for which there may not be acceptable solutions. The focus and priority instead should be on ensuring that Solvency II is actually applied appropriately in all member states and there is coordinated supervision of FOS/FOE (in this context, consideration should be given to the recent amendments of Directive 2009/138/EG on notification requirements and the establishment of collaboration platforms for FOS/FOE). National authorities should be allowed significant flexibility to choose the features that best suit their market, to reflect the important differences between member states regarding social welfare systems, winding-up process for insurers and insurance product lines. In any case, the issue of failures of FOS/FOE undertakings should be addressed in such way as to provide rules making home national supervisory authorities accountable for the failure.* It is important to reiterate that Solvency II already provides very high levels of policyholder protection and 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. Besides capital requirements (pillar 1), Solvency II also imposes higher standards regarding governance and transparency in pillars 2 and 3. 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 complement these.
* In the lead-up to this consultation, EIOPA has built a case for IGS harmonisation, notably in its 2018 Discussion Paper on this topic. While EIOPA agrees that the adequate protection of policyholders is at the core of Solvency II, it has relied on an analysis based on pre-Solvency II failures and near misses to determine that minimum harmonisation is necessary. Insurance Europe strongly believes that a better case needs to be made by EIOPA, including the effects that Solvency II has had on the risks in insurance companies and on policyholder protection, and how this affects the need for changes to the existing regime of national IGS. More time is needed to appropriately evaluate the efficiency of this new regulatory framework.
* There is simply insufficient data to justify EIOPA’s proposal for harmonisation of national IGS, particularly with respect to: insurers that went bankrupt under Solvency II, which types of insurers and insurance products face the greatest risk of insolvency, the main reasons for the insolvencies, what losses have the customers of the insolvent insurers sustained and what could have been done to avoid the insolvencies through effective supervision/supervisory collaboration and other available measures.
* EIOPA published 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.
* Moreover, when harmonisation of IGS is considered in isolation, without taking into account other elements (e.g. national insolvency laws, preferential rights of policyholders, divergent implementation of Solvency II in member states, existence of national resolution regimes), this harmonisation might create or exacerbate distortions of the European level playing field and even lead to more unequal treatment of policyholders across the European Union.
* EIOPA should better recognise that consumer protection needs are different in the insurance sector to the banking sector and that the risk profiles of insurers and banks differ fundamentally. Therefore, 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.
* IGS bears the danger of moral hazard as it cannot be excluded that IGS encourage less responsible conduct. With IGS in place, policyholders might be inclined to pay less attention to the insurance company’s financial solidity and choose their insurer solely on the basis of the lowest premium. Equally, insurance intermediaries might not necessarily offer their clients the products of a financially sound insurer, but rather those which come at the lowest price. Furthermore, a company’s directors and officers might be less prudent in their management behaviour if they know that consumers’ protection will no longer fully depend on their efficient management.
* In the majority of European insurance markets (mostly showing a high concentration, i.e. the Top 4 insurers having 70-80% of market share), should other insurance companies be required to fill IGS funding gaps in the case of a large insurance company’s collapse, inappropriate funding mechanisms would create interconnectedness between insurance companies and create an environment in which vulnerabilities in the financial position of otherwise healthy insurers could develop.

However, if the European Commission can evidence, after considering all elements provided, that minimum harmonisation is necessary, Insurance Europe would make following suggestions regarding such an initiative (without prejudice to the positions set out above):* IGS should not be used to prevent or reduce risk of company failure and IGS should play no role in recovery and resolution as doing so may breach the state aid rules. IGS should remain a “last-resort mechanism” providing additional protection after all resources from the insurance company have been exhausted (i.e. after resolution),
* Home responsibility for funding with the host country providing the “front office” customer interface. However, implementing this arrangement, or indeed any other, gives rise to a number of challenges which Insurance Europe outlines in its response.
* The scope of products included under minimum harmonisation should be as limited and focussed as possible, so as to allow national authorities to expand it in consultation with local stakeholders according to their own market’s realities.
* Any minimum harmonisation should only cover consumers (natural persons) and it should be for member states to decide, in consultation with local stakeholders, whether a wider scope is justified.
* Ex-ante funding should not be imposed, any minimum harmonisation should leave IGS funding (ex-ante or ex-post) to be decided at Member States’ level. In any case, absolute caps on insurers’ contributions to an IGS would be needed to avoid that the obligation to fund an IGS exposes the other remaining insurers in the market and their customers to a risk that would not have existed otherwise. National differences in market concentration limit the feasibility of centralised funds. In such cases decentralised, in-house funds may be a viable option.
* Insurance Europe also believes that any IGS proposal should explicitly prohibit any type of advertising about the existence of an IGS since doing so would create moral hazard.
* Information and collaboration (especially on FoS-related issues) should be reinforced between home and host supervisors. These aspects are part of the ESAs Review and will be helped by inserting Articles 152a (“Notification”) and 152b (“Collaboration platform”) into the Solvency-II Directive.
 | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. These considerations may be taken into account in the next steps.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations. | Public |
| Insurance Europe | 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. | Insurance Europe agrees that the legal structure of policyholder protection schemes should be left to the discretion of Member States. More generally, Insurance Europe believes that national authorities should be allowed significant flexibility to choose the IGS 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. | Noted. | Public |
| Insurance Europe | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | IGS should not be used to prevent or reduce risk of company failure and IGS should play no role in recovery and resolution. IGS should remain a “last-resort mechanism” providing additional protection after all resources from the insurance company have been exhausted (i.e. after insolvency or resolution). It should be up to 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. Therefore, Insurance Europe fully agrees with EIOPA’s position stated in Paragraph 86, that the mission of IGS should not include the prevention of insurance failures.Before any initiative on IGS or recovery and resolution, an in-depth assessment of the effects that Solvency II has had on the risks in insurance companies and on policyholder protection is required. | Certain flexibility should be given to Member States. Some existing national IGSs have another role (i.e. not only paying compensation). Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Insurance Europe | 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)?  | 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. Any minimum harmonisation should be solely designed to provide compensation to policyholders for their losses in liquidation. The use of IGS as tools to ensure the continuation of the insurance policies will change the core of their mission. The intervention of IGS must not be preventive: i.e., exclusively limited to funding the gap between the benefit due to policyholders and the remaining resources of the insolvent undertaking. Any minimum harmonisation should not require compensating consumers other than insurance policyholders whose claims arise directly from the liquidation of an insurer – for example, compensation claims arising from liquidations of other financial services firms, including intermediaries, should be out of scope. | On the first point indeed some flexibility should be given to Member States. On the latter point, some existing national IGSs have another role than paying compensation only to policyholders for their losses in liquidation. Flexibility is deemed necessary. | Public |
| Insurance Europe | 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. | See answer to question 3. | Noted. | Public |
| Insurance Europe | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 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.
* However, under a pure home-country approach, there would be problems because of the need to provide information to policyholders in their language customer identification, etc...
* With respect to the host-country principle, the following aspects are relevant:
* Under the host-country principle, all policyholders within the same member state are evenly protected regardless of the insurer’s location. The host country principle can also help when determining the level of compensation for statutory (“social security-linked”) lines of business and facilitate customer identification, communication in the local language and the application of relevant local laws.
* However, a pure host country approach creates a misalignment between supervision and the responsibility to cover the cost of insurance failures.

Insurance Europe’s preference would be for a home approach combined with host elements, in which: * the home country provides all the funding, because this ensures alignment with the model of the EU supervision already established in Solvency II. The Home country would be responsible for deciding on how the IGS is funded (e.g. ex-ante/ex-post funding, how contributions are allocated to each insurer in their market, contribution caps, etc.)
* the host country provides the “front office” customer interface to facilitate customer, policy and claim identification as well as communication in local language.

While this is considered the best approach there are still significant, and potentially intractable challenges at the operational level in applying this, or indeed any harmonised approach, across the EU and in making sure that policyholders are in fact treated equally. For example:* How could the availability of sufficient funds be ensured (whether on an ex-post or ex-ante basis)?
* How could equal protection of policyholders be ensured throughout the EU? If harmonised IGS operate under the home state-principle, policyholders situated in the same country but purchasing insurance cover from FoS-insurers in different member states may still suffer unequal protection due to the different levels of capacity to pay compensation in case of a failure. If harmonised IGS operate under the host state-principle, policyholders of the same failed insurer which are a situated in different member states would be also subject to different guarantee schemes with potentially different financial resources available,
* Accurately assessing FoS risk exposure when determining funding levels (irrespective of ex-ante or ex-post) for the IGS could prove difficult for the home country to do as the required information and data may not be easily available. This uncertainty applies even more to IGS based on the host state-principle, as the competent authorities must rely on the data quality submitted by home state supervisors in order to adequately fund the incoming FoS-business from other member states.
* Which IGS takes responsibility for the operational costs incurred by the host country when providing the “front office” customer interface?

As a result, minimum harmonisation will create challenges and will not ensure equal policyholder protection irrespective of the geographical coverage. If legislative action is taken anyway, the preferred option set out above constitutes the most suitable compromise. | EIOPA is of the view that the funding mechanism should be harmonized at EU level, establishing common criteria on how the national IGS is funded with very minor discretion to Member States.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.EIOPA advises that national IGSs should cover specific life policies and specific non-life policies which are meant to be harmonised at EU level. This is aimed to avoid any difference in terms of policyholders protection among the Member States. | Public |
| Insurance Europe | Q6) Specifically, should the following options be added to the principles of the home-country approach: * the possibility 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”)? | See answer to question 5.Insurance Europe believes that the “back office” would be much too burdensome and unfeasible to implement due to its complexity and the financial risks involved for the host-country IGS and host-country policyholders; therefore, Insurance Europe does not favour this option. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Insurance Europe | 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? | No further comments.  | Noted. | Public |
| Insurance Europe | 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. | The criteria set out in paragraph 149 will lead to a situation in which a wide variety of insurance products within EU will be covered by IGS, otherwise the arguments in favour of a European network of IGS will not be valid. The reason is that the type of insurance that fulfil the criteria differ between the Member States. This is because there are no EU-rules on what an insurance product is and what a specific insurance product should cover (bank deposits on the other hand are much more similar among the Member States). For example, in some countries home insurance also covers legal protection, liability and travel insurance while in others it does not. 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. The lack of an analysis of the criteria in paragraph 149 in the consultation paper and its practical implications on different insurance products in different Member States makes it impossible to draw conclusions on the implications for IGS. Therefore, under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | 1. Public
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| Insurance Europe | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market. While Insurance Europe cannot, for the reasons explained above, endorse a minimum harmonisation on any type of product, it would like to highlight the following considerations regarding the types of products that possibly may be covered by an IGS: * Life insurance contracts are long term by nature and may have social security implications to a broad cross-section of the population However, the role of life insurance may be very different in different Member States.
* 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. In unit-linked life insurance, the investment risk is borne by the policyholder and the insurance company does not provide any guarantee. Moreover, even if the insurance company would be confronted with financial problems, the units invested in by the policyholder cannot be used for the liquidation of the insurance company but remain with the policyholder. For this reason, unit-linked life insurance should be excluded from IGS.
* The criteria for the coverage of specific policies, which could lead to considerable social hardship seems more relevant in cases where the insurance substitutes state-based pension and/or health care systems.
* It is very important that national specific circumstances are taken into consideration when selecting the range of policies that should be covered by IGS, otherwise there will be damaging and unwarranted consequences for the insurance market as well as for the social welfare systems, including the national pension systems. In particular, the differing structures of the occupational pensions markets and the varying types of schemes existing in different Member States must be respected. In addition, for occupational pensions early payments are usually prohibited or discouraged by fiscal and/or social legislation, thereby limiting the risk of a “run on the insurer”. Moreover, in occupational pension insurance where the employer acts as a sponsor, the employees benefit from an additional protection on top of the protection already provided by Solvency II requirements. For these reasons occupational pensions should not be covered by IGS or similar system, regardless if the provider is a life insurance company (applying Solvency II regulations) or a pension fund (applying IORP II regulations). If, however an IGS would be introduced for occupational pension insurance, it is essential – from a level playing field perspective – that an appropriate IGS is also put in place for similar occupational pensions schemes offered by other providers such as pension funds (IORPs). Since pension funds (IORPs) are not subject to comparable prudential regulation (Solvency II), the IORP guarantee scheme should be separated from the insurance guarantee scheme.
* In contrast to life insurance, non-life insurance is generally 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.
* There may however be situations in which including non-life policies under the scope of an IGS may make sense (for example, significant homeowners‘ insurance claims could well be detrimental to policyholders if unmet by an insurer due to insolvency).
* While there is a logic to including compulsory non-life insurance in a national IGS, the reality is that the types of insurance that are compulsory vary greatly across member states. Therefore, including all compulsory non-life products under the scope of minimum harmonisation would be problematic. Moreover, since life and non-life insurance contracts differ significantly and are handled differently in the event of insolvency, it could be preferable that life and non-life insurance are treated and administered by separate IGS entities. This should, however be up to Member States to decide.
 | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | 1. Public
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| Insurance Europe | 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. | No further comments besides those in our responses to Q8 and Q9.  | Noted. | 1. Public
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| Insurance Europe | Q11) Which criteria should be used to determine/exclude the eligible claimants? | 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 that are natural persons only and that it should be at the discretion of member states, in consultation with local stakeholders, to decide whether a wider scope is justified.Insurance Europe would add that, in contrast to consumers, legal persons such as micro- and small-sized entities can assess their chosen insurers’ strength, seek professional advice and guide themselves by ratings. The administrative and financial burden resulting from the inclusion of legal persons 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).  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Insurance Europe | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Any minimum harmonisation should only cover consumers (natural persons) and it should be for member states to decide, in consultation with local stakeholders, whether a wider scope is justified. | Noted. See previous reply. | 1. Public
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| Insurance Europe | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | 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 de minimis rule (minimum threshold for IGS intervention) 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;

absolute caps on total contributions are needed to avoid that the obligation to fund an IGS exposes the other remaining insurers in the market and their customers at a risk that would not have existed otherwise.  | EIOPA is not against compensation limits/caps.However, they need to be carefully designed. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | 1. Public
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| Insurance Europe | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 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 require member states to establish funding systems that would deliver adequate and 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: * If the timing of funding would be subject to harmonisation, ex-ante funding should not be imposed. 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 IGS 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.
* Further, insurers individually, and taken together as a sector, already hold considerable capital against even remote risk of failure. Ex-ante funding effectively increases this tying up of capital very significantly.
* 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. Further consideration should be given to sound and sensible approaches to limit the aforementioned burden.
* 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 – See Q13) 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 concentrated markets, as is the case for a majority of the Member States (i.e. the Top 4 insurers having 70%-80% of market share), IGS will only be able to protect consumers from the failure of small insurance companies. Any failure of a large company in a concentrated market will require state assistance in order to protect consumers effectively. In the absence of state assistance and should other insurance companies be required to fill in funding gaps if a large insurance company collapses, this may significantly weaken the financial position of otherwise healthy insurers, thereby exposing their policyholders to risk.

As stated earlier in this response, and because of the technical complexity described above, Insurance Europe believes that decisions relating to IGS funding should be left to member states’ consideration in consultation with local stakeholders. However, Insurance Europe would caution against imposing ex-ante funding under minimum harmonisation for the reasons explained above. Should ex-ante funding be considered by a member state, Insurance Europe would suggest doing so through decentralised, in house funds (i.e. a company contributes to a fund that remains under its control until the funds are needed, as long as it can prove to the relevant authority that the required amount exists in the fund). | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Insurance Europe | 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 (risk-based, fixed rate, other)? | 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. However, Insurance Europe believes that contributions based on fixed rates make more sense in general. Additionally, any contributions should also be refundable; which means that a kind of “payback mechanisms” should be considered for such cases, where the basis of the contribution to the fund does not exist any longer or declines significantly (e.g. life insurance stock is partially/completely sold).Insurance Europe also favours the introduction of upper limits to the annual level of contributions to the IGS, the determination of which must be a national competency (See also Q13). The existence of upper limits in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry.  | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.EIOPA also believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs to mitigate the risk of overburdening the industry.  | Public |
| Insurance Europe | 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)? | Insurance Europe favours the introduction of upper limits to the annual level of contributions to the IGS, the determination of which must be a national competency (See also Q13). The existence of upper limits in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Insurance Europe | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 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 also believes that any IGS proposal should explicitly prohibit any type of advertising about the existence of an IGS since doing so would create moral hazard.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;”*  | Noted, no change needed. EIOPA stresses that the information should not be used for marketing purposes. | Public |
| Insurance Europe | 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, please also refer to Q4 and Q5)? If so, what are those? | Insurance Europe believes that this is a weak part of the current EU supervisory system. Information sharing and collaboration between home and host supervisors should be strengthened.  | Noted. | Public |
| Insurance Ireland | General comments | Insurance Ireland and its members strongly support the EIOPA initiative of moving towards a minimum harmonisation of National Insurance Guarantee Schemes (IGS) across the EU. IGS present an appropriate measure of last resort in the application of good consumer protection. A sound and sensibly designed IGS, with minimum harmonisation across EU Member States can mitigate the huge reputational risk for the insurance industry connected with the failure of an insurer. Minimum harmonisation can further lead to increasing fair competition and avoiding consumer detriment in the EU single market for insurance.Insurance Ireland and its members believe that the primary goal of an IGS is the protection of policyholders and claimants. Therefore, it needs to be ensured that the design of an IGS is as close as possible to consumers’ needs. At the same time, it must be ensured that IGS regimes do not present an unnecessary regulatory or financial burden to the industry by hampering insurers in the provision of their services to consumers. On this basis, we do not agree to EIOPA’s conclusion that a home-based regime is appropriate for protecting policyholders’ interest.The point EIOPA is making in its Consultation Paper(CP) to bring together national discretion in designing IGSs and the appropriate calibration of the system for consumers across the EU confirms this view in our opinion. Market differences cannot be appropriately reflected in a home-based regime. Such a regime could only be compatible across the EU to the extent the coverage is harmonised to a minimum level - in terms of products within the scope of a haromonsied network of IGS and eligible claimants. That would lead to products, which EIOPA identified as critical in its assessment of cross-border long-term non-life insurance (French construction and Italian medical mal-practice), being left out of scope as these are not available in other EU countries.In return, including such bespoke products into the scope will prevent a manageable and operational IGS. Furthermore, compensation could only be achieved based on the minimum harmonised regime. In accordance with the significant differences in costs of living and purchasing power across the EU, this will leave some consumers with enhanced compensation relative to their individual costs of living while other will struggle with the compensation for their claim.A national IGS in a home-based regime cannot be managed based on 28 different set-ups in terms of scope, coverage and compensation levels. The resulting demand on insurers to contribute to the scheme can only be inconsistent, disproportionate and inequitable. Therefore, we consider a host-based regime to be appropriate to best reflect consumer interest in an equitable manner across the EU. The concern EIOPA raises about link between responsibility for the prudential supervision and the management of an IGS can only be secondary to protecting consumer interest. Furthermore, we believe that the cooperation between national competent authorities (NCAs) for both subjects, prudential supervision and managing an IGS, will be the crucial factor for the appropriateness of the EU supervisory regime for insurers.Based on points already made and to contribute to the development of a minimum harmonised system of national IGS, we are anticipating that the decision to apply a home-based regime is set when answering the questions raised in the CP. On that basis, we would like to highlight the following parameters as critically and fundamentally important to the functioning and operation of a minimum harmonised system of national IGS on a home-based principle:* **Funding mechanism and contribution:** We agree with EIOPA that an ex-ante funding plus ex-post measures for excess funding is most appropriate. In addition, to the availability of funds, a harmonised funding-mechanism and minimum funding level to ensure a level-playing-field is necessary. The minimum harmonisation of national IGS should not set perverse incentives for regulatory arbitrage.
* **Minimum scope in terms of products and consumers covered:** In order to ensure that consumers across the EU are adequately covered and national IGS can be managed in a sound, sensible and sustainable way, it needs to be decided which policies are actually covered in cross-border cases as well as to which level consumers are compensated, and on which basis.
* **Compensation procedure:** Insolvency laws and creditor hierarchies differ significantly across Member States and it cannot be expected that this will change soon. Therefore, it is important that the compensation procedure remains in the hands of the responsible home-based national IGS. The IGS in the host-country should be an important supporter in the management of the compensation of claimants in their jurisdiction (e.g. as first point of contact or mitigator for language, culture reasons etc.). However, decisions about the eligibility of claims, appropriate compensation and procedures can only be made by the authority which is ultimately responsible for the fund management. Consequently, a recourse mechanism as envisaged by the Motor Insurance Directive can not provide for a practicable solution in a minimum harmonised system of national IGS.

In our opinion, the minimum harmonised system of national IGS should have the following fundamental parameters:* **Funding:** ex-ante funding with harmonised minimum contributions up to certain target level in relation to gross-written-premiums (gwp, for non-life), excess funding through risk-mitigation techniques or ex-post funding based on national discretion. Insurance Ireland would suggest that other factors such as, claim reserves(which takes account of claims frequency and amount paid out) are also analysed to develop a contribution structure that avoids disproportionate contributions from individual participants based on their risk profile, are reflected in any funding structure.
* **Products in scope:** Non-life products and life products to be clearly separated. We believe that an IGS as a compensation body is only appropriate to serve non-life customers. For most life insurance products and certain non-life products a portfolio transfer provides the only solution. It is important that such measures are separated in order to provide for appropriate rules and procedures for both cases (we will elaborate on the life insurance case below). A minimum harmonisation will provide for the products which have to be covered by each national scheme and cross-border cases.
* **Claimants in scope:** Only natural persons should be covered by the minimum harmonisation of IGS. The exposure of commercial clients differs significantly from natural persons. In addition, the definition of eligible legal persons will be onerous and depend heavily on national market characteristics.
* **Coverage level:** A certain “minimum maximum coverage threshold” needs to be harmonised. EIOPA’s analysis shows that national provisions differ significantly and might affect consumers in cross-border cases. The same applies to cases where the compensation is limited to a certain share of the claim.

As an alternative to the home-host-approach, an insurance specific IGS model could be envisaged. In such a system, insurers might reserve certain funds for the compensation of policyholders based on their exposure on an aggregated and harmonised level. In this case funds could be distributed to the respective schemes in the markets the insurer is active in, in cases of an insurer’s insolvency. Through such a measure, it can be ensured that the failing insurer is participating in the compensation of claimants and the appropriateness of coverage of consumers (based on the host principle). In order to ensure the availability of funds in the case of insolvency, it is suggested that these “contributions” to the system of IGS is clearly separated and under supervision of the NCA in charge and a trustee. Changes to the according funds will have to be approved by the trustee (and the supervisor). The benefits would be; * An increased transparency of the appropriateness of the contribution of an insurer to the system of IGS,
* Reduced administrative costs for the fund management as long as the fund is not activated,
* Policyholder benefit from the return on the funds insurers allocate on their behalf which would usually go into the publically managed IGS fund.

Insurance Ireland and its members believe that it is important that insurance policyholders are protected against financial and social hardship due to failing insurance companies. Insurance Guarantee Schemes can play a role in such protection systems but only as a measure of last resort. The most important measure of consumer protection is a consistent application of the prudential supervisory regime for insurers, Solvency II.In cases where a life insurance company fails to meet the Solvency II criteria (SCR and MCR) and all available measures have been used, we believe that resolution is a preferable option to recovery from an Insurance Guarantee Scheme. Most non-life business is usually short-term and the risk exposure does not depend on the change of the personal situation of the insured over time (health, age, etc.). In contrast, such factors, usually, play a significant role in life insurance. Life insurance policyholders might not be able to replace their policy easily at a comparable cost e.g. where the cost or availability of life or disability/illness cover has increased due to their age or health issues which have developed since the original policy was taken out.In general, even in cases of financial difficulty, life insurers will hold significant assets to cover their liabilities. For example, most domestic life assurance savings and investment business and pensions business is unit linked. The vast majority of cross border life business is single premium unit linked. In unit linked business the investment risk is borne by the policyholder and the insurance company does not provide any guarantee. Moreover, even if the insurance company experiences financial difficulties, the assets underlying policies cannot be used to repay other debtors but remain with policyholders. Therefore, solutions for policyholder protection might vary depending on the line of business and existing solutions like the compensation of claimants under the Insurance Compensation Fund (ICF) or the payment of a lump sum like in the banking sector is not appropriate. Insurance Ireland agrees to the assessment of the European Insurance and Occupational Pensions Authority (EIOPA) that contract continuity might be a key aim for most life business.[[2]](#footnote-2) Instead of an IGS, Insurance Ireland believes that a functioning resolution mechanism might be more appropriate for life insurance business. The recent example from the Netherlands[[3]](#footnote-3) might provide a good example for such a resolution mechanism. The guiding principle of the resolution mechanism is that no creditor is worse off with the resolution than with an ordinary liquidation procedure. In contrast to an IGS or the Bank resolution schemes, the Dutch system is focused on the continuity of policies. In order to ensure this continuity, the Dutch National Bank (DNB) has four major tools: a bail-in tool, the sale of business, installation of bridge institutions and asset separation (the latest only when applying one of the other tools). The overarching aim of the contract continuity is reflected in the policies under which the resolution mechanism applies. The fundamental condition for the application of the resolution mechanism is that a public interest test is passed. The mechanism applies if it protects policyholders and prevents severe social disruption together with either preventing significant adverse effects on financial markets and the real economy or preventing the use of public funds. In the cases where the resolution mechanism applies the DNB will apply the tools described above to remove potential impediments for the transfer of business and improve the resolvability of the company.In terms of the funding of the mechanism, the Dutch system is slim and efficient. The system foresees an ex-post funding arrangement which explicitly does not cover recapitalisation or absorb losses of the insurer under resolution. Instead, the funds are collected to cover the administrative costs of the operation, potential operative costs due to the establishment of a bridge institution or compensation where the no creditor is worse off requirement is not met. This approach keeps the running administration costs for the resolution mechanism low and ensures avoids additional costs due to the management of the fund. | EIOPA concluded and also agrees that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole. This would be a good supplement for Solvency II.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided recent examples and cross-border cases with undesirable outcomes for policyholders as a result of the current fragmentations. Considerations have also been taken into account now so that critical / compulsory insurance is not left out of scope under the home principle. | Public |
| Insurance Ireland | 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. | Insurance Ireland and its members agree to EIOPA that the legal structure and other elements should be left to the discretion of Member States. In order to ensure a proper functioning of the system of national IGS, we believe that following parameters need to be harmonised:* **Funding:** ex-ante funding with harmonised minimum contributions up to certain target level in relation to gross-written-premiums (gwp, for non-life), excess funding through risk-mitigation techniques or ex-post funding based on national discretion.
* **Products in scope:** Non-life and life to be clearly separated. We believe that an IGS as a compensation body is only appropriate to serve non-life customers. For most life insurance products and certain non-life products a portfolio transfer provides the only solution. It is important that such measures are separated in order to provide for appropriate rules and procedures for both cases (we will elaborate on the life insurance case below). A minimum harmonisation will provide for the products which have to be covered by each national scheme and cross-border cases.
* **Claimants in scope:** Only natural persons should be covered by the minimum harmonisation of IGS. The exposure of commerical clients differs significantly from natural persons. In addition, the definition of eligible legal persons will be burdensome and depend heavily on national market characteristics.
* **Coverage level:** A certain “minimum maximum coverage threshold” needs to be harmonised. EIOPA’s analysis shows that national provisions differ significantly and might threaten consumers in cross-border cases. The same applies to cases where the compensation is limited to a certain share of the claim.

Additional measures, e.g. inclusion of specific products into the scope, can be subject to member state discretion. However, such provisions can only hold for the national case and have to be excluded for cross-border cases. A home-based national IGS cannot be reliably managed based on 28 bespoke national regimes. | Noted.  | Public |
| Insurance Ireland | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Insurance Ireland and its members believe that recovery and resolution (R&R) regimes are an important measure of consumer protection and integral part of Solvency II. Therefore, we appreciate assessments looking into potential solutions for consistent R&R regimes across the EU. Further investigation and analysis is necessary to explore the best ways on how to create such regimes. We believe EIOPA plays an important role in assessing the different approaches and options and to provide for best practices.There is a strong link between IGS and R&R regimes. In the CP EIOPA suggests that a life insurance IGS should be managed based on a contract continuity assumption. We agree that for most life insurance products the continuity of the contract is the only viable solution for consumers. In contrast to EIOPA, we believe that the best measure to ensure the continuity of the contracts is a portfolio transfer in cases of failures of life insurers. Such portfolio transfers are, usually, subject to resolution regimes as part of existing R&R regimes. Portfolio transfers differ significantly in costs, administrative and operational efforts from compensation-based IGS. Therefore, we strongly suggest that the two regimes are not mixed and IGS should not play any role in resolution.An IGS meant to compensate claimants as a measure of last resort should not be used for covering the costs of a portfolio transfer or as a bridge-funding tool. Resolution regimes providing for efficient measures for a portfolio transfer, like the recently established Dutch regime, are particularly focussing on covering the administrative and operational costs of this transfer.Given the different dimensions of these two approaches, we consider it appropriate to approach them separately. | Some flexibility should be given to the Member States. Some existing national IGSs have another role than paying compensation. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Insurance Ireland | 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)?  | In general, Insurance Ireland and its members believe that the two options presented by EIOPA contribute to the primary objective of IGS. However, it has to be differentiated which of the options is the most effective and efficient to meet consumers’ needs as a last resort of protection. For most non-life insurance the compensation of arising/outstanding claims is effective and efficient. For such products, replacement is usually simple to acquire as is the compensation from the IGS.As mentioned already in answer to Q3, we agree to EIOPA that portfolio transfers are the measure of choice for most life insurance contracts. However, we believe that these portfolio transfers should be dealt with as part of the resolution of a life insurer and in according regime. The failure of a life insurer is not associated with the total loss of assets. Assets and liabilities are transferred together. Therefore, not the total underlying value of a life insurance contract is lost (i.e. for life insurance contracts with a pension objective). The funds necessary should primarily focus on covering administrative and operational costs. The funding of such schemes can be executed on an ex-post basis. Given the described differences and functionalities, we believe that the present workstream should focus on non-life IGS.Instead of an IGS, Insurance Ireland believes that a functioning resolution mechanism might be more appropriate for life insurance business. | Noted. However EIOPA’s view is to avoid excluding life business from the scope of IGS. Still, it agrees to take into consideration the specificities of long-term activities and life insurance. | Public |
| Insurance Ireland | 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. | As mentioned already in answer to Q3 and Q4, we agree with EIOPA that portfolio transfers are the measure of choice for most life insurance contracts. However, we believe that these portfolio transfers should be dealt with as part of the resolution of a life insurer and in according regime.Any potential use of IGS as a tool to ensure the continuation of the insurance policies will fundamentally change the core of its mission. The risk situation which as a basis for a life insurance contract can change significantly over time. The age and the health of the consumer have a strong impact on the determination of cover and premium. Therefore, consumers might not be sufficiently protected against financial hardship if a compensation is provided. Furthermore, the failure of a life insurer is usually not associated with the total loss of assets. Assets and liabilities can be transferred together. Therefore, not the total underlying value of a life insurance contract is lost (i.e. for life insurance contracts with a pension objective). The burden to continue the provision of cover might be overcome by a mix of different measures and based on a portfolio transfer. The costs born by a potential R&R fund should primarily focus on covering administrative and operational costs. The funding of such schemes can be executed on an ex-post basis.Regarding the coverage of certain long-term non-life business, it needs to be assessed which products could fall into a potential scope of a minimum harmonised system of national IGS. For the harmonised system, a set harmonised minimum scope needs to be defined. National extensions of the scope cannot fall under the coverage of a home-based regime for cross-border insurance as national home-based regimes cannot be reliably managed based on 28 different systems.Given the described differences and functionalities between an “ordinary IGS” and the continuity of contracts, we believe that the present workstream should focus on non-life IGS. | Noted on the risks associated with portfolio transfer particularly in the case of life insurance contracts. Also on the need for harmonisation of the type of contracts included for non-life long term insurance. However, EIOPA disagrees with the comment on focusing on non-life IGS. | Public |
| Insurance Ireland | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | We do not agree to EIOPA’s conclusion that a home-based regime is appropriate for protecting policyholders’ interest. The stretch EIOPA is making in its CP to bring together national discretion in designing IGSs and the appropriate calibration of the system for consumers across the EU confirms this view in our opinion. Market differences cannot be appropriately reflected in a home-based regime. Such a regime could only be consistent across the EU to the extent the coverage is harmonised - in terms of products within scope and eligible claimants. That would lead to products, which EIOPA identified as critical in its assessment of cross-border long-term non-life insurance (French construction and Italian medical malpractice), being left out of scope as these are not available in other EU countries. In return, including such products into the scope, will prevent manageable and operational IGS. Furthermore, compensation could only be executed based on the minimum harmonised regime. In accordance with the significant differences in costs of living and purchasing power across the EU, this will leave some consumers with a greater level of compensation relative to their individual costs of living while other will struggle with compensation for their claim.A national IGS in a home-based regime cannot be managed based on 28 different and unique set-ups in terms of scope, coverage and compensation levels. The resulting demand on insurers to contribute to the scheme can only be unbalanced, disproportionate and discriminatory. Therefore, we consider a host-based regime to be most appropriate to best reflect consumer protection across the EU. The concern EIOPA raises about link between responsibility for the prudential supervision and the management of an IGS can only be secondary to protecting consumer interest. Furthermore, we believe that the cooperation between national competent authorities (NCAs) for both subjects, prudential supervision and managing an IGS, will be the crucial factor for the appropriateness of the EU supervisory regime for insurers.Based on the above-mentioned and to contribute to the development of a minimum harmonised system of national IGS, we are anticipating that the decision to apply a home-based regime as set when answering the questions raised in the CP. On that basis, we would like to highlight the following parameters as critical to the functioning of a minimum harmonised system of national IGS on a home-based principle:* **Funding mechanism and contribution:** We agree to EIOPA that an ex-ante funding plus ex-post measures for excess funding is most appropriate. In addition, to the availability of funds, a harmonised funding-mechanism and minimum funding level ensure a level-playing-field and avoid forum shopping. The minimu harmonisation of national IGS should not set perverse incentives for regulatory arbitrage.
* **Minimum scope in terms of products and consumers covered:** in order to ensure that consumers across the EU are adequately covered and national IGS can be managed in a sound, sensible and sustainable way, it needs to be harmonised which policies are actually covered in cross-border cases as well as to which level consumers are compensated and on which bases.
* **Compensation procedure:** Insolvency laws and hierarchies of claims differ significantly across Member States and it cannot be expected that this will change soon. Therefore, it is important that the compensation procedure remains in the hands of the responsible home-based national IGS. The IGS in the host-country should be an important supporter in the management of the compensation of claimants in their jurisdiction (e.g. as first point of contact ormitigator for language, culture etc.). However, decisions about the eligibility of claims, appropriate compensation and procedures and only be made by the authority which is ultimately responsible for the fund management. Consequently, a recourse mechanism as envisaged by the MID can not provide for a practicable solution in a minimum harmonised system of national IGS.

In our opinion, the minimum harmonised system of national IGS should have the following parameters:* **Funding:** ex-ante funding with harmonised minimum contributions up to certain target level in relation to gross-written-premiums (gwp, for non-life), excess funding through risk-mitigation techniques or ex-post funding based on national discretion, based on further analysis of cobtribution structures that avoid disproportionate contributuions.
* **Products in scope:** Non-life and life to be clearly separated. We believe that an IGS as a compensation body is only appropriate to serve non-life customers. For most life insurance products and certain non-life products a portfolio transfer provides the only solution. It is important that such measures are separated in order to provide for appropriate rules and procedures for both cases (we will elaborate on the life insurance case below). A minimum harmonisation will provide for the products which have to be covered by each national scheme and cross-border cases.
* **Claimants in scope:** Only natural persons should be covered by the minimum harmonisation of IGS. The exposure of corporate clients differs significantly from natural persons. In addition, the definition of eligible legal persons will be burdensome and depend heavily on national market charackteristics.

**Coverage level:** A certain “minimum maximum coverage threshold” needs to be harmonised. EIOPA’s analysis shows that national provisions differ significantly and might threaten consumers in cross-border cases. The same applies to cases where the compensation is limited to a certain share of the claim. | 1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest and ensuring consistency with the responsibility for the prudential supervision. More precisely, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.
2. At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).
 | 1. Public
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| Insurance Ireland | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Insurance Ireland and its members believe that the function of the host-country IGS should be described role of a front-office. Insolvency laws and creditor hierarchies differ significantly across Member States and it cannot be expected that this will change soon. Therefore, it is important that the compensation procedure remains in the hands of the responsible home-based national IGS. The IGS in the host-country should be an important advocate in the management of the compensation of claimants in their jurisdiction (e.g. as first point of contact or mitigator for language, culture differences etc.).However, decisions about the eligibility of claims, appropriate compensation and procedures and only be made by the authority which is ultimately responsible for the fund management. Consequently, a recourse mechanism as envisaged by the Motor Insurance Directive cannot provide a practicable solution in a minimum harmonised system of national IGS.There are still significant challenges at the operational level in applying such fuctions across the EU and in making sure that policyholders are indeed treated equally such as;* How would the home country ensure sufficient funds are available? (irresprective or whatever funding contrubtion method is applied),

If this is not ensured, then the goal of identical protection for all policyholders will still not be met because even if the compensation rules of the host state apply to all, two policyholders in the same member state buying from providers operating under FOS from different countries would be protected by different IGS schemes with potentially different levels of capacity to pay compensation in the case of failure.Accurately assessing risk exposure when determining funding levels (irrespective of ex-ante or ex-post) for the IGS could prove difficult for the home country to do as the required information and data may not be easily available. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. EIOPA is of the view that the Host IGS should operate as a “front office” in cross-border cases to facilitate information transfer, such as consumer identification, communication in local language. By operating as a “front office”, the Host IGS may also apply the relevant local laws and ensure that all costumers within the country are treated equally. No right of recourse is necessary given that the payment should be made by the Home IGS, which should: (i) provide the necessary funding prior to payout and (ii) compensate the Host IGS for the operational costs incurred. The role of the host IGS should not include financial support. Member States should ensure information exchange between the Home IGS and the Host IGS. | Public |
| Insurance Ireland | 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? | The key determining factor for the coverage of the minimum harmonised system of national IGS is the level to which the scope, in terms of products and eligible claimants, can be harmonised.A home-based regime can only be reliably and appropriately managed for cross-border cases where harmonised provisions apply. Therefore, products particular to a Member State can only be covered by the IGS of that same country. Another countries regime cannot take into account the national particularities which differ from the harmonised criteria at EU level. Therefore, a home-based regime is unlikely to cover consumers in specialised or niche products specific to a single EU Member State (e.g. French construction insurance).We strongly oppose any approache which requires insurers to contribute to duplicative regimes due to divergent definitions of the scope. In general, we consider a host-based regime to be more effective and efficient to respond to consumer needs. Market differences cannot be appropriately reflected in a home-based regime. Such a regime could only be interoperable across the EU to the extent the coverage is harmonised - in terms of products and eligible claimants. That would lead to products, which EIOPA identified as critical in its assessment of cross-border long-term non-life insurance (French construction and Italian medical mal-practice), being left out of scope as these are not available in other EU countries. In return, including such products into the scope, will prevent a manageable and operational IGS. Furthermore, compensation could only be executed based on the minimum harmonised regime. In accordance with the significant differences in costs of living and purchasing power across the EU this will leave some consumers with a very greater compensation relative to their individual costs of living while other will struggle with compensation for their claim.A national IGS in a home-based regime cannot be managed based on 28 different set-ups in terms of scope, coverage and compensation level. The resulting demand on insurers to contribute to the scheme can only be unbalanced, disproportionate and discriminatory. Therefore, we consider a host-based regime to be appropriate to best reflect consumer interest across the EU. The concern EIOPA raises about link between responsibility for the prudential supervision and the management of an IGS can only be secondary to protecting consumer interest. Furthermore, we believe that the cooperation between national competent authorities (NCAs) for both subjects, prudential supervision and managing an IGS, will be the crucial factor for the appropriateness of the EU supervisory regime for insurers. | EIOPA does not support any approach which requires insurers to contribute to divergent regimes.1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring consistency with the responsibility for the prudential supervision. In particular, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.
2. At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).
 | Public |
| Insurance Ireland | 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. | Insurance Ireland and its members believe that the priority should be to cover lines of mandatory non-life insurance products, consistent at a EU level. We agree to the criteria set-out in paragraph 149 i). In contrast to paragraph 149 ii), we believe that it is not the distribution of insurance products across borders which determine the need for consumer protection. However, the potential scope of EU-wide available mandatory lines of business might be widened to other policies being distributed across the EU.The harmonised system cannot cater for products which are only distributed in a single or a very small number of Member States. The home-based IGS will not be manageable under the assumptions of 28 different regimes.With regard to life insurance products, we believe that the current workstream should not cover these policies due to their fundamentally different demand in cases of insurance failures.The risk situation which as a basis for a life insurance contract can change significantly over time. The age and the health of the consumer have a strong impact on the determination of cover and premium. Therefore, consumers might not be sufficiently protected against financial hardship if a compensation is provided. Furthermore, the failure of a life insurer is usually not associated with the total loss of assets. Assets and liabilities can be transferred together. Therefore, not the total underlying value of a life insurance contract is lost (i.e. for life insurance contracts with a pension objective). The burden to continue the provision of cover might be overcome by a mix of different measures and based on a portfolio transfer. The costs born by a potential R&R fund should primarily focus on covering administrative and operational costs. The funding of such schemes can be executed on an ex-post basis. | Noted.However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Insurance Ireland | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Under minimum harmonisation, the policies eligible for IGS protection should be kept as limited and focused as possible, leaving a degree of national flexibility to ensure that the best solution is found for every market.Motor Third Party Liability insurance, being a consistent mandatory requirement across all Member States may provide a starting point before the widening of the potential scope to other policies being distributed across the EU. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Insurance Ireland | 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. | The inclusion of specific products or certain groups of eligible claimants into the scope, can be subject to national decisions. However, such provisions can only hold for the national case and have to be excluded for cross-border cases. A home-based national IGS cannot be reliably managed based on 28 different national regimes.With regard to life insurance, contracts are long term by nature and may have social security implications to a broad cross-section of the population. 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. In unit-linked life insurance, the investment risk is borne by the policyholder and the insurance company does not provide any guarantee. Moreover, even if the insurance company would be confronted with financial problems, the units invested in by the policyholder cannot be used for the liquidation of the insurance company but remain with the policyholder.For this reason unit-linked life insurance should be excluded from any harmonised IGS, nothwistanding that Insurance Irleand believes that a functioning resolution mechanism is more appropriate for life insurance business. | Noted. See previous comment.Please note that despite the complexity, any insurer is allowed to operate under 27 different regimes. | Public |
| Insurance Ireland | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Insurance Ireland and its members believe that consumers (natural persons) should be covered by the minimum harmonisation of IGS. The exposure of commercial clients differs significantly from natural persons. In addition, the definition of eligible legal persons will be burdensome and depend heavily on national market characteristics.With regard to EIOPA’s suggestion to include micro and smallest insurers, we do not agree that the same level of protection is appropriate for such commercial clients as do consumers. Commercial cients can seek professional advice and guide themselves by ratings as part of their management duties. 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 consumers and their need for swift and effective compensation.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Insurance Ireland | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Based on the identified primary objective of IGS – consumer protection – Insurance Ireland and its members oppose the inclusion of commercial clients, i.e. large ones, into the scope of a minimum harmonised system of national IGS. | Noted, see previous reply. | Public |
| Insurance Ireland | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | As previously outlined, the initiative on a minimum harmonisation system of national guarantee schemes should have two different objectives:* Ensure that consumers in the EU single market are protected in cases of insolvencies – IGS are a measure of last resort in this respect;
* Provide for an integration and conversion of the EU internal market where appropriate and possible.

From these objectives, the criteria for the minimum coverage can be determined. As mentioned in our answer to Q9, Inurance Ireland and its members believe that compulsory consumer insurance products are a good starting point for the general consideration. In a host-based regime, the coverage could be determined based on the demands of the individual market and would not have to consider the EU-wide harmonised dimension. Products specific to a market like the French construction insurance could be included.For an EU-wide minimum harmonised approach, only products which are available throughout the Union (or at least in the vast majority of Member States) can qualify. Motor Third Party liability insurance products might prove for a explicit starting point for the EU-wide initiative. | Noted on the compulsory insurance. On the funding considerations, these may be taken into account in the follow up work after the Advice is published. | Public |
| Insurance Ireland | Q14) What should be the relevant criteria to determine the target level for national IGSs? | Insurance Ireland believes that a pre-determined fund-size as relative to the GWP in a market provides for an appropriate solution for a non-life based IGS (2% of aggregated GWP in Ireland). Insurance Ireland would suggest that other factors such as, claim reserves(which takes account of claims frequency and amount paid out) are also analysed to develop a contribution structure that avoids disproportionate contributions from individual participants based on their risk profile, are reflected in any future funding structure.We suggest that this approach is applied to the minimum harmonisation. The resulting fund should be accompanied by a volume-based ex-post mechanism and other mitigation techniques, like reinsurance, pooling or tax-based bridge-funding for cases of excess.For life insurance schemes which have the envisaged objective of portfolio transfer, the funding needs are limited to the administrative and operational costs of the portfolio transfer. This costs should be funded ex-post on a volume based contribution determined based on technical provisions in the respective market. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Insurance Ireland | 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 (risk-based, fixed rate, other)? | For compensation-based non-life IGS, Insurance Ireland and its members believe that insurers should contribute a fixed share of their aggregated gwp based on their individual business size (e.g. 2% as is currently the case in the Irish IGS). In order to establish funds where they are do not exist or need to be expanded for additional lines of business, we agree to EIOPA that an appropriate transitional period is necessary. The example of the creation of the Deposit Guarantee Schemes for banks, which EIOPA refers to, might provide for a viable solution.Proportionate and risk-based criteria might be developed at a later stage to take the risk inherent to an insurers business into account. As for the general discussion on proportionality, clear risk-based thresholds would need to be determined. Furthermore, such regimes must not excessively increase the complexity of the contribution system.Upper limits for the annual contribution might be of value to the system of IGS compensation. It needs to be ensured that these upper limits maintain the principles of fair competition in the EU internal market and at national level.As an alternative to the home-host-approach, an insurance specific IGS model could be envisaged. In such a system, insurers might reserve certain funds for the compensation of policyholders based on their exposure on an aggregated and harmonised level. In this case funds could be distributed to the respective schemes in the markets the insurer is active in, in cases of an insurer’s insolvency.Through such a measure, it can be ensured that the failing insurer is participating in the compensation of claimants and the appropriateness of coverage of consumers (based on the host principle). In order to ensure the availability of funds in case of insolvency, it is suggested that these “contributions” to the system of IGS is clearly separated and under supervision of the NCA in charge and a trustee. Changes to the according funds will have to be approved by the trustee (and the supervisor). The benefits would be;* an increased transparency of the appropriateness of the contribution of an insurer to the system of IGS,
* reduced administrative costs for the fund management as long as the fund is not activated,

policyholder benefit from the return on the funds insurers allocate on their behalf which would usually go into the publically managed IGS fund. | 1. Noted. EIOPA believes that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring the link with the responsibility for the prudential supervision. More specifically, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE).The need to take into account a potential transitional period is addressed in the final version of the Advice. | 1. Public
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| Insurance Ireland | 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)? | The annual contribution for the industry as a whole is determined by the sum of the funding target level of the established IGS (following the transitional period where applicable). Consequently, the starting point is a volume-based approach which will be adjusted by risk-based parameters at a later stage.Again, Insurance Ireland and its members would like to highlight an alternative company specific approach: As an alternative to the home-host-approach, an insurance specific IGS model could be envisaged. In such a system, insurers might reserve certain funds for the compensation of policyholders based on their exposure on an aggregated and harmonised level. In this case funds could be distributed to the respective schemes in the markets the insurer is active in, in cases of an insurer’s insolvency.Through such a measure, it can be ensured that the failing insurer is participating in the compensation of claimants and the appropriateness of coverage of consumers (based on the host principle). In order to ensure the availability of funds are available in case of insolvency, it is suggested that these “contributions” to the system of IGS is clearly separated and under supervision of the NCA in charge and a trustee. Changes to the according funds will have to be approved by the trustee (and the supervisor). The benefits would be; * An increased transparency of the appropriateness of the contribution of an insurer to the system of IGS,
* Reduced administrative costs for the fund management as long as the fund is not activated,

Policyholder benefit from the return on the funds insurers allocate on their behalf which would usually go into the publically managed IGS fund. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice.The need to take into account a potential transitional period is addressed in the final version of the Advice. | Public |
| Insurance Ireland | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | Insurance Ireland and its members believe that the information to be disclosed to consumers should be harmonised as a market-wide approach. In a coordinated approach, NCAs should determine the information to be included in the disclosure to the consumer. Each NCA should then provide for the information to be given to consumers whose insurance policy is subject to the respective scheme.  | Noted, no change needed.  | Public |
| Insurance Ireland | 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, please also refer to Q4 and Q5)? If so, what are those? | A national IGS in a home-based regime cannot be managed based on 28 different set-ups in terms of scope, coverage and compensation level. The resulting demand on insurers to contribute to the scheme can only be unbalanced, disproportionate and discriminatory. For the cross-border functioning of a minimum harmonised system of national IGS on a home-base principle the following parameters as indispensable:* **Funding mechanism and contribution:** We agree to EIOPA that an ex-ante funding plus ex-post measures for excess funding is most appropriate. In addition, to the availability of funds, a harmonised funding-mechanism and minimum funding level ensure a level-playing-field and avoid forum shopping. The minimu harmonisation of national IGS should not set incentives for regulatory arbitrage.
* **Minimum scope in terms of products and consumers covered:** in order to ensure that consumers across the EU are adequately covered and national IGS can be managed in a sound, sensible and sustainable way, it needs to be harmonised which policies are actually covered in cross-border cases as well as to which level consumers are compensated and on which bases.
* **Compensation procedure:** Insolvency laws and hierarchies of claims differ significantly across Member States and it cannot be expected that this will change soon. Therefore, it is important that the compensation procedure remains in the hands of the responsible home-based national IGS. The IGS in the host-country should be an important supporter in the management of the compensation of claimants in their jurisdiction (e.g. as first point of contact or mitigator for language, culture etc.). However, decisions about the eligibility of claims, appropriate compensation and procedures and only be made by the authority which is ultimately responsible for the fund management. Consequently, a recourse mechanism as envisaged by the Motor Insurance Directive cannot provide for a practicable solution in a minimum harmonised system of national IGS.
 | Noted, no change needed.  | Public |
| Insurance Sweden | General comments | 1. As a member of Insurance Europe, Insurance Sweden (henceforth we) share the views expressed in the consultation response submitted by Insurance Europe. However, we wish to highlight and elaborate a bit further on some of the issues in the consultation.
2. We believe that the existing protection for Swedish policyholders is already adequate. At the same time, there are several strong arguments against the introduction of an IGS in Sweden and we believe an IGS will most likely have negative implications for the Swedish insurance market. The fact that the conditions and the needs differ between the Member States indicates that decisions on whether IGS should be introduced and, if so, designed should be taken at national level.
3. We, therefore, strongly support maintaining status quo and are against introducing a network of national IGS in EU. This is the same position as in our response to the 2018 EIOPA’s discussion paper on IGS (see Insurance Sweden’s response to the discussion paper).
4. Many of the problems with the arguments in the 2018 discussion paper are unfortunately still valid for the consultation. One such issue is the lack of a proper and thorough analysis of the consequences of introducing a European network of national IGS. For example, as pointed out in the consultation a network of national IGS will probably lead to higher costs for insurance (see e.g. the Table on page 20 – 21). But in the consultation there are no analysis of how that will affect the policyholders, e.g. the households. We believe higher premiums could make financially vulnerable households less inclided to buy insurance policies. In this sense, a network of national IGS could reduce the overall level of insurance protection in the society, which in the end could imply higher costs for the government.
5. In addition, for life insurance policies the yearly costs (fee) of a network of national IGS could lead to an interest-on-interest rate effect that could reduce the final pension payments, especially in the current low interest rate environment. The establishment of a network of national IGS may also lead to that insurers will be less inclined to offer certain insurance products because it will be too costly. Thus, this could have a negative impact for those policyholders that demand/need those insurance products.
6. Another issue that was also present in the discussion paper, is the claim that a network of national IGS will be beneficial for the financial stability (see e.g. paragraph 67 in the consultation paper). However, neither in the discussion paper nor in the consultation this claim is motivated. For insurance there are no such stability risks as for banks that motivate a guarantee scheme. Instead, a network of IGS could lead to higher risk of contagion within the insurance sector especially in concentrated markets, such as the Swedish market. Thus, a European network of national IGS could actually have a negative impact on the financial stability, an issue which we believe is more or less neglected in the consultation. In addition, the consultation suffers from contradictory statements on this issue as an IGS cannot be both beneficial for the financial stability and be a threat to the financial stability (see paragraph 40 and 67 in the consultation).
7. However, the most severe problem with the consultation is the lack of a proper cost-benefit analysis. To just focus on the benefits (“+”) of different policy issues in the tables on e.g. page 23 and 30 is problematic. Instead these tables should be complemented with the costs (“-“). It also seems arbitrary which options get “++” and which get “+”. In addition, in order to conduct a proper cost-benefit analysis some estimation of the costs (e.g. in euros) of the policy proposals is required. However, as there are so many issues unresolved and unclear in the consultation), it is not at this stage possible to estimate the cost of the consultation’s proposals.

In addition, in the consultation there is no description of what kind of losses that the IGS is supposed to cover. The losses of a liquidation will also differ greatly between different kinds of policies as well as insurers, which make estimations of the expected costs of IGS very difficult and in manys cases not reliable. Therefore, we believe it is not possible to conclude that the benefits of an EU network of national IGS is larger than the costs, which is the conclusion of the consultation. Instead, we believe that a proper analysis of the consequences of a network of national IGS will show that the costs greatly exceeds the benefits for Sweden and many other member states.  | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. These considerations may be taken into account in the next steps.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations. | Public |
| Insurance Sweden | 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. | Yes, we think it should be left to the Member States discretion to choose the legal structure. However, there should be the same flexibility for other aspects of IGS. We believe that due to differences in national markets, e.g. in social welfare systems, insurance products lines and winding up proceedings, the decisions of establishment, scope and design of IGSs should be left at the national level completely. | Noted. | Public |
| Insurance Sweden | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | We don’t see a need for neither IGS nor recovery & resolution framework (R&R) for Sweden. In addition, we believe that EIOPA has not motivated well enough why there is a need of such frameworks. On the contrary, we think that, by introducing such frameworks there is a risk negative consequences for the insurance market as well as for the policyholders.In addition, before developing any IGS and recovery & resolution (R&R) framework within EU there must be a thorough analysis of how Solvency II, including the 2018 review as well as other changes due to the 2020 review, affect the need for IGS and R&R framework. The introduction of Solvency II has significantly improved policyholder protection. The 2018 review, e.g. through new LAC DT requirements, have introduced even stricter regulatory requirements, which may also be the outcome of the 2020 review (also when IGS and R&R are excluded). If decisions about introducing IGS and R&R framework are not preceded by an extensive and thorough impact assessment and seen in relation to other parts of Solvency II, there is a very large risk that the frameworks will only result in large (unnecessary) costs and other negative consequences without any substantial improvements. Further, if it is decided to implement such frameworks in EU, it is critical that that they are phased in one after the other, with enough time between them to re-evaluate the need to introduce both IGS and R&R.  | EIOPA analysed both pros and cons of harmonisation of R&R and IGS and concluded a minimum degree of harmonisation is needed. | Public |
| Insurance Sweden | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | We would like to stress the importance to allow large flexibility at national level to choose the features that best suit their domestic market if a requirement that Member States must have IGS would be introduced in EU. Flexibility is necessary to reflect the fact that there are important differences between Member States regarding e.g. the social welfare system, the winding-up process for insurers, type of insurance companies (mutuals etc.), and insurance products lines. Thus, the establishment, scope and design of IGSs should be left at the national level completely. This should also include the possibility for the national authorities to choose between home-country principle, host-country principle or some combination of these principles.  | 1. Based on the assumption that a minimum level of harmonisation needs to be achieved by limiting divergent approaches applied by NCAs, EIOPA disagrees on the idea to allow large flexibility at national level to choose the features and scope of the national IGSs, as well as between home-country principle and host-country principle. This system would not ensure an equal treatment among the policyholders of all Member States.
2. EIOPA believes that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring consistency as well with the responsibility for the prudential supervision. More specifically, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE). | 1. Public
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| Insurance Sweden | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | The features of IGS should be decided at national level in order reduce the drawbacks of requirements of IGS, if such requirements are introduced. Thus, it should be voluntary for the Member states to add these and other options/possibilities to the principle of geographical coverage that is considered most appropriate for their insurance market.   | EIOPA is of the view that it is necessary to have a harmonized framework based on a harmonized geographical coverage of the national IGSs. | Public |
| Insurance Sweden | 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? | Yes, we believe there could be cases were the host-country principle could be preferred, while in other cases the home-country principle could be preferred. And this could differ between the Member States, because of differences in e.g. the insurance products between the Member states, the social welfare system and the winding-up process. Therefore, the host- or home-principle should be a decision at national level.  | EIOPA is of the view that the recourse to the host- or home-principle should not be decided discretionally at a national level but be based on harmonised criteria.  | Public |
| Insurance Sweden | 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. | 1. The lack of an analyses of the criteria in paragraph 149 in the consultation paper and its practical implications on different insurance products in different Member States makes it impossible to conduct a thorough analysis of the consequences of an European network of national IGS.
2. We think the criteria set out in paragraph 149 are not thoroughly motivated and it is not explained how they should be used in practice. We believe these criteria will lead to almost all insurance products within EU being covered by IGS. The reason is that what type of insurance that fulfil the criteria differ between the Member States, due to e.g. differences in products offered. For example, in some countries, e.g. Sweden, home insurance also covers legal protection, liability and travel insurance while in other Member States home insurance does not cover these other areas.

Compulsory insurance will most likely fulfil the criteria in paragraph 149 (see e.g. paragraph 139). Besides third party motor liability insurance there are large differences between the Member States in respect of what type of insurance products that is compulsory. In Sweden only a very limited number of insurance products are compulsory. As we understand it, if these criteria are used for a network of national IGS we could end up in a situation where the Swedish IGS will have to cover insurances products that are compulsory in just some (one?) other Member States. That could imply additional costs of the IGS for products which there are no need for extra protection for the Swedish policyholders. There are also major differences when it comes to the extent of cross-border business. It is therefore a high likelihood that for a given insurance product the criteria in paragraph 149 will be fulfilled in at least one Member State and could therefore accordingly be covered by IGS in all Member States to be a network. Therefore, by using this criteria most insurance products may have to be covered by the national IGS.  | Noted.1. However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries.
2. This is further explained and justified in the Advice. Compulsory insurance is also considered in the Advice.
 | Public |
| Insurance Sweden | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Because of differences regarding insurance products, social welfare systems etc. the policies eligible for IGS protection could differ greatly among the Member States. Thus, in some Member States there could be many policies that are eligible, but in others, e.g. Sweden, very few polices, if any, would be eligible for IGS protection. Therefore, the choice of which policies that should be covered by the IGS must be decided at national level.  | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Insurance Sweden | 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. | Differences between the Member States regarding e.g. insurance products, social welfare systems, the winding-up process must be taken into consideration when selecting the range of policies covered by IGS. Therefore, the choice of which policies that should be covered by the IGS must be decided at the national level. It is also very important that national specific circumstances are taken into consideration when selecting the range of policies that should be covered by IGS, otherwise there will be damaging and unwarranted consequences for the domestic insurance market as well as for the social welfare system, including the national pension systems. In particular, the differing structures of the occupational pensions markets and the varying types of schemes existing in different Member States must be respected. For that reason occupational pensions should not be covered by IGS or similar system, regardless if the provider is a life insurance company (applying Solvency II regulations) or a pension fund (applying IORP II regulations). | Noted. However, full flexibility to select policies would imply no harmonisation of any kind and goes against EIOPA’s proposal. | Public |
| Insurance Sweden | Q11) Which criteria should be used to determine/exclude the eligible claimants? | These criteria will differ between the member states due to differences in e.g. insurance products, social welfare and how the insurance market are structured. Therefore, these criteria must be decided at national level.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Insurance Sweden | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | We think that the coverage must be decided at national level. Which policyholders that need IGS-protection depends on e.g. insurance products and social welfare systems in the Member States. As they differ between the Member States, the coverage must also differ. In addition, in some member states, as in Sweden, the policy holder protection is sufficient for all natural as well as legal persons and, therefore, no need for IGS.  | Noted, see previous reply. | Public |
| Insurance Sweden | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | We think the financing, i.e. ex-post or ex-ante funding, should be decided at national level. In the case of ex-post funding this question is not relevant. Therefore, we have no specific view about the target level, besides that the pre-fund level as well as other aspects of the financing should be decided at national level.  | Please see funding questions below. | Public |
| Insurance Sweden | Q14) What should be the relevant criteria to determine the target level for national IGSs? | We believe the financing, e.g. ex-post or ex-ante funding, should be decided at national level. In the case of ex-post funding this question is not relevant. Therefore, we have no specific view about the target level, besides that the pre-fund level as well as other aspects of the financing should be decided at national level.  | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in Advice.  | Public |
| Insurance Sweden | 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 (risk-based, fixed rate, other)? | The relevant criteria to determine annual contributions per insurer depends on the type of funding. When an ex-post funding system is chosen the contributions should be preferably a fixed rate. If Member States choose ex-ante funding, risk-based contributions make more sense. As we think that the IGS funding should be decided at national level, also the criteria for the annual contributions per insurer should be decided at national level.  | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. The IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. In order to avoid the risk of contagion the ex-post fund raising should be constrained. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. | Public |
| Insurance Sweden | 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)? | The annual contributions will, amongst others, depend on the type of financing (ex-ante or ex-post), the number of insurance policies that will be covered by the IGS etc. Therefore, these criteria must be decided at national level. In addition, for concentrated markets, such as the Swedish insurance market, it is crucial that there are strict upper limits for the annual level of contributions to an IGS and that these upper limits are fixed independent of failures of other insurers. In concentrated markets, IGS will only be able to protect consumers from the failure of (very) small insurance companies. If the IGS are supposed to cover also failures of medium-sized or large company, then failures of such companies would significantly weaken the financial position of otherwise healthy insurers. Thus, IGS in concentrated markets could lead to severe contagion risk since the IGS would introduce interdependence between the companies. Thereby, for concentrated markets the IGS could have a negative impact on the financial stability. The negative impact can be somewhat reduced by having strict upper limits of the contribution to IGS and requiring additional contributions from the industry. However, such limits would require state assistance in the event of a failure of a mid/sized/large insurance company. Thus, one of the consultation’s arguments for a network of national IGS, i.e. that the reliance on public funds are minimized, is not valid. And if the upper limits are high there will be high costs for the insurance companies and even more negative implications for the policyholders of IGS.   | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| International Forum of Insurance Guarantee Schemes | 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. | We believe that every Member State should have an appropriate environment of insurance guarantee schemes (IGS) and that the legal structure should be left to the discretion of the Member States. (We say “schemes” with a plural because there are a number of members of our international organisation which have separate and distinct entities for life insurance and general insurance recognizing the distinct differences between the product lines.) While there are other policyholder protection mechanisms, we believe that the strongest protection for insurance policyholders is provided by the establishment of some form of an IGS. The appropriate legal structure of a jurisdiction’s IGS(s) may vary depending on the nature and size of the insurance market and the structure of insurance supervision and resolution. | Noted. | Public |
| International Forum of Insurance Guarantee Schemes | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Yes. The IGS and recovery/resolution regime need to complement each other. In our view, an IGS is not suited to performing the functions of a recovery regime i.e. not intended to restore the insurer’s viability. The mission of an IGS should be to protect policyholders and assist in maintaining public confidence in the financial system. In some jurisdictions, the IGS and the resolution authority are unified in the same body. In some other jurisdictions the IGS and the resolution authority are separate bodies. In the latter instance, it is important that the roles, responsibilities, mandates and powers of the IGS and the resolution authority should be aligned and coordinated.  | Noted. | Public |
| International Forum of Insurance Guarantee Schemes | 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. Paying compensation is a critically important function of an IGS particularly for compensating general insurance policyholders that have claims that need to be paid. In some cases, however, direct compensation will not address the policyholder’s losses. In the case of long term contracts, the policyholder may not able to obtain affordable replacement coverage and therefore, continuity of coverage is much preferable. IGSs (and/or a resolution authority) should have a broad range of available tools to pay compensation and continue coverage, including but not limited to issuing a guarantee, procuring reinsurance, aiding in a full or partial sale of the entity or a book of business or liquidation. | Noted. | Public |
| International Forum of Insurance Guarantee Schemes | 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. | Yes. In the case of long term contracts, the policyholder may not able to obtain affordable replacement coverage using the compensation amount and thus, ensuring continuity of coverage may be the best protection for a policyholder. See, *Developing Effective Resolution Strategies and Plans for Systemically Important Insurers*, Financial Stability Board, 6 June 2016, p. 11-12 (“given the long-term nature of most life insurance contracts, the existing life policies should ideally be continued since the policyholder may not easily be able to procure replacement cover.”) In some jurisdictions, continuation of health insurance contracts also may be important, especially when policyholders with ongoing medical conditions cannot obtain affordable replacement coverage. | Noted. | Public |
| International Forum of Insurance Guarantee Schemes | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | We agree that the home-country approach aligns with EU supervisory structure, conduct of business requirements and domestic resolution processes that are likely to apply. To be effective, every Member State will need to adopt the home-country principle. Arguments in favour of the home-country principle are:* For purposes of providing continuing coverage, the home-state-principle ensures that the IGS is able to fulfill the same requirements based on the same insurance-law as the failed insurer.
* Policyholders of the same insurer will be treated the same in the event of resolution regardless of where they reside.
* It aligns with the home-country supervisory principle.
* National IGS can assess and rely on the quality of their national supervisory authorities.
* Location and identification of policyholders abroad should not be a problem because each insurer has to maintain policyholder information in its records and database.

It is important to note that there are countries outside of the EU that have adopted the host-state approach, and it works well given the effective supervisory structure of those jurisdictions.  | Noted. | 1. Public
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| International Forum of Insurance Guarantee Schemes | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | IGSs in different countries should be able to enter bilateral cooperation Memoranda of Understanding in their discretion.  | Member States should ensure information exchange between the Home IGS and the Host IGS. | Public |
| International Forum of Insurance Guarantee Schemes | 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? |  A possible harmonization framework for the EU should not promote both home-country and host-country-based IGS at the same time, as this may result in lack of protection or double-protection. | Noted. | Public |
| International Forum of Insurance Guarantee Schemes | 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. | We generally agree with the criteria set forth in the paragraph 149, although it may prove challenging to objectively identify whether a failure could lead to considerable financial or social hardship, because this depends on the individual policyholder. Accordingly, we believe that the harmonisation directive should provide greater specificity as to the types of policies that should be covered.  | Noted. | 1. Public
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| International Forum of Insurance Guarantee Schemes | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Traditional life including fixed annuity products, health, accident, fire, householders’ comprehensive insurance should be covered. Some jurisidictions also include commercial liability and property. Mandatory insurance (e.g. motor insurance) should be covered at the discretion of Member States based on the specifics of the individual markets. Policies (or portions of policies) that are not guaranteed by the insurer and as to which the purchaser agrees to bear risks of market fluctuation or investment failure should not be covered. | Noted. | 1. Public
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| International Forum of Insurance Guarantee Schemes | 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. | Mandatory insurance should be covered at the discretion of each Member State.1. Products, like certain surety protection, where the policy primarily protects governments and are purchased by professional insurance buyers may not need to be covered.
 | Noted. | 1. Public
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| International Forum of Insurance Guarantee Schemes | Q11) Which criteria should be used to determine/exclude the eligible claimants? | In our experience internationally, IGS coverage most often focuses on individual insurance consumers and beneficiaries. In some countries, small businesses also may be included as eligible claimants, but this requires a clear definition of what is meant by “small business.”  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| International Forum of Insurance Guarantee Schemes | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Yes, when individual consumers may otherwise suffer hardship. Because of the variety of corporate pension concepts in the EU, however, the decision on pensions might be left to the discretion of Member States.  | Noted. EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | 1. Public
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| International Forum of Insurance Guarantee Schemes | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | We agree with EIOPA’s view that minimum coverage levels should be harmonized and should cover at least a majority of policyholders’ losses. For example, in some countries compensation limits are set at levels that ensure 100% repayment for a target percentage (e.g. 95%) of all claimants. Some other jurisdictions may reduce liabilities by a percentage sufficient to ensure that at least 95% of each liability is covered. Individual Member States should be free to increase the coverage levels in their jurisdiction above harmonized minimums. | Noted.  | Public |
| International Forum of Insurance Guarantee Schemes | Q14) What should be the relevant criteria to determine the target level for national IGSs? | Minimum harmonization with regard to funding is not required to achieve the objectives described in paragraph 72 of the consultation paper. As the consultation paper recognizes, there are pros and cons to both ex ante and ex post funding. These pros and cons have been considered by the IAIS (*Issues Paper on Policyholder Protection Schemes*, para. 41-48) and the OECD (*Policyholder Protection Schemes: Selected Considerations*, p. 32-34), and neither organization has deemed it necessary to recommend a preferred funding approach. Each Member State should be able to devise its own funding model, whether ex ante, ex post or a hybrid. This approach could recognize the different structure and benefits provided by an IGS based on such factors as the Member State thinks appropriate. | Noted. EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the advice. EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.EIOPA recommend that the structure and governance of the funding arrangements are left to Member State discretion. | Public |
| International Forum of Insurance Guarantee Schemes | 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 (risk-based, fixed rate, other)? | Contributions should be left to the discretion of each Member State and will depend in part on the funding mechanism (ex ante, ex post or hybrid) and the individual market in that State. This includes the calculation of levies (risk-based, fixed rate, etc.) also. The IGS must have the resources necessary to fulfill its objectives to protect policyholders and the power to collect funds from insurers when needed. Annual contributions (if any) should be set at limits that manage the risk of a financial overload of members. In some jurisdictions, the IGS may be able to access capital markets for short-term or bridge financing until it is able to collect sufficient levies. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. The IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. In order to avoid the risk of contagion the ex-post fund raising should be constrained. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.EIOPA also believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs to mitigate the risk of overburdening the industry.  | Public |
| International Forum of Insurance Guarantee Schemes | 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)? | Contributions should be left to the discretion of each Member State and will depend in part on the funding mechanism in that State (ex ante, ex post or hybrid). More specifically, the level of annual contributions will depend on whether the IGS intends to pre-fund its potential obligations or whether it is seeking to cover the expenses (claims payment, administration cost, etc.) of each year. | Noted, however EIOPA is in favour of a certain level of ex-ante funding, complemented possibly by ex-post funding. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.Furthermore, as part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| International Forum of Insurance Guarantee Schemes | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | Insurers should clearly and prominently disclose that policies are protected by an IGS. Policyholders will not read lengthy disclosures. The IGS should promote awareness of the existence and functions of an IGS to policyholders, the public and the industry through media and other means of mass communication.We note that, in some states in the U.S., agents and insurers are prohibited from using the existence of the IGS to sell insurance. | Noted. EIOPA stresses that the information should not be used for marketing purposes. | 1. Public
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| International Forum of Insurance Guarantee Schemes | 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, please also refer to Q4 and Q5)? If so, what are those? | At their discretion, IGSs should be able to enter formal information sharing and coordination arrangements. IGSs should be able to cooperate cross-border, including sharing policyholder data, on terms to be agreed between the IGSs.Supervisory authorities should be required to promptly involve IGSs on a confidential basis in case of a potential or actual failure of an insurer.The transfer of insurance business between companies from different countries should not reduce the IGS cover of an existing policy. | Noted. | 1. Public
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| Lithuanian Insurers Association | 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. | Yes. The legal structure of policyholder protection mechanisms should be left to the discretion of Member States. Member States should be able to decide to establish a separate legal scheme or set up an alternative mechanism in order to ensure proportionality as well as avoid excess of costs and administration. | Noted. | Public |
| Lithuanian Insurers Association | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | No. In general, we see many disadvantages of IGSs harmonisation, particularly in non-life insurance. The main arguments against the development of IGSs framework are the following:* Solvency II capital requirements makes IGSs redundant;
* Additional costs and new risks associated with running IGSs;
* Unclear communication of overall default risk to policyholder (i. e. it could be unclear when is the default on obligations more likely: 1) with 180% solvency ratio company and IGS in home-country with credit rating of B; or 2) with 130% solvency ratio company and IGS in home-country with credit rating of AAA?). And thus, promotion of lower capitalisation (why pay more for an insurance product offered by more well capitalised company, when anyway there is a IGS?);
* Moral hazard to insurance sector (especially for high rated and well capitalised entities and for regulators).
 | EIOPA analysed both pros and cons of harmonisation of IGS and concluded a minimum degree of harmonisation is needed. | Public |
| Lithuanian Insurers Association | 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)?  | No, flexibility to Member States to adopt the role and functioning of IGSs should be left in order to ensure national needs. It is worth to notice that the funding needs tend to be lower for IGSs that only pay compensation, compared to IGSs that aim to ensure the continuation of policies. The type of intervention by an IGS (i. e. compensation of claims or continuation of policies) might not be also clear in advance.  | Noted, however EIOPA’s view is that in order to achieve harmonisation of policyholders protection in Europe, it is necessary to define a common framework and agree on the role of IGS, which can’t be fully left at the discretion of the Member States.  | Public |
| Lithuanian Insurers Association | 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. | No, Member States should be able to decide on functioning of IGSs. This in particular is applicable to non-life insurance. | EIOPA’s view is that there is a need for minimal harmonization, which involves to define some principles on the role and functioning of IGS. | Public |
| Lithuanian Insurers Association | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | Based on provided numbers, cross-border business is just a small part of Member States market. Payments to existing IGSs are comparatively low to have any considerable impact on competitiveness (see paragraph 203). Thus, the IGS framework in terms of geographical coverage should be left to full discretion of Member States, taking into account the size of cross-border business.  | EIOPA disagrees with the idea to leave the geographical coverage to full discretion of the Member States, since this flexibility would not ensure an equal treatment among the policyholders of all Member States. | Public |
| Lithuanian Insurers Association | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Based on provided numbers, cross-border business is just a small part of Member States market. Payments to existing IGSs are comparatively low to have any considerable impact on competitiveness. Thus, the IGS framework in terms of geographical coverage should be left to full discretion of Member States, taking into account the size of cross-border business. | EIOPA is of the view that the geographical coverage should not be left to full discretion of Member States, because it is necessary to ensure an equal treatment to all policyholders of the Member States. | Public |
| Lithuanian Insurers Association | 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? | In addition, the whole Baltic region is not supporting proposed harmonisation of IGSs. | Noted. | Public |
| Lithuanian Insurers Association | 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. | Based on principles defined in paragraph 149, we clearly see that these rules are not applicable for non-life insurance business.In addition, it should be noted that the concrete definition of eligible policies has a significant impact on the costs for IGSs (i. e. the wider the scope, the higher the costs). This should therefore be explicitly taken into account.  | Noted.However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Lithuanian Insurers Association | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | None. Based on principles defined in paragraph 149, we clearly see that these rules are not applicable for non-life insurance business.It should also be noted that the concrete definition of eligible policies has a significant impact on the costs for IGSs and this should therefore be explicitly taken into account.  | EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Lithuanian Insurers Association | 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. | None. Based on principles defined in paragraph 149, we clearly see that these rules are not applicable for non-life insurance business. The failure‘s probability of a non-life insurer is very low (following Solvency II framework) as well as cause very limited financial hardship for policyholders. It should also be noted that the concrete definition of eligible policies has a significant impact on the costs for IGSs and this should therefore be explicitly taken into account.  | Noted, with the same remarks made for your previous comment. | Public |
| Lithuanian Insurers Association | Q11) Which criteria should be used to determine/exclude the eligible claimants? | Full flexibility for Member States to determine the eligible claimants should be left. Limiting the scope of eligible claimants reduces the total costs.   | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Lithuanian Insurers Association | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | No. Full flexibility for Member States to determine the eligible claimants should be left. Legal persons policyholders are equipped to assess the financial soundness of insurers and/ or have access to a network of insurance brokers who can do the assessment on their behalf. This option might not be fully justified, because of the presumed objective of IGSs – the protection of retail consumers.  | Noted, see previous reply. | Public |
| Lithuanian Insurers Association | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | None, flexibility to Member States to adopt the role and functioning of IGSs should be left in order to ensure national needs.  | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.   | Public |
| Lithuanian Insurers Association | Q14) What should be the relevant criteria to determine the target level for national IGSs? | None, flexibility to Member States to adopt the role and functioning of IGSs should be left in order to ensure national needs, i. e. no level playing field between insurers in the EU.  | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Target levels would ensure the adequacy of funding. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. | Public |
| Lithuanian Insurers Association | 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 (risk-based, fixed rate, other)? | None, flexibility to Member States to determine the relevant criteria for annual contributions into IGSs should be left in order to ensure reasonable risk-based approach. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS, defining an appropriate target level for the funding of IGSs. | Public |
| Lithuanian Insurers Association | 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)? | None, flexibility to Member States to determine the relevant criteria for annual contributions into IGSs should be left in order to ensure reasonable risk-based approach. | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the advice. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| Lithuanian Insurers Association | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | None. | Noted. | Public |
| Lithuanian Insurers Association | 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, please also refer to Q4 and Q5)? If so, what are those? | None. | Noted. | Public |
| Lloyd’s  | General comments | This response is submitted by Lloyd’s, which is recognised in EU legislation as “the society of underwriters known as Lloyd’s” and has extensive experience of conducting freedom of services and freedom of establishment business in the EU. In the UK, Lloyd’s is covered by the Financial Services Compensation Scheme (FSCS), which operates as an insurance guarantee scheme (IGS). In light of the uncertainty around the UK’s departure from the EU, both Lloyd’s and Lloyd’s Insurance Company S.A. (Lloyd’s Belgian domiciled company) will provide input to EIOPA consultations where relevant. The main points we would like to make about this Consultation Paper (CP) are as follows: 1. The CP makes clear that at present there is a variety of different approaches to IGSs across member states, with IGSs established in different ways and some member states not having any IGSs at all. This means that introducing a harmonised system of national IGSs could represent substantial change to the operation of existing IGSs and to the insurance markets of member states with no IGS, with the potential for confusion and disruption. These risks would be mitigated if any proposals took a minimalist approach, representing the minimum rules necessary to introduce a harmonised system. Member states would have the option to make more extensive arrangements if they choose. A review clause in the legislation would allow assessment after a few years ,of how the system was working, providing an opportunity to introduce more comprehensive harmonised arrangements if this was considered necessary.
2. A system designed with minimal prescription would leave to member states options about how precisely to establish their IGSs. For example, the method of funding the IGS should be left to member states: harmonisation in this area is unnecessary and not in accordance with the principle of proportionality. On the other hand, it would be necessary to determine whether the system should be established on a home-country or a host-country basis.
3. The objectives of a harmonised system of IGSs would be best achieved if its design proceeded on the basis of a commitment to simplicity. Making claims in the event of an insurance undertaking failure should be straightforward.
4. IGSs should focus on personal lines, not commercial, business and should exclude reinsurance. This should be reflected in the types of policy covered.

  | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. These considerations may be taken into account in the next steps. | Public |
| Lloyd’s  | 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. | We agree that the legal structure of policyholder protection schemes should be left to the discretion of member states. It is unnecessary for this to be harmonised in order to establish an effective system of national IGSs in the EU. Mandating a particular structure could create a need for unnecessary changes to existing IGSs in member states.  | Noted. | Public |
| Lloyd’s  | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Recovery and resolution frameworks and IGSs are supervisory mechanisms that both relate to insurance undertakings in financial difficulty, so it is sensible for work on the two projects to be coordinated. At the same time, it is important that the differences between the two are always borne in mind and they are treated as separate topics. For example, “recovery” relates to an insurance undertaking that is still viable and is intended to facilitate its return to financial health, whereas an IGS comes into play only once an undertaking has failed. Application of the principle of proportionality to recovery and resolution requirements means that their full application may well be limited to larger undertakings and groups, whereas experience suggests that the undertakings most likely to give rise to IGS claims are small, and probably lying outside the scope of recovery and resolution regulation. Approaches to recovery and resolution and IGSs should take account of the extensive existing supervisory mechanisms under Solvency II designed to protect policyholders from the failures of insurance undertakings.  | Noted. | Public |
| Lloyd’s  | 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)?  | The primary objective of an IGS is to protect policyholders when an insurance undertaking can no longer meet its contractual obligations. This objective is met if the IGS pays compensation for valid claims arising on policies with the failed undertaking. It is not necessary for the IGS also to have powers to ensure continuity of policies: this can be a complex matter and, as the CP suggests, is likely to make the IGS more expensive and remove their focus on the settlement of claims as they fall due. Portfolio transfers are better dealt with by professional firms brought in to handle the insolvency of an insurance undertaking in accordance with local laws.   | No change, EIOPA’s view is that IGS should also help ensure the continuity of insurance policy. Indeed, EIOPA’s view is that IGS should also help ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Lloyd’s  | 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. | The Lloyd’s market is predominantly a provider of non-life insurance and we are unable to comment on proposals relating to life insurance. An IGS is principally a mechanism for the protection of private individuals, not businesses and should focus on personal lines, not commercial insurance. We believe that few, if any long-term non-life policies are sold to private individuals, so we do not think that it is necessary to have a rule that continuation of such policies should take precedence.  | Noted. | Public |
| Lloyd’s  | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | A key advantage of the home-country principle is that it places responsibility for dealing with the consequences of an insurance undertaking failure in the jurisdiction that is responsible for the supervision of that undertaking.There have been few recent insurance failures within the EU, but those that have occurred have been predominantly of small undertakings carrying on freedom of services business in other member states. As they have few or no policyholders in their home state, it is possible that their home state supervisors – focused on the protection of local policyholders - have not viewed the financial stability of these firms as a priority. It would be helpful for the acceptance of a harmonised system of IGSs if it appears to be fair. The home-country principle looks fairer than the host-country principle, as the latter can entail local insurers – and ultimately their policyholders - having to pay for the consequences of the failure of an “outside” undertaking, unregulated by the local supervisor, which may well have got itself into financial difficulties through unsound business practices.Although the host-country principle can appear to avoid distortions to the single market by providing all policyholders in a jurisdiction with the same level of protection, it can also give rise to potential barriers to FoS / FoE business. These can arise in relation to the funding arrangements: if insurers trading on an FoS / FoE basis in a jurisdiction are covered by the local IGS, it is reasonable for them to be included in the levy on insurers to fund the scheme. If the IGS provides a high level of protection, those levies may appear quite high. Any system of harmonised national IGSs requires supervisory coordination and cooperation and this will apply to a system established on the home-country principle as on any other basis. The important point is that there is an agreed approach, avoiding gaps or duplications in coverage.  | Noted.The model of harmonization proposed by EIOPA is intended to avoid as much as possible gaps or duplications in coverage. | Public |
| Lloyd’s  | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | A harmonised system of national IGSs should be kept as simple as possible. We think that additional features such as those suggested should be considered very carefully before they are included in a proposal, as they risk adding unnecessary complexity. A harmonised system should operate on the basis of cooperation between national IGSs. It might be better to leave detailed arrangements for dealing with cross-border business in the event of a insurance failure to non-legislative agreements between national IGSs, drafted in light of what they believe to be necessary and realistic.  | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Lloyd’s  | 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? | If the system is established on the home-country principle, there should be no exceptions, as they would introduce confusion over how claims should be handled.  | Noted. | Public |
| Lloyd’s  | 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. | We agree that it is not necessary for an IGS to cover every line of business and that therefore criteria are needed for determining eligible policies. A comprehensive IGS, covering a national insurance market in its entirety would be a very large and expensive operation. Member states without any type of IGS at present would be very uncomfortable implementing such a scheme. Paragraph 45 of the CP says “The main reason for establishing a network of harmonised national IGSs is to provide a minimum level of protection to policyholders against the effects of an insurance failure.” Most EU policyholders purchase their insurance cover from insurance undertakings established in the same jurisdiction. Paragraph 50 says that FoS and FoE business accounts for 10% of the EU insurance market: although there has been recent growth in the amount of business transacted on this basis, it still constitutes only a small part of the total market. Cross-border business should not therefore be a determining factor in the design of a harmonised system of IGSs. The second criteria listed in paragraph 149 – lines of business with high market share in cross-border business – is largely irrelevant. If cross-border business accounts for just 10% of the EU insurance market, it is unlikely that any particular line of business accounts for a high market share. The box on page 17 illustrates the size of total premiums, not market share: many of the largest premium incomes relate to lines of business where the aggregated EU premium incomes are very large, so their market share might be quite small. If the market is growing rapidly, it is quite possible that market shares at line of business level will be volatile. Furthermore, three of the lines of business included in the box are reinsurance, which should not be included in an IGS. The first criteria in paragraph 149 – policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries – does not take the selection of eligible policies much further. “Considerable” is not a precise concept.   | Noted. | Public |
| Lloyd’s  | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | We are unable to comment on which lines of life insurance should be eligible policies, although we agree that an IGS should not be limited to non-life insurance only. The range of policies to be covered should take account of the eligible claimants. If eligibility is restricted to private individuals, as we think it should be, a starting point is the main personal lines of insurance, such as motor, household, travel, pet and personal accident and sickness. The question could then be: which of these lines should not be covered by an IGS? Personal policyholders build their lives and make financial decisions on the basis of the insurance cover they have purchased. Non-payment of a valid insurance claim under any type of policy due to the failure of an insurance provider can give rise to substantial financial impact. Persons seeking legal compensation are in a special position. Usually their claims will be met by liability insurance held by the liable party. If those insurance policies cannot pay out due to the failure of the insurer, the claimants can be left in a very difficult position, particularly if their claims are for personal injury. As this risk relates to commercial insurance cover in many cases, but the impact will be on an individual consumer, there must be consideration in the design of an IGS scheme as to whether it is the nature of the insurance or the potential beneficiaries that drives scope.  | Noted. | Public |
| Lloyd’s  | 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. | Reinsurance should be excluded from an IGS. Reinsurance is purchased by insurance undertakings, who are informed purchasers, with access to knowledge and expertise, and less in need of supervisory protection, as reflected by the design of regulatory regimes in the EU and elsewhere. An IGS that covered reinsurance would be at risk of potentially large liabilities and would need to be designed on a rather different basis to one focused on direct business. In the UK, the Financial Services Compensation Scheme (FSCS), which provides the UK IGS, does not include the following lines of business: * + Aircraft and aircraft liability.
	+ Ships and ships liability.
	+ Goods in transit.
	+ Credit.

These classes are commonly purchased by large commercial entities, able to tap informed market knowledge when they make purchasing decisions and, like insurance undertakings, not deserving of the same levels of protection as ordinary citizens of a jurisdiction. These exclusions from the scope of an IGS appear sensible. Compulsory liability insurance requires special consideration. National governments impose the obligation to hold liability insurance on those engaged in pursuits or occupations considered to give rise to particular risks, often of physical injury to other persons. The obligation means that, if injury, loss or damage occurs, compensation is available from the responsible person’s insurance through legal processes. Legislation imposing mandatory cover is rendered nugatory if the insurer concerned is unable to pay claims because it is insolvent, putting such insurance in a special position. At the same time, there is no harmonised system of compulsory liability in the EU. Some member states have very many such requirements; others rather fewer. A requirement for IGSs to cover compulsory insurance will therefore have a different impact in different member states.  | It is not in EIOPA’s intention to cover reinsurance policies in the selected range of policies.Compulsory insurance is also considered in the advice.  | Public |
| Lloyd’s  | Q11) Which criteria should be used to determine/exclude the eligible claimants? | A harmonised IGS system should target the policyholders and beneficiaries in most need of protection. As paragraph 163 says, most corporate policyholders have greater capacity to manage risk, so the inclusion of such policyholders as potential claimants is not justified. We therefore think that the eligible claimants in a harmonised IGS should be natural persons only. Deciding criteria for the inclusion of smaller commercial entities could be quite difficult, in view of the differences in the size and shape of member states economies. There is also an argument that, even though small commercial enterprises have some similarities to private individuals, a financial loss sustained by a legal person is of a fundamentally different nature to a financial loss sustained by a private individual (though see above in respect of third parties under the eligible policy criteria). A harmonised IGS system should be established on a minimalist basis, covering only what is essential for the system’s operation. The criteria for claimants should therefore be set at a minimum level and member states should have the option to include other types of claimants should they wish to do so. The EU legislation establishing a harmonised IGS should include a review clause, permitting assessment of the system’s operation after a number of years. It might be appropriate at this time to consider extending the list of eligible claimants in light of experience.   | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| Lloyd’s  | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | We are unable to comment on whether an IGS should cover pensions.  | Noted. | Public |
| Lloyd’s  | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | If the harmonised IGS system is established on a minimalist basis, there is scope for the coverage level to be set at less than 100%, with member states given the option to provide a higher level of coverage if they so desire. The information provided about the UK coverage level is not completely accurate. The level is 100% for life insurance and compulsory non-life insurance and 90% for non-compulsory non-life insurance, with no upper limit (these limits apply to firms failing after 3 July 2015). So far as we are aware, the scheme has worked satisfactorily on this basis.   | Noted. | Public |
| Lloyd’s  | Q14) What should be the relevant criteria to determine the target level for national IGSs? | We disagree with the need for a target level for national IGSs. Paragraph 198 suggests that just 4 out of the 20 existing national IGSs have target levels and there is no evidence that those 4 operate more satisfactorily or provide better policyholder protection than those IGSs without targets. The proposal for harmonised target levels needs to be justified by evidence, which is not contained in the CP.   | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Target levels would ensure the adequacy of funding. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. | Public |
| Lloyd’s  | 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 (risk-based, fixed rate, other)? | The arrangements for funding of IGSs should be left to member states. The CP demonstrates that there is considerable variation in the funding of existing IGSs and many member states do not have an IGS at all. Consequently, harmonising the basis on which IGSs should be funded will lead to considerable change and potential disruption. Furthermore, agreeing the basis for harmonisation will be difficult, as it will require changes to existing IGSs that are operating perfectly satisfactorily. Harmonising the basis of funding will require detailed legislation and we question its usefulness and whether it would be in accordance with the principle of proportionality. Providing a national IGS is solvent, there is no need for micro-management of its operations at EU or EIOPA level.  | 1. Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS, defining an appropriate target level for the funding of IGSs.
2. In order to take into account the national market specificities, the harmonized target level should be accompanied by a suitable transition period to ensure that the target level can be achieved without major disruptions to the industry.
 | 1. Public
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| Lloyd’s  | 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)? | Please see our response to Q15.  | Noted. | Public |
| Lloyd’s  | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | The efficacy of regulatory obligations to provide detailed information to policyholders may be questioned. Many policyholders do not read their policy documents and pay little attention to lengthy statements drafted to comply with regulations. Much insurance coverage is arranged online, so any such requirements that are put in place should not require the issue of paper documents. Having said that, we agree that, if an insurance policy is covered by a national IGS, it should say so, and should give details of how the IGS can be contacted, including the IGS’s website. The IGS website should give full details of what is and what is not covered. If a policy directs policyholders to an IGS website, which sets out entitlement to coverage under the scheme, it is not necessary for the policy also to set out the rules on coverage, which will add unnecessarily to the size of the policy document. It will also be necessary to consider whether coverage by a national IGS should be disclosed in the Insurance Product Information Document (IPID). As this is supposed to be no longer than two sides of A4, and as there are a number of other items that must be included, any such requirement should be limited to a statement that the policy is covered with the name and website of the IGS concerned.   | Noted, no change needed.  | Public |
| Lloyd’s  | 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, please also refer to Q4 and Q5)? If so, what are those? | We agree that national IGSs should cooperate and coordinate. Probably the best means of arranging this would be by way of Memorandums of Understanding, negotiated between them. Article 21(1) of the EIOPA Regulation relates to colleges of supervisors. Such colleges are established when insurance groups are carrying on business within the EU through local subsidiaries. They are not set up to oversee an insurance undertaking carrying on FoS / FoE business (see the definitions of “college of supervisors” and “group” in Article 212 of the Solvency II Directive and Article 248 on arrangements for a college of supervisors). The EIOPA Regulation does not therefore give EIOPA powers to take a leading role in the functioning of national IGSs in relation to cross-border business.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | General comments | This response is submitted by Lloyd’s Insurance Company S.A.The main points we would like to make about this Consultation Paper (CP) are as follows: 1. The CP makes clear that at present there is a variety of different approaches to IGSs across member states, with IGSs established in different ways and some member states not having any IGSs at all. This means that introducing a harmonised system of national IGSs could represent substantial change to the operation of existing IGSs and to the insurance markets of member states with no IGS, with the potential for confusion and disruption. These risks would be mitigated if any proposals took a minimalist approach, representing the minimum rules necessary to introduce a harmonised system. Member states would have the option to make more extensive arrangements if they choose. A review clause in the legislation would allow assessment after a few years ,of how the system was working, providing an opportunity to introduce more comprehensive harmonised arrangements if this was considered necessary.
2. A system designed with minimal prescription would leave to member states options about how precisely to establish their IGSs. For example, the method of funding the IGS should be left to member states: harmonisation in this area is unnecessary and not in accordance with the principle of proportionality. On the other hand, it would be necessary to determine whether the system should be established on a home-country or a host-country basis.
3. The objectives of a harmonised system of IGSs would be best achieved if its design proceeded on the basis of a commitment to simplicity. Making claims in the event of an insurance undertaking failure should be straightforward.
4. IGSs should focus on personal lines, not commercial, business and should exclude reinsurance. This should be reflected in the types of policy covered.

  | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. These considerations may be taken into account in the next steps. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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. | We agree that the legal structure of policyholder protection schemes should be left to the discretion of member states. It is unnecessary for this to be harmonised in order to establish an effective system of national IGSs in the EU. Mandating a particular structure could create a need for unnecessary changes to existing IGSs in member states.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Recovery and resolution frameworks and IGSs are supervisory mechanisms that both relate to insurance undertakings in financial difficulty, so it is sensible for work on the two projects to be coordinated. At the same time, it is important that the differences between the two are always borne in mind and they are treated as separate topics. For example, “recovery” relates to an insurance undertaking that is still viable and is intended to facilitate its return to financial health, whereas an IGS comes into play only once an undertaking has failed. Application of the principle of proportionality to recovery and resolution requirements means that their full application may well be limited to larger undertakings and groups, whereas experience suggests that the undertakings most likely to give rise to IGS claims are small, and probably lying outside the scope of recovery and resolution regulation. Approaches to recovery and resolution and IGSs should take account of the extensive existing supervisory mechanisms under Solvency II designed to protect policyholders from the failures of insurance undertakings.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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)?  | The primary objective of an IGS is to protect policyholders when an insurance undertaking can no longer meet its contractual obligations. This objective is met if the IGS pays compensation for valid claims arising on policies with the failed undertaking. It is not necessary for the IGS also to have powers to ensure continuity of policies: this can be a complex matter and, as the CP suggests, is likely to make the IGS more expensive and remove their focus on the settlement of claims as they fall due. Portfolio transfers are better dealt with by professional firms brought in to handle the insolvency of an insurance undertaking in accordance with local laws.   | EIOPA’s view is that IGS should also help ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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. | The Lloyd’s market is predominantly a provider of non-life insurance and we are unable to comment on proposals relating to life insurance. An IGS is principally a mechanism for the protection of private individuals, not businesses and should focus on personal lines, not commercial insurance. We believe that few, if any long-term non-life policies are sold to private individuals, so we do not think that it is necessary to have a rule that continuation of such policies should take precedence.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | A key advantage of the home-country principle is that it places responsibility for dealing with the consequences of an insurance undertaking failure in the jurisdiction that is responsible for the supervision of that undertaking.There have been few recent insurance failures within the EU, but those that have occurred have been predominantly of small undertakings carrying on freedom of services business in other member states. As they have few or no policyholders in their home state, it is possible that their home state supervisors – focused on the protection of local policyholders - have not viewed the financial stability of these firms as a priority. It would be helpful for the acceptance of a harmonised system of IGSs if it appears to be fair. The home-country principle looks fairer than the host-country principle, as the latter can entail local insurers – and ultimately their policyholders - having to pay for the consequences of the failure of an “outside” undertaking, unregulated by the local supervisor, which may well have got itself into financial difficulties through unsound business practices.Although the host-country principle can appear to avoid distortions to the single market by providing all policyholders in a jurisdiction with the same level of protection, it can also give rise to potential barriers to FoS / FoE business. These can arise in relation to the funding arrangements: if insurers trading on an FoS / FoE basis in a jurisdiction are covered by the local IGS, it is reasonable for them to be included in the levy on insurers to fund the scheme. If the IGS provides a high level of protection, those levies may appear quite high. Any system of harmonised national IGSs requires supervisory coordination and cooperation and this will apply to a system established on the home-country principle as on any other basis. The important point is that there is an agreed approach, avoiding gaps or duplications in coverage.  | Noted.The model of harmonization proposed by EIOPA is intended to avoid as much as possible gaps or duplications in coverage. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | A harmonised system of national IGSs should be kept as simple as possible. We think that additional features such as those suggested should be considered very carefully before they are included in a proposal, as they risk adding unnecessary complexity. A harmonised system should operate on the basis of cooperation between national IGSs. It might be better to leave detailed arrangements for dealing with cross-border business in the event of a insurance failure to non-legislative agreements between national IGSs, drafted in light of what they believe to be necessary and realistic.  | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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? | If the system is established on the home-country principle, there should be no exceptions, as they would introduce confusion over how claims should be handled.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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. | We agree that it is not necessary for an IGS to cover every line of business and that therefore criteria are needed for determining eligible policies. A comprehensive IGS, covering a national insurance market in its entirety would be a very large and expensive operation. Member states without any type of IGS at present would be very uncomfortable implementing such a scheme. Paragraph 45 of the CP says “The main reason for establishing a network of harmonised national IGSs is to provide a minimum level of protection to policyholders against the effects of an insurance failure.” Most EU policyholders purchase their insurance cover from insurance undertakings established in the same jurisdiction. Paragraph 50 says that FoS and FoE business accounts for 10% of the EU insurance market: although there has been recent growth in the amount of business transacted on this basis, it still constitutes only a small part of the total market. Cross-border business should not therefore be a determining factor in the design of a harmonised system of IGSs. The second criteria listed in paragraph 149 – lines of business with high market share in cross-border business – is largely irrelevant. If cross-border business accounts for just 10% of the EU insurance market, it is unlikely that any particular line of business accounts for a high market share. The box on page 17 illustrates the size of total premiums, not market share: many of the largest premium incomes relate to lines of business where the aggregated EU premium incomes are very large, so their market share might be quite small. If the market is growing rapidly, it is quite possible that market shares at line of business level will be volatile. Furthermore, three of the lines of business included in the box are reinsurance, which should not be included in an IGS. The first criteria in paragraph 149 – policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries – does not take the selection of eligible policies much further. “Considerable” is not a precise concept.   | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | We are unable to comment on which lines of life insurance should be eligible policies, although we agree that an IGS should not be limited to non-life insurance only. The range of policies to be covered should take account of the eligible claimants. If eligibility is restricted to private individuals, as we think it should be, a starting point is the main personal lines of insurance, such as motor, household, travel, pet and personal accident and sickness. The question could then be: which of these lines should not be covered by an IGS? Personal policyholders build their lives and make financial decisions on the basis of the insurance cover they have purchased. Non-payment of a valid insurance claim under any type of policy due to the failure of an insurance provider can give rise to substantial financial impact. Persons seeking legal compensation are in a special position. Usually their claims will be met by liability insurance held by the liable party. If those insurance policies cannot pay out due to the failure of the insurer, the claimants can be left in a very difficult position, particularly if their claims are for personal injury. As this risk relates to commercial insurance cover in many cases, but the impact will be on an individual consumer, there must be consideration in the design of an IGS scheme as to whether it is the nature of the insurance or the potential beneficiaries that drives scope.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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. | Reinsurance should be excluded from an IGS. Reinsurance is purchased by insurance undertakings, who are informed purchasers, with access to knowledge and expertise, and less in need of supervisory protection, as reflected by the design of regulatory regimes in the EU and elsewhere. An IGS that covered reinsurance would be at risk of potentially large liabilities and would need to be designed on a rather different basis to one focused on direct business. In the UK, the Financial Services Compensation Scheme (FSCS), which provides the UK IGS, does not include the following lines of business: * + Aircraft and aircraft liability.
	+ Ships and ships liability.
	+ Goods in transit.
	+ Credit.

These classes are commonly purchased by large commercial entities, able to tap informed market knowledge when they make purchasing decisions and, like insurance undertakings, not deserving of the same levels of protection as ordinary citizens of a jurisdiction. These exclusions from the scope of an IGS appear sensible. Compulsory liability insurance requires special consideration. National governments impose the obligation to hold liability insurance on those engaged in pursuits or occupations considered to give rise to particular risks, often of physical injury to other persons. The obligation means that, if injury, loss or damage occurs, compensation is available from the responsible person’s insurance through legal processes. Legislation imposing mandatory cover is rendered nugatory if the insurer concerned is unable to pay claims because it is insolvent, putting such insurance in a special position. At the same time, there is no harmonised system of compulsory liability in the EU. Some member states have very many such requirements; others rather fewer. A requirement for IGSs to cover compulsory insurance will therefore have a different impact in different member states.  | It is not in EIOPA’s intention to cover reinsurance policies in the selected range of policies.Compulsory insurance is also considered in the Advice. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | A harmonised IGS system should target the policyholders and beneficiaries in most need of protection. As paragraph 163 says, most corporate policyholders have greater capacity to manage risk, so the inclusion of such policyholders as potential claimants is not justified. We therefore think that the eligible claimants in a harmonised IGS should be natural persons only. Deciding criteria for the inclusion of smaller commercial entities could be quite difficult, in view of the differences in the size and shape of member states economies. There is also an argument that, even though small commercial enterprises have some similarities to private individuals, a financial loss sustained by a legal person is of a fundamentally different nature to a financial loss sustained by a private individual (though see above in respect of third parties under the eligible policy criteria). A harmonised IGS system should be established on a minimalist basis, covering only what is essential for the system’s operation. The criteria for claimants should therefore be set at a minimum level and member states should have the option to include other types of claimants should they wish to do so. The EU legislation establishing a harmonised IGS should include a review clause, permitting assessment of the system’s operation after a number of years. It might be appropriate at this time to consider extending the list of eligible claimants in light of experience.   | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | We are unable to comment on whether an IGS should cover pensions.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | If the harmonised IGS system is established on a minimalist basis, there is scope for the coverage level to be set at less than 100%, with member states given the option to provide a higher level of coverage if they so desire. The information provided about the UK coverage level is not completely accurate. The level is 100% for life insurance and compulsory non-life insurance and 90% for non-compulsory non-life insurance, with no upper limit (these limits apply to firms failing after 3 July 2015). So far as we are aware, the scheme has worked satisfactorily on this basis.   | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | We disagree with the need for a target level for national IGSs. Paragraph 198 suggests that just 4 out of the 20 existing national IGSs have target levels and there is no evidence that those 4 operate more satisfactorily or provide better policyholder protection than those IGSs without targets. The proposal for harmonised target levels needs to be justified by evidence, which is not contained in the CP.   | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Target levels would ensure the adequacy of funding. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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 (risk-based, fixed rate, other)? | The arrangements for funding of IGSs should be left to member states. The CP demonstrates that there is considerable variation in the funding of existing IGSs and many member states do not have an IGS at all. Consequently, harmonising the basis on which IGSs should be funded will lead to considerable change and potential disruption. Furthermore, agreeing the basis for harmonisation will be difficult, as it will require changes to existing IGSs that are operating perfectly satisfactorily. Harmonising the basis of funding will require detailed legislation and we question its usefulness and whether it would be in accordance with the principle of proportionality. Providing a national IGS is solvent, there is no need for micro-management of its operations at EU or EIOPA level.  | 1. Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS, defining an appropriate target level for the funding of IGSs.
2. In order to take into account the national market specificities, the harmonized target level should be accompanied by a suitable transition period to ensure that the target level can be achieved without major disruptions to the industry.
 | 1. Public
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| Lloyd’s Insurance Company S.A. (LIC) | 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)? | Please see our response to Q15.  | Noted. | Public |
| Lloyd’s Insurance Company S.A. (LIC) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | The efficacy of regulatory obligations to provide detailed information to policyholders may be questioned. Many policyholders do not read their policy documents and pay little attention to lengthy statements drafted to comply with regulations. Much insurance coverage is arranged online, so any such requirements that are put in place should not require the issue of paper documents. Having said that, we agree that, if an insurance policy is covered by a national IGS, it should say so, and should give details of how the IGS can be contacted, including the IGS’s website. The IGS website should give full details of what is and what is not covered. If a policy directs policyholders to an IGS website, which sets out entitlement to coverage under the scheme, it is not necessary for the policy also to set out the rules on coverage, which will add unnecessarily to the size of the policy document. It will also be necessary to consider whether coverage by a national IGS should be disclosed in the Insurance Product Information Document (IPID). As this is supposed to be no longer than two sides of A4, and as there are a number of other items that must be included, any such requirement should be limited to a statement that the policy is covered with the name and website of the IGS concerned.   | Noted, no change needed.  | Public |
| Lloyd’s Insurance Company S.A. (LIC) | 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, please also refer to Q4 and Q5)? If so, what are those? | We agree that national IGSs should cooperate and coordinate. Probably the best means of arranging this would be by way of Memorandums of Understanding, negotiated between them. Article 21(1) of the EIOPA Regulation relates to colleges of supervisors. Such colleges are established when insurance groups are carrying on business within the EU through local subsidiaries. They are not set up to oversee an insurance undertaking carrying on FoS / FoE business (see the definitions of “college of supervisors” and “group” in Article 212 of the Solvency II Directive and Article 248 on arrangements for a college of supervisors). The EIOPA Regulation does not therefore give EIOPA powers to take a leading role in the functioning of national IGSs in relation to cross-border business.  | Noted. | Public |
| Malta Insurance Association | General comments | By way of a general comment, the Malta Insurance Association supports the status quo and is in agreement with Insurance Europe in opposing an EU initiative on IGS. This is because the experience of insolvencies amongst insurers operating within the Maltese industry has been extremely low and has never exceeded the resources available through the IGS currently in place in Malta.Even a minimum level of harmonisation would create significant costs and involve complex challenges to the Maltese insurance industry. The MIA agrees with Insurance Europe that the focus and priority instead should be on ensuring that Solvency II is actually applied appropriately in all member states and there is coordinated supervision of FOS/FOE, in line with recent amendments of Directive 2009/138/EG on notification requirements and the establishment of collaboration platforms for FOS/FOE. Moreover the Maltese Life Insurance market is highly concentrated, with a few insurers having more than a majority market share. Indeed based on gross life premium income, the concentration of life insurers in Malta stands at 0.46%. In this situation should other insurance companies be required to fill IGS funding gaps in the case of a large insurance company’s collapse, inappropriate funding mechanisms would create interconnectedness between Maltese insurance companies and create an environment in which vulnerabilities in the financial position of otherwise healthy insurers could develop.  | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. These considerations may be taken into account in the next steps. | Public |
| Malta Insurance Association | 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. | If the European Commission can evidence that minimum harmonisation is necessary, and without prejudice to MIA’s above stated position, it is our view that the legal structure of policyholder protection schemes should be left to the discretion of Member States. However MIA disagrees that the funding of IGS should be left to the discretion of member states. The main advantages of such an approach are that: • a readily-available fund would provide a satisfactory level of security to claimants in the event of an insolvency. It would prevent MS from imposing lower contribution levels, at the risk of undercapitalising their IGSs. • all relevant insurers would contribute to the funding of the IGS, including the insolvent insurer – which would not be the case with an ex post funding approach;• by spreading contributions over time, it would reduce the sudden adverse impact on the capital of the insurance industry after the insolvency event. * + A harmonised funding arrangement would ensure that insurers would pay the same level of contributions irrespective of the MS in which they are established.
	+ A harmonised funding arrangement would minimise market distortion and an unlevel playing field between MSs who opt for different levels of ex ante or ex-post contributions – with jurisdictions at the lower level of the contributions scale seeking to promote themselves as a much more attractive location for insurers to establish their business in.

An ex ante funding arrangement can adopt a regime which is similar to the Deposit Guarantee Scheme Directive (2014/49/EU). According to this regime, banks pay the same level of contributions for covered deposits irrespective of the MS they are in.  | Noted. | Public |
| Malta Insurance Association | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | IGS should not play any role or cover costs related to the resolution of insurers, as they create incentives for negligent supervision and hazardous risk-taking behaviour. IGS should remain a “last-resort mechanism” providing additional protection after all resources from the insurance company have been exhausted (i.e. after insolvency or resolution). MIA fully agrees with EIOPA’s position stated in Paragraph 86, that the mission of IGS should not include the prevention of insurance failures. | Noted.However, some flexibility should be given to Member States. Some existing national IGSs have another role than paying compensation. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Malta Insurance Association | 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)?  | Without prejudice to MIA’s above stated position:* National IGS should be solely designed to provide compensation to policyholders for their losses in liquidation, and not the continuation of the insurance policies.
* Nor should national IGS be used to provide compensation other than that arising from the liquidation of the insurer. This would mean that compensation claims arising from liquidations of other financial services firms, including intermediaries, should be out of scope of an IGS.

. | EIOPA’s view is that IGS should also ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Malta Insurance Association | 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. | See answer to Q3. | Noted.  | Public |
| Malta Insurance Association | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | If the European Commission can evidence that minimum harmonisation is necessary, and without prejudice to MIA’s above stated position, MIA’s preference would be for a host approach and this for the following reasons:* Under the host-country principle, all policyholders within the same member state are evenly protected regardless of the insurer’s location. This would also ensure that use of IGS in the sales and marketing can be avoided.
* The host-country principle is useful when determining the level of compensation for compulsory classes of business - especially in those countries where the coverage level already may be as high as 100 % for those products.
* Applying the host country principle would facilitate customer identification, communication in the local language and the application of relevant local laws.
 | 1. EIOPA is of the view that the European harmonization of the national IGS should be based on the Home country principle, which appears to be the most appropriate approach for protecting policyholders’ interest ensuring the link with the responsibility for the prudential supervision. More specifically, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.

At the same time, this approach also ensures a higher responsibility of the Supervisor of the Home IGS that is responsible for dealing with the consequences of an insolvent insurer, wherever its activities are located (including business under FoS and FoE). | 1. Public
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| Malta Insurance Association | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | See answer to Q5.Regardless of whether an IGS is home or host based:* Adequate funding arrangements should be in place for the IGS, and such arrangments should be regulated at EU level in a manner similar to the Deposit Guarantee Scheme Directive (2014/49/EU);

Compensation payable to a claimant should be capped at Euro 100,000, similar to the Deposit Guarantee Scheme Directive (2014/49/EU).  | Noted. However, DGS considerations are unrelated to this question. | Public |
| Malta Insurance Association | 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? | Without prejudice to MIA’s above stated position, MIA is in favour of the host country approach because this ensures that policyholders within a Member State are evenly protected regardless of the location of the insurer, and the compensation statutory regime in the home country. | 1. EIOPA is of the view that the European harmonization of the national IGSs should be based on the Home country principle, which seems to be the most appropriate approach for protecting policyholders’ interest, ensuring consistency with the responsibility for the prudential supervision. In particular, the home-country principle prevents that policyholders of the same insurers are unevenly protected depending on their residence, as they would all be covered by the insurer’s home country IGS.
 | 1. Public
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| Malta Insurance Association | 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. | The relative importance of different types of insurance for policyholders differs greatly between member states. This is precisely why there are significant differences in this respect between current IGS in EU member states. The lack of an analysis of the criteria in paragraph 149 in the consultation paper and its practical implications on different insurance products in different Member States makes it impossible to draw conclusions on the implications for IGS. Therefore, under minimum harmonisation, the product scope should be kept as limited and focused as possible, leaving a large degree of national flexibility to ensure that the best solution is found for every market.Having said this, MIA recognizes that life insurance products, involve large amounts and long-term commitments with insurers, often with a retirement objective, where the absence of an IGS in the event of a failure of an insurer could lead to considerable financial hardship for policyholders. It is for this reason that, without prejudice to MIA’s above stated position, MIA is of the view that only specific types of life insurance products should be under the scope of an IGS under minimum harmonization. | Noted.However, EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Malta Insurance Association | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See answer to Q8.The significant differences between different types of life insurance products militate for different treatment for the purposes of IGS. Thus risks differ significantly between unit-linked products without guarantees and (traditional) life insurance products with guarantees. In unit-linked life insurance, the investment risk is borne by the policyholder and the insurance company does not provide any guarantee. Moreover, even if the insurance company would be confronted with financial problems, the units invested in by the policyholder cannot be used for the liquidation of the insurance company but remain with the policyholder. For this reason unit-linked life insurance should be excluded from IGS.On the other hand life insurance products with a retirement objective appear to be more relevant to IGS protection. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the advice. | Public |
| Malta Insurance Association | 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. | No other comments | Noted. | Public |
| Malta Insurance Association | Q11) Which criteria should be used to determine/exclude the eligible claimants? | MIA believes that the IGS should only cover consumers (natural persons) and that it should be at the discretion of member states to decide whether a wider scope is justified. 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. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Malta Insurance Association | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | See answer to Q11 | Noted. | Public |
| Malta Insurance Association | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | Without prejudice to MIA’s above stated position, the following are MIA’s views on this matter:* The compensation paid in the case of a life insurer’s insolvency is limited to the guaranteed sums and main commitments of the life insurance contract.
* On the other the compensation paid in the case of non-life insurance concentrates on outstanding claims and excludes the repayment of pre-paid premiums.

If the European Commission decides that minimum harmonisation is necessary, MIA would support 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. They should 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 compensation capped at EURO 100,000, in line with the limit established under the Deposit Guarantee Scheme Directive (2014/49/EU). Unlimited contributions following a significant failure may otherwise seriously undermine the financial solvency of other insurers in that Member State. | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| Malta Insurance Association | Q14) What should be the relevant criteria to determine the target level for national IGSs? | IGS funding should be regulated at EU level in a manner similar to the Deposit Guarantee Scheme Directive (2014/49/EU). In this way insurers would pay the same level of contributions irrespective of the MS they are in. There should be a cap on the amount of fund that is held by an IGS at any one time, and that this figure should be calculated as a percentage of an insurer’s mathematical reserves adjusted by means of a risk-based coefficient (see below).Some of the more relevant criteria to determine the target level for national IGSs are the following:* A mix of ex-ante and ex-post funding.
* Ex-ante funding ensures 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.
* Where an IGS is limited to specific life insurance classes, its funds, in any one year, should be calculated as a percentage of the mathematical reserves of all life insurers operating in that MS.
* A life insurer’s contribution to an IGS should be calculated as a proportion of its mathematical reserves to the total mathematical reserves of all Life insurers operating in a member state; and adjusted according to a risk based coefficient assessed according to the minimum capital requiriements of that Life Insurer under Sovency II.
1. In small, concentrated markets like Malta, IGS will only be able to protect consumers from the failure of small to medium sized insurance companies. If small / medium sized companies are expected to fund the failure of larger companies, this would increase systemic risks.
 | As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the Advice. | Public |
| Malta Insurance Association | 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 (risk-based, fixed rate, other)? | See answer to Q14.* A life insurer’s contribution to an IGS should be calculated as a proportion of its mathematical reserves to the total mathematical reserves of all Life insurers operating in a member state; and adjusted according to a risk based coefficient assessed according to the minimum capital requiriements of that Life Insurer under Sovency II.
* A risk based coefficient should be introduced in a manner similar to the Deposit Guarantee Scheme Directive (2014/49/EU).

Upper limits in insurers’ annual contributions should prevent an IGS from requiring addional ex post funding in any year | Noted. | Public |
| Malta Insurance Association | 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)? | See answer to Q14 and Q15. | Noted.  | Public |
| Malta Insurance Association | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | Insurers should disclose to their policyholders whether 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.  | Noted. | Public |
| Malta Insurance Association | 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, please also refer to Q4 and Q5)? If so, what are those? | No further comments | Noted. | Public |
| Medicator AG | General comments | Medicator AG welcomes EIOPA’s discussion paper on proposals for Solvency II 2020 Review. Generally, we would like to refer to the statements filed by the German Association of Private Health Insurers (PKV) and the German Insurance Association (GDV) which is fully supported by us. Medicator AG is not in line with the advice to harmonize national insurance guarantee schemes as level and scope of guarantee schemes have to be consistent with the legal frame in the Member States. The consideration of different lines of business is of atmost importance. For the design of the IGS, it is crucial what kind of needs the policyholder has in the case of insolvency of an insurance company. A uniform design for all IGS is difficult, so that a fundamental harmonisation due to different configurations is unrealistic.Aside from that we as Medicator AG ask you to consider our following statement:In addition to the German IGS “Protektor Lebensversicherungs-AG”, the Guarantee Scheme “Medicator AG” has been assuming the duties of the statutory and at the same time voluntary security fund for substitutive private health insurance since 2006. Germany has made use of the option under Article 206 of the Solvency Framework Directive and has authorized substitutive private health insurance as a substitute for social security. The substitutive private health insurance is pursued on a similar technical basis to that of life insurance. In the dual German system of social and private insurance, substitutive private health insurance forms an essential and integral part of protecting the entire population against illness. Because of their strong involvement in the social security of the population, the insurers are subject to a strong regulation and socio-political compulsion. The insurers are members of Medicator on a compulsory basis. Medicator is in this respect an integral part of the protection of the population in the event of illness in Germany. In the event of a claim, Medicator will continue the existing health insurance contracts after a transfer of the stock and the investments available to the non-performing insurer. The insurance cover and possible ageing reserves remain so for the insured. In order to fulfill its tasks, Medicator receives (ex-post) contributions from member companies based on ageing reserves and premium income.1. Regarding the timing of the funding of IGSs we would like to underline the suitability and appropriateness of an ex-post scheme. 2. Other funding schemes might be considered for lines of insurance business in which it is highly probable that the event of default results from liquidity squeeze. This does not apply to substitutive private health insurance. The current (ongoing) insurance coverage and the benefit processing of insured events can be met by the ongoing insurance premiums which persist in the event of default. In case of loss in premium in the context of events of default, the insurance benefits can be offset to the premiums. Furthermore, it needs to be considered that the capital tied by ageing reserves, which might be the most probable event of default, will not be disbursed to the insured person. | Noted. Some of these considerations may be taken into account in the next steps for the follow up work after the advice.As regards the GDV and PKV statements, please confront the EIOPA respective replies. | Public |
| Medicator AG | 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. | Yes. With view on the special status of substitutive private health insurance, which is build on national characteristics of social security systems, it is very important that Insurance Guarantee Schemes reflect the market environment in the Member states. As an example of the different lines of business and their security requirements, the substitutive private health insurance in Germany should be taken into consideration. | Noted. | Public |
| Medicator AG | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) which is supported by us. | Noted. | Public |
| Medicator AG | 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)?  | The focus should be on the protection needs of the policyholder. Whether this objective can be achieved by compensating policyhoders and/or continuing contracts depends on the particularities of national markets and products. For insured persons with a lifelong contract as with substitutive private health insurance similar to life insurance a compensation makes no sense. The continuation of the contracts is of utmost importance to the policyholder. In the event of a claim, Medicator will continue the existing health insurance contracts after a transfer of the stock and the investments available to the non-performing insurer. | Noted. | Public |
| Medicator AG | 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. | The basic design should consider national characteristics as well as the peculiarities of substituitive health insurance similar to life technique. The focus should be on the protection needs of the policyholder. The continuation of the contracts is of utmost importance to the policyholder. | Noted. | Public |
| Medicator AG | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | We are in favour of the home-state-principle. Also, especially because the substitutive private health insurance is offered exclusively by German insurers. National IGS can assess and rely on the quality of their national supervisory authorities. | Noted. | Public |
| Medicator AG | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 1. Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) which is supported by us.
 | 1. Noted.
 | 1. Public
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| Medicator AG | 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? | See our answer to Q5.  | Noted. | Public |
| Medicator AG | 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. | 1. For potentially harmonized IGS, two requirements must be satisfied. For the type of policies, a relevant market must be present. In addition, there must be a security requirement for the policyholder.

Furthermore, Member States should have the possibility to set up their own IGS for other type of policies or to continue existing IGS, even if there may be several IGSs in a Member State. | 1. Noted.
 | 1. Public
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| Medicator AG | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See our answer to Q8. | Noted. | Public |
| Medicator AG | Q11) Which criteria should be used to determine/exclude the eligible claimants? | In our view, an IGS should only cover natural persons, i.e. consumers. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Medicator AG | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | No. | Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | Public |
| Medicator AG | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | The security requirement for the policyholder is crucial (see also our answer to Q8). | Noted. | Public |
| Medicator AG | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. For substitutive private health insurance there should be no target level at all. However, a portfolio transfer should be possible.
 | 1. Noted, no change needed.
 | 1. Public
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| Medicator AG | 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 (risk-based, fixed rate, other)? | Risk-weighted contributions should be given preference. The Member States should have the right to vote on the specific structure of the ISG. Generally, the design of the IGS should reflect the kind of risk the policyholder is exposed to and should avoid unnecessary and costly upfront capitalisation. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| Medicator AG | 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)? | See our answer to Q15. | Noted. | Public |
| Medicator AG | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 1. Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) which is supported by us.
 | 1. Noted.
 | 1. Public
 |
| Medicator AG | 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, please also refer to Q4 and Q5)? If so, what are those? | With view on the special status of substitutive private health insurance, which is build on national characteristics of social security systems, it is not appropriate, to create a transnational compensation mechanism.This is especially true against the background that a cross-border market for substitutive health insurance because of these national peculiarities does not exist. | Noted.  | Public |
| Ministry of Finance of the Republic of Lithuania | General comments | 1. • We support policyholder protection and in order to have the system that works as intended, we think that all risks should be assessed and peculiarities of national insurance markets and their abilities to finance Insurance guarantee schemes should be taken into account.
2. • Consultation paper says that costs of the scheme could particularly be seen as a problem for small and concentrated markets, but no solutions are proposed.
3. • In our opinion more thorough impact assessment of this particular aspect should be performed.

• We encourage to perform analysis on the effect of a new Insurance guarantee scheme to small and concentrated markets and to provide suitable solutions for them. | 1. Noted. An assessment may have to be done once progress is made on the areas for follow-up after the advice is published, such as on funding.
 | 1. Public
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| Ministry of Finance, Czech Republic | 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. | 1. **YES**
2. The Czech Republic is of the opinion that in case national IGS systems are implemented, the legal structure should be left to the discretion of the Member States. However, we do not support the introduction of IGS for the following reasons:
3. 1. Under Solvency II, the solvency limit is set safely. Solvency II significantly improved supervision of insurance/reinsurance undertakings. In case of the proper functioning of the supervisory authorities, insurance/reinsurance undertakings should not suffer from a lack of funding to cover their liabilities.
4. 2. The implementation of IGS would cause other costs for the insurance sector which will be passed on to policyholders. This is connected with a risk of reduced affordability of insurance. There is also a risk of moral hazard, it is necessary to take into account the specific business model of insurance undertakings compared to other sectors.

We prefer that if the supervisory authority identifies a problem with a decrease of the MCR below the lower limit, the insurance portfolio will be transferred. | 1. Noted.
 | 1. Public
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| Ministry of Finance, Czech Republic | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | 1. **NO**

The Czech Republic is of the opinion that in consideration of the cross-border insurance activity growth the upcoming amendment of Solvency II calls for the strengthening of the exchange of information and cooperation among supervisors and EIOPA, while decisions on authorisation, supervision and recovery remain under the home Member State supervisory authority. Sharing information on any deterioration in the financial situation or other emerging risks strengthens consumer protection, which is further supporting argument that the IGSs are redundant. In addition, managing two funds (the National resolution fund and the IGS) could increase costs and complicate the situation. | 1. EIOPA analysed both pros and cons of harmonisation of R&R and IGS and concluded a minimum degree of harmonisation is needed.
 | 1. Public
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| Ministry of Finance, Czech Republic | 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)?  | The Czech Republic decidedly prefers to ensure the continuation of insurance policies. Based on best practice, we prefer early-warning intervention of the supervisory authority and subsequent transfer of the insurance portfolio to another insurance/reinsurance undertaking. Only in unique cases where it would not be possible to transfer the insurance portfolio, the possibility of paying compensation may also be considered. In general, we do not support the introduction of the network of national IGS. In case they would be established we propose to limit them to compulsory liability insurance and life insurance (otherwise there is a risk of moral hazard). However, we need to point out that there is no complete consensus at national level on the scope of insurance which should be covered by the IGS. Should other insurance be covered, it is desirable to limit the coverage to consumers. Further we prefer minimum harmonization.  | Noted, however paying compensation cannot be excluded from the role of IGSs. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| Ministry of Finance, Czech Republic | 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. | 1. **Partly**

As was noted above, the Czech Republic does not support the creation of the IGS network. However, if despite the arguments put forward the IGS network should be created, we clearly prefer to ensure the continuation of insurance policies, for both life and non-life insurance. See above explanation Q3). | 1. Noted.
 | 1. Public
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| Ministry of Finance, Czech Republic | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | The Czech Republic does not support the creation of the IGS network. However, if despite the arguments put forward the IGS network should be createted, we prefer to apply the home-country principle provided that the payment of eligible clients would be ensured by the IGS in the client's home state, but always according to instructions and from the sources of the home IGS; by analogy with deposit insurance, see Article 14 DGSD. This solution is most suitable for persons who suffered any kind of damage in terms of communication, cost and time-consuming process. We do not agree with the compulsory coverage of insurance claims concluded when the insurance /reinsurance undertaking operates in a third country. We also point out that the application of the home-country principle is problematic for some types of insurance (e.g. maritime insurance, which is based on English law and takes into account the custom, so that neither the home-country principle nor the host-country principle can be applied). | Noted. However, the criteria proposed by EIOPA in the Advice should allow to reasonably select the policies to be covered by the national IGSs at a harmonized level. | Public |
| Ministry of Finance, Czech Republic | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 1. • **NO** - if the Czech Republic understands the question correctly, we consider functioning of the host-country IGS as a "front office" for identifying the policyholders and beneficiaries as unnecessary, because the required identification already occurs when the insurance policy is concluded. However, the host-country IGS could assist in identifying whether both insurance and policyholders are a covered by the IGS.

 • **YES** - it is a simpler solution for the insured persons or beneficiaries who do not have to seek redress in the home country of the failed insurance undertaking. | 1. Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.
 | 1. Public
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| Ministry of Finance, Czech Republic | 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? | See above Q5). The Czech Republic does not make any further comments. | Noted. | Public |
| Ministry of Finance, Czech Republic | 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. | Paragraph 149) defines two areas of eligible insurance for which it would be appropriate to be subject to the IGS. The Czech Republic considers this definition sufficient and does not propose an extension to other class of insurance. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| Ministry of Finance, Czech Republic | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See above Q3). | Noted. | Public |
| Ministry of Finance, Czech Republic | Q11) Which criteria should be used to determine/exclude the eligible claimants? | According to the Czech Republic, the definition of eligible applicants is closely linked to the definition of covered insurance contracts. We prefer to limit compensation only to compulsory liability insurance and life insurance. In this case, we also prefer to cover all entities, i.e. consumers and small and large legal persons. We are of the opinion that it is necessary to cover primarily the harm of the persons who suffered any kind of damage, and it should not play a role whether the damage was caused by a small or large undertaking. However, in the case of a broader concept of IGS (compensation of a wider range of insurance), we prefer to limit the compensation only to consumers due to high costs. | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), and also micro-sized legal entities as defined by the European Commission. | Public |
| Ministry of Finance, Czech Republic | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | According to the Czech Republic, the definition of eligible applicants is closely linked to the definition of covered insurance contracts. We prefer to limit compensation only to compulsory liability insurance and life insurance. In this case, we also prefer to cover all entities, i.e. consumers and small and large legal persons. We are of the opinion that it is necessary to cover primarily the harm of the persons who suffered any kind of damage, and it should not play a role whether the damage was caused by a small or large undertaking. However, in the case of a broader concept of IGS (compensation of a wider range of insurance), we prefer to limit the compensation only to consumers due to high costs. | Noted, however, EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | Public |
| Ministry of Finance, Czech Republic | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | As declared, the Czech Republic does not support the creation of the IGS network. However, if despite the arguments put forward the IGS network should be created, we see no reason to implement upper limits of annual contributions (target level) of insurance/reinsurance undertakings to the national IGS. | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| Ministry of Finance, Czech Republic | Q14) What should be the relevant criteria to determine the target level for national IGSs? | Determining the relevant criteria for setting a minimum level of compensation at EU level for different types of insurance is very difficult due to the diversity of offered insurance products, to the different levels of compensation and to the different risks which are covered by insurance.  | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the advice.  | Public |
| Ministry of Finance, Czech Republic | 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 (risk-based, fixed rate, other)? | The Czech Republic is of the opinion that the amount of contributions should be calculated using a fixed rate, while the basis for the calculation of contributions should be the written premium for the calendar year. Other methods create a risk of manipulation of the contribution base and/or are unnecessarily complex. We see no reason to implement upper limits on the annual contributions of insurance undertakings to the national IGS. | 1. Noted. EIOPA believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs to mitigate the risk of overburdening the industry.
 | 1. Public
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| Ministry of Finance, Czech Republic | 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)? | The Czech Republic is of the opinion that the amount of contributions should be calculated using a fixed rate, while the basis for the calculation of contributions should be the written premium for the calendar year. Other methods create a risk of manipulation of the contribution base and/or are unnecessarily complex. We see no reason to implement upper limits on the annual contributions of insurance undertakings to the national IGS. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the Advice. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | 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. | Yes. EIOPA’s efforts should focus on achieving the objectives described in paragraph 72 of the consultation paper. Multiple legal structures could achieve those objectives, and member states should be permitted to choose the legal structure that makes the most sense for them. | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Yes. A harmonized recovery and resolution framework should focus on prompt corrective action and early involvement of the insurance guarantee scheme. An IGS that has been involved in significant insurer insolvencies in its jurisdiction has valuable and often unmatched practical experience with resolutions. For that reason, insurance guarantee schemes can and should play an important role in developing or assessing resolution strategies, and they should be part of or otherwise support crisis management groups and other coordination efforts.  | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | 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. Continuation of policies should be required only with respect to life insurance and certain other long-term contracts.  | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | 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. | Yes. Paying compensation to life insurance policyholders and holders of certain other long-term contracts would provide inadequate protection, as some policyholders might not be able to obtain affordable replacement coverage, while others might not be able to obtain replacement coverage at any price. | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | Based on the experience in the U.S., we believe that it is critical that the geographical scope of the IGSs be consistent among the EU member states. While the host-country approach works well in the U.S., we do not express a view on what would work best for the EU. In the U.S., the life/health and the property/casualty guarantee systems are made up of schemes in all 50 states and territories. Each state’s guarantee scheme is a separate legal entity governed by its own law. The guarantee scheme laws in each state are very similar because they are based on the common model developed by the National Association of Insurance Commissioners. Conceptually, there are three different levels at which the home/host question must be answered: financial supervision, insolvency administration, and guaranty scheme protection. In the U.S., financial supervision and insolvency administration are handled by the home state, pursuant to laws and procedures that do not vary materially by state. Guaranty scheme protection is handled by the host state, again pursuant to laws and procedures that do not vary materially by state. More specifically, protection for consumers generally is provided by the IGS of the state where the consumer resides or, in the case of property insurance, where the property is located. Each IGS responds to an insolvency by paying claims of the residents of that IGS’s state, regardless of where the failed company may have been domiciled, regulated, or placed in resolution proceedings. There are two reasons for this host-state approach for IGS protection in the U.S. First, it eliminates (for the most part) coverage mismatches across jurisdictions. Second – perhaps more important – it vastly enhances the financial capacity of the entire IGS system.  | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | 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. | Based on the experience in the U.S., we believe that it is important to have minimum harmonization regarding products that will be covered by IGS protection. In the U.S, both life and non-life products are covered, including at a minimum:* Life, Health, Annuities, Supplemental contracts to any of these

Personal injury, Property damage, Workers compensation | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Traditional life and fixed annuity products, health, accident, fire, homeowners’ insurance, and mandatory insurance should be covered. Policies (or portions of policies) that are not guaranteed by the insurer and as to which the purchaser agrees to bear risks of market fluctuation or investment failure should not be covered. | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | To promote consumer confidence in the insurance industry, we think minimum harmonization of minimum coverage levels makes sense, although we do not have an opinion on what those minimum levels should be for the EU. For perspective, in the U.S., most life/health IGSs provide coverage at limits of at least $300,000 for life insurance death benefits, $100,000 for life insurance cash surrender values, $250,000 for annuity withdrawal or payment values, and $500,000 for most health insurance benefits. Most non-life IGSs provide coverage on a per-claim basis for personal injury and property damages up to $300,000, provide full benefit coverage for workers' compensation claims, and provide for premium refunds. | Noted. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | Minimum harmonization with regard to funding is not required to achieve the objectives described in paragraph 72 of the consultation paper. As the consultation paper has recognized, there are pros and cons of both ex ante and ex post funding. These pros and cons have been more fully described in papers issued by the IAIS (Issues Paper on Policyholder Protection Schemes, para. 41-48) and the OECD (Policyholder Protection Schemes: Selected Considerations, pg. 32-34). Those papers do not recommend any preferred funding approach. We do not believe that the EU should prescribe the timing or form of funding, but instead should allow each EU Member State to determine the funding that best matches its system on insurance solvency supervision. [See appendix A for information on U.S. IGS funding.] | EIOPA takes note of the comments and understands that some flexibility is needed in terms of timing of funding under a minimum harmonisation approach. In EIOPA’s view, this flexibility is already included in the current drafting. EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | 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 (risk-based, fixed rate, other)? | Contributions should be left to the discretion of each Member State and will depend in part on the funding mechanism in that State. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | 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)? | Contributions should be left to the discretion of each Member State and will depend in part on the funding mechanism in that State. | Noted, however EIOPA is in favour of a certain level of ex-ante funding, complemented possibly by ex-post funding. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.Furthermore, As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the Advice. | Public |
| National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) & National Conference of Insurance Guaranty Funds (NCIGF) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | In some states in the U.S., agents and insurers are prohibited from using the existence of the IGS to sell insurance. | Noted. EIOPA stresses that the information should not be used for marketing purposes. | Public |
| PIU – Polish Chamber of Insurance | General comments | **PIU – Polish Chamber of Insurance opposes an EU initiative on IGS. In PIU’s opinion the reasons stated below, justify to keep status quo.**Any form of the minimum harmonisation would create significant costs and cause complex obstacles which may be very difficult to overcome. In contrast to other financial sectors insurance products are a kind of social agreement based on the principle of pooling and distribution of funds necessary to cover the effects of the accidents. This social aspect is based on commonly agreed set of rules which are defined in the civil law, which is not harmonised at the EU level. This is one of the reasons for which differences in products offered exists, and consumer expectations vary.Moreover in case of insolvency affected number of policyholders is considerably smaller in relation to the total insured portfolio. 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.Any future proposals should take into account differences in the level of development of insurance markets in the EU as well as different market structures. Since European Commission White Paper on IGS most of the Member States already have created an IGS based on the local market structures and the market needs. Since 2016 Solvency II enhanced the level of policy holder protection and supervisory cooperation, as well as together with EIOPA Regulation granted the European Supervisory Authority the additional powers to ensure consistent supervisory outcomes across the EU. In the opinion of PIU, a lot has already changed and any policy proposal should recognise already made improvements to the system.Looking at the history of the EU insurance market, there were very few failures of the insurance companies and even fewer resulting in any losses for policyholders. Insurers didn‘t need to benefit from government support, and well none problems of only some insurance groups were not originated from the insurance activity. The Solvency II ensures that those situations will be even less likely.PIU is very supportive to the EIOPA activities aiming at consistent application of the EU law and bringing the EU supervision to higher level. Establishment of the common EU supervisory culture already enhanced the functioning of the EU insurance industry. PIU encourage EIOPA to continue the ambitious Supervisory Convergence Plans leading to the situation in which:* insurance providers act honestly, fairly and professionally in the best interests of policyholders and beneficiaries,
* laws and regulations are interpreted in the same way across Europe,
* policyholders and beneficiaries have a similar level of protection wherever they are based in Europe.

The above can be achieved only by ensuring an effective and consistent level of supervision within the EU. Adequate prevention is a prerequisite of the solid insurance system and is much efficient than any measure afterwards.Therefore any policy proposal should be outcome based, and recognition of the already existing safeguards in the Member States should be recognised.Many European insurance markets are highly concentrated, it seems to be unfair to ask the insurance companies to fill IGS funding gaps in the case of a large insurance company’s collapse. Such a funding issue would create interconnectedness between insurance companies and create systemic risk. In PIU opinion, concentration on the polish and other UE markets is a huge barrier to creation of centralised funds. Especially in case of those markets, in-house funds may be a much more viable option than the creation of centralized fund.However, in case the EU regulators insist on taking the path of the minimum harmonisation, PIU provides the following view (without prejudice to the positions set out above):* **The discussion on IGS should not be done in separation** – it requires strategic and holistic analyses of the strengths and weaknesses of the whole system which should be supported by the in depth analyses of the costs embedded in different policy options.
* **IGS should function as a last resort measure** – that means that the role of the IGS should not be prevent the company failure and there should be no role in recovery and resolution process in order to avoid the breach of the state aid rules.
* **Home responsibility for funding is key due to the way mechanisms for supervision of the FoS business in designed at the EU level**. The option of host country providing the “front office” customer interface should be considered as it serves the best the consumers and assists in building the trust to the insurance market as a whole. However, while implementing such option regulators will have to go through the challenges which might be difficult to overcome at the EU level.
* **Any minimum harmonisation should only cover consumers, namely natural persons**. Widening the scope at the EU level may result in unjustified costs, which might be difficult to accept especially at the markets with a very low insurance penetration rate.
* **In terms of financing ex-ante funding definitely should not be imposed**. Moreover the absolute caps on insurers’ contributions to an IGS would be needed to be established in order to avoid the situation in which the customers of the other remaining insurers in the market contribute significantly to the system which they would not contribute otherwise.
* **The enhanced information sharing and collaboration between home and host supervisors (especially on FoS-related issues) should be established**, and that it cannot be replaced by the establishment of any minimum harmonisation of IGS.
 | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Nevertheless, further work is still required in different areas. This may be taken into account in the next steps.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored. | Public |
| PIU – Polish Chamber of Insurance | 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. | PIU believes that the Member States are in the best position to design the IGS features that suit their market reality. The key arguments for that solution are the differences in product lines based on historical development of the each insurance market, different consumer expectations, and different law especially in the area of civil law, insolvency law, etc. | Noted. | Public |
| PIU – Polish Chamber of Insurance | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | In PIU opinion it is difficult to design the proper safety level for the IGS without designing the EU regime for recovery and resolution in insurance sector nor with recognition of the enhanced safety embedded already in the Solvency II regime. Therefore, before the discussion of the proper design of the IGS at the EU level, PIU calls for the in depth analyses of all the elements of the system and recognition of the interlinkages between different elements of the system (namely between the safety embedded already in SII regime, IGS, recovery and resolution measures, and supervisory convergence at the EU level). Otherwise, PIU warns that the system would be very costly, which would not have a positive impact on the consumers which was an initial intention of EIOPA and the European Commission.  | Noted. | Public |
| PIU – Polish Chamber of Insurance | 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)?  | PIU aggress that especially in case of the life insurance policies the portfolio transfer and continuation of the policies is in the best interest of the policyholders. Nevertheless, PIU would like to highlight that the role of the IGS should be limited to provide compensation to policyholders for their losses in liquidation.Any potential use of IGS as a tool to ensure the continuation of the insurance policies will change the role of the IGS. PIU believes that other parts of the system should facilitate an efficient run-off of an insurance portfolio in the interest of the policyholders, and timely supervisory intervention is key to that. | EIOPA’s view is that IGS should help ensure the continuity of insurance policy. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice. | Public |
| PIU – Polish Chamber of Insurance | 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. | In general continuation of the policies might be the best option from the policyholders perspective, however it might be extremely difficult to find another insurer willing to take over the portfolio of the failed insurer, if the supervisor do not act timely. If the risks embedded in the portfolio are significant resolution mechanisms should be considered in order to transfer the portfolio which in normal conditions would jeopardise the financial soundness of the insurance company that took over the portfolio. That is why, PIU believes the discussion about the designing the IGS should be done jointly with the discussion about the SII review, recovery and resolution. In addition the safeguards already embedded in the system of supervision of the insurance sector should be recognised.  | Noted. | Public |
| PIU – Polish Chamber of Insurance | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | Financial supervision in Europe is designed on the home-country base. According to article 30 of the SII directive the financial supervision of insurance and reinsurance undertakings, including business under FoS and FoE, is the sole responsibility of the home Member State. Therefore it is evident that it must be the responsibility of the home Member State to deal with the consequences of an insolvent insurer, regardless where it was conducting the business.The challenge with this solution however remain how to facilitate the communication between the client and the relevant IGS in case they are not in the same country. PIU believes that is such case host country should act as a “front office”, especially in providing to the consumer assistance in communication in local language, and in ensuring that all customers within one country are treated equally. | Noted.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| PIU – Polish Chamber of Insurance | Q6) Specifically, should the following options be added to the principles of the home-country approach: * the possibility 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”)? | Defining a role of IGS as a „front-office“ is PIU’s preferred option, however 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”) would be difficult to apply in practice due to the lack of harmonisation of the relevant laws, differences in product lines, etc. That is exactly why PIU believes that further we go into the details of the minimum harmonisation we will find the obstacles which are difficult to overcome.There is no optimal solution to that. However, the principle should remain that the home country provides all the funding, and host country only assist in the process and facilitate the proceed to the consumer. Minimum harmonisation may envisage bilateral agreements between the IGS in all EU countries, based on their experience with cooperation with each other. | Noted.As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| PIU – Polish Chamber of Insurance | 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. | Any approach to selection of the eligible policies should be preceded by the examination of the relative importance of different products to the policyholders. Due to the ways insurance markets developed in different Member States it would differ significantly. PIU regard this aspect as another obstacle to the minimum harmonisation of IGS. Therefore, if a minimum harmonization is chosen, the product scope should be kept very limited, and flexibility should be ensured for the Member States to design the IGS in such a way that fits best to the local market. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| PIU – Polish Chamber of Insurance | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | Due to the reasons explained above, PIU is not in position to endorse a minimum harmonisation on any type of product at the EU level. At the EU level products differ significantly as well as the value they bring to the policyholders. For example depending on the pension system, the role of life insurance is very different in the EU Member States. The pension security systems are out of scope of the EU Treaty.In case of unit-linked life insurance, the investment risk is borne by the policyholder and the insurance company does not provide any guarantee. Anyway, in case of insolvency, the units which belongs to the policyholders cannot be used for the liquidation of an insurer.„Social hardship“ criterion provided by EIOPA has different value for different Member States as it works better in Member States where the insurance policies replace state-based pension and/or health care systems.For occupational pensions early payment is prohibited or discouraged by fiscal and/or social legislation, which put into question its relevance.Non-life contracts are usually one-year policies and consumer can easily switch from the insolvent insurer to another insurer more or less on the same price. 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. | See previous reply. | Public |
| PIU – Polish Chamber of Insurance | Q11) Which criteria should be used to determine/exclude the eligible claimants? | IGS should cover only the natural persons, otherwise it would be to the detriment of a fast and effective settlement of consumer claims which would be contrary to the initial goals. In contrast to consumers, legal persons can more easily assess their chosen insurers, seek professional advice and guide themselves by ratings. Therefore in PIU opinion, the scope for eligible claimants should not be extended mainly due to administrative and financial reasons.  | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| PIU – Polish Chamber of Insurance | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | IGS, especially in case of minimum harmonisation at the EU level, should only cover consumers (natural persons). | Noted. See previous reply. | Public |
| PIU – Polish Chamber of Insurance | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | In case of minimum harmonisation, PIU believes that Member States should be obliged to introduce 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. Absolute caps on total contributions should protect the customers of the other remaining insurers in the market from excessive costs embedded in the system.  | EIOPA is not against compensation limits/caps.However, they need to be carefully designed. EIOPA is of the view that Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered.For other policies, the maximum coverage in terms of a percentage cap could apply. | Public |
| PIU – Polish Chamber of Insurance | Q14) What should be the relevant criteria to determine the target level for national IGSs? | PIU believes that decisions on IGS funding should be subject to consultation with local stakeholders and reflect the market reality. Funding model should reflect the market structure and for this reason it should be left to the Member States discretion.In the consideration on ex-post vs ex-ante funding, PIU is in favour of ex-post funding. Ex-post approach ensure contributions from insurers only if there is a failure, and insurers have more funds at their disposal which can be invested in the interest of the insurer and its policyholders. Ex-post approach reduces management costs and avoids investment risks. Moreover, any contributions to the IGS will be computed according to outstanding claims, therefore there is no justification to hold more in the fund. With ex-post funding, a certain amount of liquidity is needed on a rather short-notice and it should be reflected in the insurers investment policy, yet there is no risk that funds are not used exclusively for the defined purposes of the IGS. Insurer failures do not result in the sudden calls on funds like in a banking sector, therefore ex-ante funding seems not to be justified. Moreover, in concentrated markets, realistically the IGS will only be able to protect consumers from the failure of small insurance companies. A failure of a large insurer would require state assistance in order to protect consumers effectively. Lack of state assistance would weaken the financial condition of other insurers on the market and would expose their policyholders to risk.  | EIOPA’s view is that some level of ex-ante funding is required in order to ensure funding is available in a timely manner to meet a call on the IGS. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.EIOPA recommend that the structure and governance of the funding arrangements are left to Member State discretion.As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| PIU – Polish Chamber of Insurance | 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 (risk-based, fixed rate, other)? | The contribution basis is strongly linked to the funding model, which in PIU opinion should be left to the Member States.The introduction of limits (see Q13) in insurers’ contributions should preclude any further power of the IGS to require additional contributions from the industry.  | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.EIOPA also believes that it’s necessary to consider the introduction of harmonized upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs to mitigate the risk of overburdening the industry.  | Public |
| PIU – Polish Chamber of Insurance | 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)? | PIU call for the introduction of upper limits to the annual level of contributions to the IGS and we believe it should be done at the national level. (see Q13). The existence of upper limits would preclude the contagion risk to the rest of the industry. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| PIU – Polish Chamber of Insurance | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | In PIU opinion policyholders should be clearly informed what are their compensation rights. Such requirement already exists in PRIIPs regulation. At the same time, this should not result in an information overload for consumers, as it would be in contradiction to the disclosure goal. Any type of advertising of IGS should be prohibited.  | Noted. EIOPA stresses that the information should not be used for marketing purposes. | Public |
| PIU – Polish Chamber of Insurance | 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, please also refer to Q4 and Q5)? If so, what are those? | PIU believes that first of all information and experience exchange as well as enhanced cooperation between home and host supervisors is a prerequisite for the proper functioning of the freedom of services and freedom of establishment. That cannot be replaced by the establishment of any scheme.Moreover, it is the reason for which we believe that in order to design the way the safety is embedded in the insurance system, EU regulators need to reflect on all elements of this system. EU approach to IGS cannot be designed without the designing the recovery and resolution mechanism relevant for insurance, as well as recognition of the safety already included in the Solvency II system and recognition of the differences deriving from different business models within the financial sector.  | Noted. | Public |
| Polish Insurance Guarantee Fund (UFG) | 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. | 1. Yes. Polish Insurance Guarantee Fund (hereinafter:UFG) believes that decision on the legal structure of insurance guarantee schemes (hereinafter: IGSs) (i.e. whether IGSs should be public, private or mixed entities) should be left to the national legislators of the European Economic Area Member States (hereinafter: EEA Member States).
2. Concurrently, the UFG considers that it would be properly if IGSs, within the hypothetic future directive on IGSs, would be defined as formal institutional bodies/institutions instead guarantee mechanisms/arrangements without institutional formal form. It seems to us that in order to ensure the most effective system to guarantee insurance, the most preferably would be a solution based on a net of national institutional IGSs in every EEA Member State, which mutual relations on operational level, would be regulated under the relevant agreement on cooperation rules and potential costs reimbursements between them.

  | Noted. | Public |
| Polish Insurance Guarantee Fund (UFG) | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | 1. UFG supports solutions, which lead to the fact that national IGSs from EEA Member States, on the basis if minimum standard provided for in a hypothetic future directive on IGSs – on the one hand would be paying out compensations and benefits in a situation of insurance undertakings’ insolvencies, on the other hand would ensure continuation of certain insurance contracts, at least in a situation of insolvency threat of insurance undertakings. However detailed arrangements/recommendations in what circumstances continuation of insurance contracts should be executed (ex. whether only in case of insolvency threat or following insolvency declaration of the insurance undertaking in question etc.), which entity should it execute/carry out (ex. directly IGS, specially dedicated bridge insurer, the undertaking taking over the portfolio, the undertaking in question etc.), what should be the role of IGS in this arrangement (ex. exclusively financing of this mechanism, whether also its promotion etc.) and other aspects – all this should be left to the decision of national legislators from EEA Member States.
2. However the UFG is against, to fix on EEA level (i.e. on the level of the respective directive) IGSs or other institutions equipment with a tools of resolution body as well as recovery and resolution. It seems to us, that it is better to decide to leave this issue to the decision of national legislators from the EEA Member States. Hypothetic effects of such a regulation on a directive level would have to be thoroughly analysed.
 | No change needed. EIOPA argues in its advise that, in order to achieve harmonisation of policy holder protection, not only IGS should be harmonised (to some extent), but also recovery and resolution regimes.  | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | 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)?  | 1. UFG supports solutions, which lead to the fact that national IGSs from EEA Member States, on the basis if minimum standard provided for in a hypothetic future directive on IGSs – on the one hand would be paying out compensations and benefits in a situation of insurance undertakings’ insolvencies, on the other hand would ensure continuation of certain insurance contracts, at least in a situation of insolvency threat of insurance undertakings. However detailed arrangements/recommendations in what circumstances continuation of insurance contracts should be executed (ex. whether only in case of insolvency threat or following insolvency declaration of the insurance undertaking in question etc.), which entity sould it execute/carry put (ex. directly IGS, specially dedicated bridge insurer, the undertaking taking over the portfolio, the undertaking in question etc.), what should be the role of IGS in this arrangement (ex. exclusively financing of this mechanism, whether also its promotion etc.) and other aspects – all this should be left to the decision of national legislators from EEA Member States.
 | Noted. EIOPA’s advice is to provide minimum common principles for harmonisation. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | 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. | 1. As for principle, UFG agrees with the statement, that hypothetic process of payment the compensations and benefits should be preceded by the continuation of insurance contracts arrangement. In case of life policies this is justified, having in mind the role of these insurance (also to secure retirement risk) payment of benefits would rather consist in premium refund/reimburse, which would turn out nonsufficient for policyholders, to conclude a new-subsequent insurance contract (i.e. due to higher age, worse health state, greater risk for new insurance undertaking and as a consequence higher premium needed for policyholder to be able to find insurance). It is also to have in mind that life policies more frequently constitute an important element of retirement security.

It also seems to us, that continuation of contracts arrangements should also be applied in case of compulsory insurance contracts just due to their obligatory nature. The insureds should have better protection level due to earlier obliging the to conclude compulsory insurance contract and the victims/injured parties should have the guarantee of dealing with their claims (since the state regard this insurance as needed, this is in order to ensure protection to the victims/injured parties). This is completely different situation from the one in which policyholder freely/voluntarily/autonomously takes decision wheter in certain parts of his/her life he/she should insure himself/herself or not. According to UFG, health insurance products should be included within this scope as well.1. Nevertheless UFG believes, that national legislators EEA Member States should have discretionary powers afforded, whether in a given circumstances it is better to apply the mechanism of payment the compensations and benefits or continuation of insurance contracts arrangement.

  | Noted. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 1. In order to implement into force the principle of Home State effectively, it is needed to harmonize national regimes in scope of insurance undertakings insolvencies. It has been already proved through number of cross-border insolvencies (i.e. hereinaster: freedom of eastablishment – FOE and freedom of services – FOS). For instance, while in one state (ex. Home Member State) IGS is entitled to intervene immediately following the first declaration of insolvency of insurance undertaking, while in another one (ex. the Host Member State), the IGS intervention may commence only when the insolvency declaration of insurance undertaking is final (i.e. following court proceedings of the last intance). This in turn has direct influence that even in case of insolvency the same insurance undertakings, situation of different insureds/beneficiaries etc. may differ in a different EEA Member States.
2. Furthermore, for effective implementation into force the principle of Home State, it is needed to have the relevant technical-operational agreement regulating cooperation rules between IGS of the EEA Host State wi Home EEA Member State in case of FOE/FOS insolvencies. IGSs from Host EEA Member State in a first step/stage should satisfy the claims of entitled parties (ex. policyholders, insureds, victims, beneficiaries) in order to ensure, more effective, smooth and direct compensatory proceedings regarding entitled parties in their own language, but in a second step/stage IGSs from the Host EEA Member States should receive the final return/reimbursement of the costs from the relevant IGSs of Home EEA Member States of insolvent insurance undertakings.
 | 1. EIOPA is of the view that the implementation of the Home country principle does not strictly depend on the harmonization of the national insolvency regimes.2. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 1. UFG supports the solution/arrangement, that although the general binding rule of the IGSs functioning under the hypothetic future directive on IGSs should be based on principle of the Home State – at the same time this is IGS from the Host EEA Member State which, according to UFG’s position, should play the function of operational entity (i.e. “front office) during verification and identification of the policyholders/insureds and beneficiaries concerned/in question.

UFG supports the solution/arrangement that although the general biding rule of the IGSs functioning under the hypothetic future directive on IGSs should be based on principle of the Home State – at the same time this is IGS from the Host EEA Member State which in the first turn/stage/step, according to UFG’s position, should make payments of compensations and benefits to the insureds and beneficiaries (in their state of residence), and then has the obligation to institute recourse for costs refund/reimbursement against the IGS from Home EEA Member State (“back office”) of the insurance undertaking.  | 1. Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.
 | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | 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? | 1. The principle of Home State should be binding, according to which – the final costs of insurance undertaking’s insolvency should be borne by the respective Home EEA Member State of that undertaking. According to UFG, there are no any specific cases, for which the principle of the Host State should be preffered/favoured (including detailed comment presented in the current UFG’s reply to this EIOPA Consultation Paper in point 2 on question no 9 below).
 | Noted. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | 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. | 1. According to the paragraph 149 mentioned in this question, this is EIOPA’s position which policies (i.e. taking into account the kind of policies ex. life, compulsory etc. as well as including categories of entities/subjects protected by IGSs ex. natural persobs, legal persons etc.) should be protected by IGSs on the basis of minimum standard principle on the level of EEA Member States. EIOPA advises, that at a minimum, the following lines of business should be captured:
* policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries;
* lines of business with a high market share in cross-border business in Europe.
1. UFG supports the solution/arrangement consisting in the fact, that in general life, health, compulsory insurance products (especially including the ones with the common nature) should be protected by national IGSs as harmonized mnimum EEA standard:
* As for life policies – it is justified due to the fact that the whole Branch I has voluntary nature. Thus, in case of life assurrer’s insolvency, it is extremely important to keep the insurerds/beneficiaries trust tot he insurance sector. Otherwise, in future they may be reluctant to allocate their savings in insurance products. Probability of realisation such a scenario can be even greater, taking into account, that banks‘ deposits (being directly – the closest competition for life policies), are already protected on the EEEA level in a form of banking guarantee funds in a situation of banks‘ insolvencies.

Moreover, life policies with long-term nature constitute in a many of EEA Member States a significant savings component for old age (element of social/retirement security).Perhaps, to exclude from the coverage life policies more dedicated for short-term hypothetic profit than an instrument of longterm saving, the minimum period of insurance contract conclusion should be considered, as the premises fort he IGSs‘ intervention., It seems, that such a lower limit coould be an indication in a general insurance cnditions/terms of a given insurance contract, that it is concluded fort he period of at least 5 years. * Health insurance provide financing of healthy benefits and are connected with very sensitive/delicate sphere/aarea. Furthermore we do observe moving funding of healthy benefits from public means towards funding made from private benefits plub in general increasing role of these insurance.
* As regards compulsory insurance in a Branch II of non-life insurance (specifically with common nature) – the importance and obligatory nature of these products should be strenghtened through ensuring policyholders/insureds/victims/injured parties etc. that even during financial turbulences (understood as insurers‘ insolvencies) – they will be financially protected by IGSs. This is all the more important, that in the most cases compulsory insurance contracts constitute third party liability contracts (hereinafter: TPL insurance). Thus in case of causing bodily injury or damage to property, the person liable (usually being in this particular case, the policyholder/insureds within the scope of a given compulsory TPL isurance in an insolvent insurance undertaking) – hast o be prepared to meet/satisfy the reasoned/justified claims of the third parties victims/injured parties. Thanks to IGSs, third parties victims/injured parties have the possibility to have their claims satisfied even in a situation, in which the person liable is not able (due to lack of financial means) to meet/satisfy these claims and his/her respective insurance undertaking is being in an insolvency state/proceedings.
 | EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries.Compulsory insurance is also considered in the Advice. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | 1. UFG is of the opinion, that if hypothetic future directive on IGSs constitute that protection/coverage of national IGSs from EEA Member State should include life, health and compulsory insurance – perhaps it would be worthwile to consider creation an exhaustive list with the indicated certain insurance lines on the level of directive on IGSs to be included in IGSs protection/coverage. Otherwise it could be difficult which compulsory insurance should be protected. For instance in a EEA Member State X, there can be 2 common compulsory insurance and 15 compulsory non-common insurance.

Exhaustive list with indicated names of compulsory insurance in the meaning of the directive on IGSs will mean, that a single common for all EEA Member States minimum list of compulsory insurance exists. Any EEA Member State however would be entitled to develop the list concerned/in question (please see the comment in point no 2 to this question below).1. As regards incoming FOE/FOS from other EEA Member States (Home States) operating in a given individual EEA Member State (Host State), it should be considered whether a given/individual insurance is compulsory is compulsory in an EEA Member State of provision the services (i.e. in a Host State – then an equal treatment of policyholders/insureds/victims/injured parties etc. is ensured in the territory of that state). If so, IGSs from the Host State would meet/satisfy the reasoned claims in the first turn, but then the IGS from the Home State of the insolvent undertaking, would carry out final costs refund/reimbursement.

Having above in mind, perhaps in the directive on IGSs a provision should be inserted about the periodical (ex. once a year) providing the information to the European Commission or EIOPA with listed compulsory insurance in a its own particular/individual EEA Member State. The summary/aggregated list of all compulsory insurance in each particular/individual EEA Member State would be constantly presented on a EC’s or EIOPA’s website in a publicly non-restricted part easy accessible for all interested parties. Thanks to such an approach, IGSs from the Home EEA Member States would be able to verify and check wether a given insurance is compulsory in a given Host EEA Member State (which would constitute then a basis for making future refundation/reimbursement).1. The analogous comments as referred to in points 1 and 2 to this question above, are presented by UFG to the proposals of EIOPA in abovementioned par. 149.
2. Moreover UFG would like to draw attention, that for the time being, it seems that the issue of motor third party liability insurers’ insolvencies (hereinafter: MTPL insurers’ insolvencies), will be regulated in future in amended motor insurance directive (hereinafter: MID). Therefore it is justified to put a provision in a hypothetic directive on IGSs directly and clearly indicating, that in case of MTPL insurers’ insolvencies, the MID constitute lex specialis.

However, if MTPL insurers’ insolvencies is not finally regulated in a future ammended MID or is only partly regulated (ex. exclusively regarding FOE/FOS insurers but without purely domestic insolvencies) – thus the hypothetic future directive on IGSs, should include, in the respective/relevant scope, MTPL insurance contracts as well.1. As regards insurance of Branch I, UFG is of the opinion, that having in mind their massive scale, the coverage/protection of national IGSs in EEA Member States pursuant to the EEA level minimum requirement, should at least include claims from line no 1 (life insurance) and line no 3 (i.e. so-called unit-links). Perhaps it would be worthwile to introduce a minimum limit for the period for which they ensure insurance protection, for the purposes of clear division of short-term life policies and real long-term (with savings nature) life policies.
2. Health insurance play important functions increasingly replacing financing of health benefits from the public means.
3. As regards insurance of Branch II, according to the UFG estimation, taking into account their obligatory nature, directive on IGSs should provide for the intervention of IGSs in EEA Member States (based on a harmonized minimum standard) also in case of compulsory insurance (especially having a common nature).
4. Summing up, having above in mind, UFG advocates/recommends, that directive on IGSs should oblige the national legislators of EEA Member States, to make national IGSs obliged to ensure coverage/protection at least in the scope of given life, health and non-life (compulsory) policies.
 | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the Advice.Compulsory insurance is also considered in the Advice. | Public |
| Polish Insurance Guarantee Fund (UFG) | 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. | No. Individual national legislators from EEA Member States may provide for in its national law a greater role for he IGS (ex. coverage of all life and non-life policies). However, it should be taken into account that, within directive on IGSs, there should be binding the principle of minimum standards throughout the whole EEA territory. In accordance to our position, a special treatment of the selected life, health and non-life (compulsory) policies results from their social and systemic importance. | Noted.  | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q11) Which criteria should be used to determine/exclude the eligible claimants? | 1. UFG believes, that national IGSs from EEA Member States, should at least ensure protection for the insureds/beneficiaries/victims/injured parties etc. being natural persons or natural persons conducting business activity. According to us, the IGSs protection should be dedicated to the weakest parties of insurance contract. It should also include IGSs financial capacity as well as the entities/subject financing them. Bigger policyholders may easier and in a more professional way conduct the process of financial analysis of a given insurer, for instance via the use of insurance brokers services, which in their name will verify financial situation of a given insurance undertaking, already before taking decision by them to conclude insurance contract.
2. Simultaneously, the UFG considers, that legal persons should be excluded from the IGSs coverage (with the only exception of the natural persons conducting busieness activity) as well as natural persons, which played an important function in the insolvent/failed insurance undertaking before declaring this state of play (i.e. they were the member of Supervisory Board, Executive Board, director or manager bearing responsibility for operational activity of this undertaking, thereby bearing in a greater or lesser extend the responsibility for insolvency of this undertaking).
 | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| Polish Insurance Guarantee Fund (UFG) | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | UFG is of the opinion, that IGSs coverage should also include final beneficiaries/victims/injured parties etc. if they are natural persons or natural persons conducting business activity. | Noted. EIOPA’s advice clarifies that the related policyholders and beneficiaries in case they are natural persons, should be covered. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | 1. UFG is in a position that as regards compulsory, IGSs should ensure coverage in 100% up to the limit of guarantee amount or the sum insured.
2. As regards life insurance, according to UFG, the minimum limits for IGSs should be correlated with the minimum limits introduced for banking guarantee funds. Currently, in line with the minimum EEA standards (directive on deposits guarantee) – in case of banks’ insolvencies, national banking guarantee funds are obliged to safeguard protection to deponents’ deposits in 100% at least up to 100 thousands EUR in a given bank, no matter how many accounts are opened in this bank by this deponent. Therefore in order to keep level playing field of life policies having savings’ nature – IGSs in EEA Member States should apply the analogous level of limit.
3. As regards health insurance – decision on the extent/level of the IGS’ coverage should be left to national legislators in a given EEA Member State, taking into account the fact, that these insurance are playing a different function in relation to the health benefit from public means.
 | EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. According to UFG, the term of upper limit of means collected on the IGSs accounts, should be described in a directive on IGSs.
2. It seems, that in case of hypothetic future directive on IGSs, criteria of fixing the upper limit of means collected on accounts (i.e. target level) for national IGSs in EEA Member States, at least during the first period of the functioning of the directive (ex. for the period of 5 years) – should be left to the decision of national legislators of EEA Member States. For the time being, according to us this issue is too detailed and technical for the level of directive. Moreover each EEA Member State has its own specificity, ex. there is different level of market concentration in a given states. Therefore it is justified that the maximum level of financial means to be collected on the IGSs accounts, should be different in individual states (i.e. the lower limit of target level on a more distracted markets and the higher limit of target level on a more concentrated markets).
3. However if finally decision was taken, that within directive on IGSs, it should be taken into account also the issue of criteria of fixing the upper limit of means collected on accounts (i.e. target level) for national IGSs – thus, according to us the capacity of collected financial means and yearly financial burdens on insurance undertakings should be correlated with the gross written premium. This is the case in the most EEA Member States, which have already implemented a mechanism of a target level. By the way, in a White Book on IGSs from 2010, the EC reccomended that national IGSs in EEA Membar States should collect financial means up tot he limit of 1,2% oft he gross written premium by way if unsurance lines covered. Simultaneously it was provided for 10-years of transitional period with a maximum burden fixed oft he respective undertakings on the level of 0,12% oft he gross written premium.

Perhaps it should be précised, whether abovementioned target level should be applied both to the means of IGSs for payments the compensations and benefits as welll a continuation of insurance contracts, whether separately.1. In future, mechanism of a target level perhaps should be correlated with the commitments level (technical provisions). For instance, directive on guaranteing deposits 2014/49/EU constitute that available financial means of banking guarantee funds should at least correspond to the target lelvel amounting to 0,8% of the level of amount of guaranteed deposits, the member of that system. However it should be taken into account, that this arrangement was implemented on EEA level, only following 20 years of the functioning of directive on guaranteeing deposits in its original shape.
 | As part of the follow-up work, EIOPA may further assess the funding issues, such as developing an appropriate target level for ex-ante funding or developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the Advice. | Public |
| Polish Insurance Guarantee Fund (UFG) | 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 (risk-based, fixed rate, other)? | 1. UFG is of the opinion, that undertakings’ contributions to the IGSs should have ex ante nature, and if there is a need to organize further means they should also have ex post nature. Thus on the one hand the permament form of means collection would be ensured to the IGSs account if there is of necessity to use them, but on the other hand if they turn out to be insufficient, then the respective insurance undertakings would be obliged to pay an additional ex post contribution.

It seems, that directive on IGSs should advocate/recommend mixed contribution (ex ante – ex post) as the most balanced and fair. 1. According to UFG, on the one hand in order to lower burdens connected with IGSs by individual undertakings, on the other hand to increase their financial capacity in the situation of turbulences on a market, the hypothetic future directive on IGSs should advocate/recommend also other funding/financing sources (ex. internal repayable loans up to certain level within different accounts opened by a given IGS, or a public support).
2. According to UFG, the method of contributions calculation should be left to the decision of national legislators from EEA Member States. Based on their experiences from a given market, its concentration state, so far adopted rules of IGS funding, the level of estimated liabilities/commitments – in a greatest extent national legislators will be able to recommend:
* the most effective method of contributions calculations for insurance undertakings on this market (ex. based on technical provisions of the sector, gross written premium, gross earned premium etc.),
* maximum permissible yearly % level and/or amount level per insurance undertaking.

However if finally turns out that the option will prevail to regulate abovementioned issues (moreless connected with the mechanism of contributions’ calculation) on the level of directive on IGSs – thus UFG supports the simpliest, most common calculation mechanism: fixed contribution on a certain % level for all undertakings based on gross written premium. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. The IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. In order to avoid the risk of contagion the ex-post fund raising should be constrained. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards. | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | 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)? | The analogous reply as of in reply to the abovementioned question no 15.  | Noted.  | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | 1. UFG supports a solution/arrangement that hypothetic future directive on IGSs should impose an obligation on national legislators from EEA Member States to provide for that national IGSs and insurance undertaking should conduct disclosure and transparent policy in order to ensure information for natural persons and legal persons conducting business activity and using different insurance products, whether and in what extent a given insurance product (coverage limit) is included under the IGSs protection.
2. In particular, the reference point while constructing the minimum standards in this scope for hypothetic future directive on IGSs, should be the article 16 of directive on guaranteeing deposits (i.e. on banking guarantee funds) 2014/49/EU as well as article 8(3) of the Regulation on the development of documents containing key information about the packaged retail and insurance-based investment products (so-called PRIIPs Regulation).
 | Noted, no change needed.  | 1. Public
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| Polish Insurance Guarantee Fund (UFG) | 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, please also refer to Q4 and Q5)? If so, what are those? | UFG considers that especially in the context of FOE/FOS insurers, for the purposes to ensure an exchange of information needed as well as smooth payment of compensations and benefits (and mutual financial of making the costs settlements/refundations/reimbursements) – formal mechanisms/arrangements of cooperation and coordination between IGSs from EEA Member States should be established. | Noted. | 1. Public
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| Skandia Mutual Life Insurance Company | General comments | Skandia Mutual Life Insurance Company[[4]](#footnote-4) (hereinafter “Skandia”) is a member of Insurance Sweden[[5]](#footnote-5) and agrees with the comments made by Insurance Sweden and Insurance Europe on EIOPA's Consultation Paper on Proposals for Solvency II 2020 Review ̶ Harmonisation of National Insurance Guarantee Schemes (EIOPA-BoS-19-259) (hereinafter ”EIOPA’s IGS Consultation Paper”). However, Skandia would like to separately highlight two issues relating to a potential introduction of an Insurance Guarantee Scheme (hereinafter “IGS”) which Skandia believes have not been sufficiently considered or discussed in the consultation process with EIOPA’s IGS Consultation Paper, and which cannot be overlooked. These issues relate to the importance of obtaining a level playing field for market participants subjected to different regulations (that is, institutions for occupational retirement provision and insurance companies, respectively), and to the difficulty in principle of introducing an IGS scheme on a market with different types of corporate ownership (mutual companies and joint stock companies).**1. Point of departure**Skandia strongly opposes the need to introduce an Insurance Guarantee Scheme (IGS) at all, which regulation is proposed to be introduced according to EIOPA’s IGS Consultation Paper in connection with the proposal for the 2020 review of Solvency II.[[6]](#footnote-6) Skandia believes that the existing protection in the Solvency II regulations for policyholders is sufficiently high and adequate. The policyholders are protected in Solvency II by several layers of rules aimed at protecting the interests of policyholders and other persons who are entitled to benefits under insurance contracts.In addition, it must be taken into account that if IGS is introduced, it can lead to significant unnecessary costs for the insurance industry, which would certainly also be transferred to policyholders without corresponding benefit to them since the necessary customer protection already exists.A minimal requirement should under these circumstances be, that, first, a thorough analysis of the need for the introduction of an ISG scheme should be performed given the current consumer protection under the Solvency II regime. The above approach is also presented by Insurance Sweden and Insurance Europe in their consultation responses on EIOPA's IGS Consultation Paper submitted by October 18, 2019.Hence, Skandia agrees with Insurance Sweden's and Insurance Europe's general attitude to IGS, that is, in addition to the existing high customer protection in Solvency II, there is no reason for the introduction of IGS. The arguments advanced so far against the introduction of IGS have not fully taken into account the competitive aspect of the fact that different rules would apply to actors in the insurance and occupational pension markets, respectively, who both commercially and functionally conduct the same type of business, thereby creating a risk of distorting competition. Therefore, in the following substantive issues ̶ which are of great importance for the future occupational pension market ̶ Skandia considers it important to provide separate consultation comments as below.Skandia firmly believes that the proposal for IGS that follows from EIOPA's IGS Consultation Paper must include an impact assessment of a scenario where insurance companies, subject to Solvency II regulations, are forced to apply IGS and finance its application, while at the same time, institutions for occupational retirement provision (hereinafter “IORPs”), subject to relevant occupational retirement provision regulations, do not.[[7]](#footnote-7) Furthermore, Skandia wants to draw attention to the risk with an insurance guarantee scheme in a market that consists of both mutual companies and joint stock companies will in principle be difficult to implement without the risk of negative discrimination of owners in one form of company vis-à-vis the owners in the other.To justify the introduction of IGS at all, an impact assessment must be made from the competition perspective **that all companies with the same type of business, regardless of the forms of enterprise, must be able to compete on equal terms, i.e. the maintaining of the equal treatment principle.** The natural starting point must be that pensions provided by insurance companies and IORPs are equally treated in this regard. A negative discrimination of insurance companies vis-à-vis IORPs violates the basic rights and rules of fair competition and thus distorts market conditions. EIOPA's IGS Consultation Paper lacks such an impact assessment and should therefore be supplemented in that part.Against the above background, Skandia wants to elaborate on these issues in the following two points.**2. A need for an impact assessment on how IORPs should be managed in relation to IGS**Skandia considers, just as argued by Insurance Europe and Insurance Sweden as one of the main arguments against IGS, that the companies applying the Solvency II regulations already have high and sufficient protection mechanisms for policyholders and other persons who are entitled to benefits under insurance contracts that go further than that of IORPs applying the IORP II Directive and, as relevant for Sweden, also the proposed bill[[8]](#footnote-8) on implementing the IORP II Directive.In view of the fact that the protection interests coincide with pension savings within life insurance companies and IORPs, Skandia considers it inappropriate to proceed with the introduction of IGS for the Solvency II companies without conducting any analysis whether IGS should apply to IORPs applying the IORP II Directive (including national rules based thereon), which is a major part of the occupational pension insurance market.It would be wrong if a costly special regulation with the introduction of IGS for life insurance companies will result in activities that are essentially similar (that is, pension savings within life insurance operations and ditto within IORPs, respectively) will be governed by different rules, depending solely on whether an activity belongs to the life insurance sector (Solvency II regulations) or occupational pension sector (IORP II regulations). The ambition with IGS seems to be to protect precisely the type of products that have elements of savings and pensions. However, Skandia does not argue that IGS should be introduced for insurance companies applying Solvency II if it is also introduced for IORPs, but rather that there are already adequate protection mechanisms for policyholders and other persons who are entitled to benefits under insurance contracts, and that the regulations that have the most customer protection are precisely the Solvency II regulations.Regarding occupational pension activities and the IORP II Directive, the directive expressly provides that the home Member State shall prohibit IORPs from acting as a guarantor on behalf of third parties (Article 19 (3)). The same prohibition also applied in the IORP I Directive (Article 18 (2)).[[9]](#footnote-9) The aforementioned prohibition rule in the IORP II Directive (likewise the predecessor) is absolute in respect of all guarantees that are made for the benefit of third parties, regardless of the situation. For the insurance companies, the corresponding prohibition from acting as a guarantor on behalf of third parties does not apply, insofar as it relates to the insurance activities that apply the Solvency II regulations.Therefore, in our assessment, the prohibition in the IORP II Directive against IORPs acting as a guarantor on behalf of third parties is likely to be a definitive obstacle that makes it impossible to apply IGS to IORPs.Against this background, Skandia requests that a special detailed impact assessment be carried out in the preparation of IGS with the aim of studying the consequence that a costly special regulation with the introduction of IGS for life insurance activities will result in activities that are similar in nature will be governed by different rules, depending solely on whether a business belongs in the life insurance sector (applying Solvency II regulations) or occupational pension sector (applying IORP II regulations). Such negative discrimination of insurance companies vis-à-vis IORPs, with the introduction of IGS for insurance companies, violates the basic rights and rules of fair competition and thus risks distorting the market conditions of the insurance companies.**3.** **A need for an impact assessment for the introduction of IGS in market with mutual companies and stock companies** Applying a guarantee system (in the form of IGS) in a market that consists of both mutual companies and joint stock companies will in principle be difficult to implement without favoring the owners in one form of company over the owners in the other. In a mutual company where the policyholder takes two roles – i.e. co-owner and policyholder – compensation from IGS to the policyholder (in case the mutual company fails to honor the insurance undertaking) would lead to that this policyholder will also be *de facto* compensated as an co-owner for the operating capital he or she has made available with the insurance capital for the company's operations (this would be the case, for example, if the failing mutual company lacks assets amounting to issued guarantees and what deficiency IGS compensate). In a joint stock company, the shareholder’s equity would be lost. The enterprise form of a joint stock company would thus be disadvantaged by a system in which such owners (i.e. shareholders) participate and finance an IGS that may benefit the co-owners of mutual companies (in these latter’s dual characteristics of policyholders and co-owners), but not vice versa.Against this background, Skandia requests that a special detailed impact assessment be carried out in the analysis of IGS with the aim of studying the consequence that compensation from an IGS will have different effects for insurers and owners who have organized their operations in joint stock companies or as mutual companies. Such negative discrimination against joint stock companies may constitute a violation of the competition principle of equal treatment and the possible implications of IGS in this regard must therefore be carefully analysed.4. ConclusionsFor the Swedish part, a very large part of Sweden's working population has an occupational pension agreed by the employer. The occupational pension also grows in importance for an individual’s final pension as the general pension system dwindles. Occupational pensions thus play a very central role for the individual's livelihood in older days. Against this background, it is extremely important that the rules governing occupational pensions are robust and predictable. The importance of occupational retirement provision for current and future pensioners and for the social economy should mean that the regulation of the undertakings that offer occupational pension service must be designed with utmost care. The functional meaning of IORPs’ occupational pension undertaking is the same as that of a life insurance company’s undertaking with regard to occupational retirement provision, i.e. that compensation should be paid when the insured reaches retirement age. Against this background, it is particularly important to promote competition neutrality between the actors who provide occupational pension, which is, with a regulation achieving a situation of level playing field among the actors. Skandia values that a guideline when designing financial regulation is that the functions that the occupational pension business performs, regardless of corporate form, should be taken as the starting point for the regulation. By this, Skandia believes that the regulation should be less focused on separately regulating different groups of financial institutions − in this case insurance companies and IORPs − and more towards the function being performed in order to avoid distortions between competitors. A functioned-oriented and competition neutral regulation, inter alia by safeguarding the equal treatment principle, promotes competition and the interest in effective supervision. Competition neutrality should be sought both in the domestic market and in an international perspective. The currently proposed IGS rules only take into account insurance activities in insurance companies subject to the Solvency II regulations but do not take into account at all whether the corresponding rules can or should be proposed for IORPs that are subject to the IORP II regulations. By ensuring a fair and equitable regulatory environment − that is, level the playing field − for IORPs and insurance companies, employees who have a pension solution in either type of undertaking will be covered by the same functional rules as far as possible. In this way, the insured can make informed choices when comparing customer protection between different pension solutions and actors that offer occupational pension service. | Please refer to EIOPA’s reply to Insurance Europe.Regarding the separate issues, EIOPA reiterates that the assessment of pros and cons resulted in the need for advocating a minimum degree of harmonization in the field of IGSs.Also, an assessment may have to be done, once progress is made on the areas for follow-up after the final advice is published, such as on funding. | Public |
| UNESPA | General comments | As our European Federation appreciates, we share its view tha IGS currently in place vary significantly across Europe but work generally well within their local context and laws. Some Member States, as is the case in Spain, currently have arrangements equivalent to an IGS that protect policyholders in the same way, whereas other Member States do not have an IGS but consider that policyholder protection is nevertheless sufficient.In this sense, we fully support all the statements made by Insurance Europe at its contribution as we have participated as well in its elaboration.This individual contribution aims to outline some special features of the Spanish current system. In our opinion, it will unreasonable to force a change in it if it has beein protecting policyholders appropriately until now.UNESPA also believes that, as regards crossborder transactions, information and collaboration between home and host supervisors should be reinforced and improved. | EIOPA set out the pros and cons and concluded that a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Please also refer to EIOPA’s reply to Insurance Europe. | Public |
| UNESPA | 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. | Yes. First of all, there are some systems in place (as is the case in Spain) that have being operating properly during decades. It will unreasonable to force a change in them if they have beein protecting policyholders appropriately until now. Secondly, national authorities are in a better place to know and understand the implications of a local insurance company entering into problems in their markets. They must be able to organise themselves in the most efficiently way. | Noted. | Public |
| UNESPA | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | Both issues are interlinked. They should be taken into account when analising them. This does not mean that if one issue is to be developed, the other should be necessary developped as well.  | Noted. | Public |
| UNESPA | 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. These are the main problems to be tackled when an insurance company fails to face its compromises. | Noted. | Public |
| UNESPA | 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. | Respecting the status quo is the best solution for the policyholder and the insurance company as well. The less implications it has, the better for the consumer. | Noted. | Public |
| UNESPA | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | There are two kind of markets: those prone to “export” insurance via FOS and FOE and those which mainly host these kind of operations. Given the different grade of maturity and the size of the markets the presence of insurers operating in FOS and FOE is different. The real problem is companies operating from one country and doing their real business in another through was has been called “empty sells”. In these cases supervision should be reinforced and an early warning system with red flags alert must be established. | Noted. | Public |
| UNESPA | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | Yes, host authorities must facilitate the relationship and the compensation to policyholders and beneficiaries with the right of recourse against the IGS of the home-country. This is the solution that has been thought for motor insurance by the Commisssion at the last modification of MID (Motor Insurance Directive). This should be the mechanism to apply in other branches as well. | Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language. | Public |
| UNESPA | 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? | No. Home country control should be applied any way. The authority responsible for the supervision of the insurance company being winding up should be the one paying “the bill” at the end. | Noted. | Public |
| UNESPA | 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. | Yes. European regulation in this area is specially needed when there are crossborder transactions. In accordance with the subsidiarity principle, in cases whith just local implications should be dealt localy. | Noted. | Public |
| UNESPA | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | We do agree with the proposal made: it should cover specific life policies and specific non-life policies but the exact criteria for selecting the range need to be carefully designed by taking into account local specificities. | Noted. EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. Further detail can be found in the Advice. | Public |
| UNESPA | Q11) Which criteria should be used to determine/exclude the eligible claimants? | 1. EU consumer protection rules apply only to consumers as phisycal persons and this mut be the general principal as well concerning IGS.
 | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| UNESPA | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | Pensions schemes should have their own specific mechanism. | Noted, see previous reply. | Public |
| UNESPA | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | 1. It will depend on the type of insurance
 | Noted.EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| UNESPA | Q14) What should be the relevant criteria to determine the target level for national IGSs? | 1. See our answer to the previous question.
 | Noted. | Public |
| UNESPA | 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 (risk-based, fixed rate, other)? | It should be left to national autorities. A fixed rate seems to be a reasonable system. It is the way that the current Spanish systems operates now but as said before, it should be left to member States to decide. | Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS. | Public |
| UNESPA | 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)? | See our answer to the previous question. | Noted. | Public |
| UNESPA | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | The consumer is already overload with previous information requirements. Current regulation obliges insurance companies to inform, among a lot of other issues, if they are operating via FOS or FOE.1. The most important issue is that supervisors are well aware of the operations made by their supervised companies abroad. The exchange of information and the collaboration with host authorities is key.
 | Noted, no change needed.  | Public |
| UNESPA | 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, please also refer to Q4 and Q5)? If so, what are those? | In our opinion, this is the most weak part of the current EU supervisory system. Information and collaboration between home and host supervisors should be reinforced. Based in our proper experience, we feel that more information and control is needed about the intermediaries that are selling these products. In the case of the so called “empty shells” a specific early warning alert system could be established.  | Noted. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | General comments | In the interest of full consistency, any regulation on insurance guarantee schemes (IGSs) should be incorporated into the Solvency II Framework Directive.Any legislative proposal shall incorporate both, centralized and decentralised funds, as an instrument of last resort protection. This will allow to accommodate different market structures and needs across Member States, since on concentrated markets (i.e. Top-4 insurers cover more than 50 % of the market) centralised funds are not a workable solution. The concept of decentralized funds comprises contributions of an insurance undertaking to an in-house fund that remains under the in-house control until the funds are needed, as long as the insurance undertaking can prove to the relevant authority that the required amounts exist in the insurance undertaking’s in-house fund. Once the funds are needed in case of an insurance failure/insolvency, they may be called upon ex-post. | Noted. Some of these considerations may be taken into account for the follow-up work after the final advice is published. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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. | In order to satisfy the principles of proportionality and subsidiarity, any regulation on IGS shall be principle-based and outcome-oriented, i.e. the organisation and funding of IGS have to be left to the discretion of Member States. | Noted. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning. | 1. From our understanding, IGS serve as an instrument of last resort protection with the main objective to compensate policyholders of guaranteed life insurance contracts. Especially consumers of increased age and/or worse health should not be forced to buy comparable life insurance from another insurer at a later point in time as a result of their insurers’ insolvency. For that reason and as a matter of priority, life insurance contracts shall be protected through a sequenced approach, starting with continuation:
2. Transfer of the portfolio to a professional legacy specialist writing no new business
3. Transfer of the portfolio to a third party bridging institution
4. Distribution among the remaining market participants through/by approval of the national competent authority and the national competition authority in order to resolve market concentration issues.

Furthermore, any recapitalisation of insurance undertakings shall be excluded. IGS funds shall not cover costs related to the resolution of insurers. This should be a matter for national supervisory and/or resolution authorities. The governance and financing of resolution schemes should be left to the discretion of each Member State including any losses generated by a reduction of insurance obligations. If, however, harmonised resolution funds are considered, a clear distinction between resolution funds and IGS is needed. Resolution funds should be characterised by monitoring commitment and payback duties. | 1. Some flexibility should be given to Member States. Some existing national IGSs have another role than paying compensation. Indeed, EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects, as explained in the Advice.
 | 1. Public
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| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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)?  | 1. Especially in concentrated markets, (i.e. around 2/3 of the Member States), where e.g. Top-4 insurers cover more than 50 % of the market, centralised funds are not a workable solution. Therefore, prior to any IGS intervention, smoothing options should be taken into account:
2. Professional legacy specialist
3. bridging institution
4. Distribution among market participants

Please see answer to Q2 for further details. | 1. Please note this comment is out of scope for Q3.
 | 1. Public
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| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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. | As outlined under Q2/Q3 the continuation of life insurance contracts shall be the overriding priority before any IGS comes into play. For this purpose, a sequenced approach should be considered to ensure both, consumer protection and financial stability. The main objective of national IGS’ should be the provision of compensation to consumers for their losses in case of liquidation. | Noted. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | 1. The key argument in favour of the home-country principle is the financial supervision of insurance undertakings, including business under FoS and FoE, under the sole responsibility of the home Member State (Article 30 of Solvency II). Therefore, it must be the financial responsibility of the home Member State to deal with the consequences of an insolvent insurer, wherever its activities are located.

However, the host supervisor/relevant authority is needed as a “front office” in cross-border cases to facilitate consumer identification, communication in local language, to apply relevant local laws and to ensure that all consumers within one country are treated equally. Moreover, as insurance products follow the conduct of business regulation of the host market, contractual obligations may have to be quantified in the host market. Therefore, no right of recourse is necessary between the home and host country as the host supervisor/relevant authority only acts as a “front office” in cross-border cases. | 1. Noted. As part of the follow-up work, EIOPA may further assess the possible operationalisation of the “front office” mechanisms in cross-border cases, to facilitate information transfer, such as consumer identification, communication in local language.
 | 1. Public
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| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | 1. It could be to the benefit of damaged consumers to be able to place a claim in their native language at a local “front office” or “correspondent” in the host country, which then transfers this claim to the home IGS of the insolvent insurer in question, without any compensation taking place in the host country (i.e. this would merely serve as an information transfer).

Further details, see Q5. | Noted. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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? | 1. The geographical scope requires maximum harmonization, otherwise gaps or overlaps between Member States are most likely to arise.

Further details, see Q5 and Q6. | 1. Noted.
2. EIOPA’s assumption is that the geographical scope should be a key feature of the harmonized framework.
 | 1. Public
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| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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. | We believe that guaranteed life insurance policies should be considered under minimum harmonisation of IGS, as these policies involve larger amounts and long-term commitments with insurers, often with a retirement objective. Further details, see Q2. | Noted.EIOPA’s preferred option is to extend IGS coverage to specific life and specific non-life policies, based on the nature of the protection (be it contract-related or claims-related). IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | We believe that guaranteed life insurance policies should be considered under minimum harmonisation of IGS, as these policies involve larger amounts and long-term commitments with insurers, often with a retirement objective.Further details, see Q2 and Q8. | Noted. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q11) Which criteria should be used to determine/exclude the eligible claimants? | As an instrument of consumer protection, we believe that IGS should only cover consumers (natural persons). | Noted. EIOPA’s view is that national IGSs should cover natural persons (i.e. policyholders and beneficiaries), but also micro-sized legal entities as defined by the European Commission. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)? | As an instrument of consumer protection, we believe that IGS should only cover consumers (natural persons). | Noted, see previous reply. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances? | The compensation paid in case of a life insurer’s insolvency is normally limited to the guaranteed sums and main commitments of the life insurance contract. Accordingly, we support the introduction of minimum requirements on caps and compensation limits comparable with:1. a) Directive 97/9/EC on investor-compensation schemes (Recital 11: “harmonized minimum level of compensation of EUR 20 000 for each investor where an investment firm is unable to meet its obligations to its investor clients”)

b) Directive 2014/49/EU on deposit guarantee schemes (Recital 21: “On the one hand, the coverage level laid down in this Directive should not leave too great a proportion of deposits without protection in the interests both of consumer protection and of the stability of the financial system. On the other hand, the cost of funding DGSs should be taken into account. It is therefore reasonable to set the harmonised coverage level at EUR 100 000.”) | Noted.EIOPA is of the view that a minimum harmonised coverage level is necessary at EU level, at least for selected policies associated to social hardship. Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. For other policies, the maximum coverage in terms of a percentage cap could apply.  | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q14) What should be the relevant criteria to determine the target level for national IGSs? | See Q13 | Noted. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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 (risk-based, fixed rate, other)? | 1. In principle, we believe that contributions shall be left to the discretion of Member States. However, in case of further harmonisation risk-based annual contributions should be considered, e.g. taking into account the net technical provisions.
2. In line with Q13, we believe that the introduction of upper limits should be considered for the level of annual contributions.

In addition, we believe that in the case of insurance undertakings belonging to an insurance group the level of annual contributions should positively reflect the benefits of the “Double Four-Eyes-Principle”, i.e. these insurance undertakings are supervised by the Group NCA and the local NCA, resulting in superior consumer protection and financial stability. | 1. Noted. In order to ensure a level playing field, EIOPA is of the view that it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.
 | 1. Public
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| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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)? | 1. It is unlikely that an IGS would be able to levy sufficient capital to finance the failure of a large insurance undertaking, especially in concentrated markets (i. e. around 2/3 of the Member States), where e.g. Top-4 insurers cover more than 50 % of the market (see Q3 and Q13). In such cases, an IGS should not be expected to guarantee full compensation of consumers.
2. Therefore, prior to any compensation through an IGS, smoothing options should be taken into account to ensure both, consumer protection and financial stability as well as mitigating dangers of moral hazard. Furthermore, consumers of increased age and/or worse health should not be forced to buy comparable life insurance from another insurer at a later point in time as a result of their insurers’ insolvency. In order to protect consumers, life insurance contracts shall be protected through a sequenced approach, starting with continuation:
3. Transfer of the portfolio to a professional legacy specialist
4. Transfer of the portfolio to a third party bridging institution

 Distribution among the remaining market participants through/by approval of the national competent authority and the national competition authority in order to resolve market concentration issues. | Noted. As part of the follow-up work, EIOPA may further assess the funding issues, such as developing a calculation method for defining the contributions. Any additional considerations may be taken into account in the follow-up work to be done after the final Advice. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those? | The PRIIPs regulation already provides for precontractual disclosure under Art 8(3)(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;”*Notwithstanding this existing precontractual disclosure we believe that any regulation on IGS should explicitly prohibit any type of advertising about the existence of an IGS since doing so could create moral hazard. | Noted, no change needed. EIOPA stresses that the information should not be used for marketing purposes. | Public |
| VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe | 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, please also refer to Q4 and Q5)? If so, what are those? | 1. As a consequence of several cross-border problems, mostly resulting in significant financial burden (for both home and/or host countries) in recent years, we believe that the supervisory convergence among Member States has to be enhanced. The provisions for recovery as laid down in the Solvency II Framework shall be applied appropriately in order to minimize the risks for resolution and reduce the practical need for IGS funds. Furthermore, coordination platforms between NCAs shall work together more closely (as enhanced during the recent ESAs Review) for the introduction of safeguards. Particularly in a challenging FoS environment, a regular review of the FoS notification/registration (Article 147ff of Solvency II), which shall be exercised jointly by the home and host NCA, would be advisable.

With a view to FoS/FoE there should be a pan-European ban on marketing with IGS, i.e. cross-border providers should not be allowed to promote the fact that their products are covered by a foreign IGS. However, this does not concern pre-contractual disclosures such as the PRIIPs KID.Any legislative proposal shall incorporate both, centralized and decentralised funds, as an instrument of last resort protection. This will allow to accommodate the different market structures and needs, since on concentrated markets (e.g. the top-4 insurers cover more than 50 % of the market) centralised funds are not a workable solution.The concept of decentralized funds comprises contributions of an insurance undertaking to an in-house fund that remains under the in-house control until the funds are needed, as long as the insurance undertaking can prove to the relevant authority that the required amounts exist in the insurance undertaking’s in-house fund. Once the funds are needed in case of an insurance failure/insolvency, they may be called upon ex-post.Finally, we believe that in the case of insurance undertakings belonging to an insurance group the level of annual contributions should positively reflect the benefits of the “Double Four-Eyes-Principle”, i.e. these insurance undertakings are supervised by the Group NCA and the local NCA, resulting in superior consumer protection and financial stability. | 1. Noted, no change needed.
 | 1. Public
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| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | General comments | • Contrary to what is stated in the EIOPA consultation, the Netherlands does have a National Insurance Guarantee Scheme for health insurance. In the Netherlands, it is regulated by law that in the case of the bankruptcy of a health insurer, the National Healthcare Institute (executive body of the health insurance) pays the insured's existing claims for entitlement to reimbursement (see Article 31 of the Healthcare Insurance Act). From January 1, 2019 this has been further tightened through the Recovery and Settlement of Insurers Act.• The introduction of the home-country principle recommended by EIOPA has direct consequences for the current Dutch situation, because the Healthcare Insurance Act is based on the host-country principle. The guarantee scheme provided for in Article 31 of the Healthcare Insurance Act would then no longer apply to the insured persons of the two health insurers established abroad. These two health insurers also implement the Dutch Health Insurance Act.• It is important to make an exceptional situation for health insurance policies that are required by law. Health insurance policies are different from non-life insurance policies in which the insured person generally has a free choice and the consequences of suspension of the insurance are less drastic. | The IGSs in the Netherlands have been added to the table. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | 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. | We do not agree with this for health insurance policies that are legally required for all residents of a country and for which there is legislation that is geared to the current Dutch situation. The Dutch Health Insurance Act is based on the host country principle. See further the general comments. | Noted. EIOPA explains in its advise that from the perspective of proportionality, and because some Member States already have a well-functioning mechanism in place, the legal structure should be left to the discretion of Member States. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle? | See the answer to Q1 | Noted. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility 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”)? | The second bulletIn the Netherlands there is a statutory health insurance. This Act provides that in the event of a bankruptcy of a health insurer, the National Health Care Institute pays the insured the existing claims regarding the right to reimbursement. This applies to all health insurers that offer health insurance policies, both in the Netherlands and abroad. This means that an IGS based on the host country principle applies.In this situation the host country principle must take precedence over the home country principle. | Noted, however, EIOPA’s Advice is based on the home country approach. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | 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? | See the answer to Q6 | Noted. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | 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. | The Dutch health insurance is an insurance policy for which an exceptional position must be made based on the host country principle. The loss of coverage of health insurance in the event of bankruptcy of a health insurer causes a lot of social hardship for policyholders. Precisely for this reason, the Dutch law provides that in the event of the bankruptcy of a health insurer, the National Health Care Institute pays the insured the existing claims regarding the right to reimbursement. | Noted.Please note that EIOPA advises harmonisation based on the home country principle. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)? | See the answer to Q8. In addition to this: It is important to make an exceptional situation for health insurance policies that are required by law. | Noted. See previous reply. | Public |
| Zorgverzekeraars Nederland (umbrella organisation of health insurers of the Netherlands) | 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 the answers to previous questions | Noted. | Public |
| **Additional comments in the overall CP Solvency II review document of 15 January 2020** |
| Gesamtverband der Deutschen Versicherungswirtschaft e. V. (GDV, German Insurance Association) | Chapter 13 | In this context we refer to our comments on EIOPA Consultation Paper on Proposals for Solvency II 2020 Review – Harmonisation of National Insurance Guarantee Schemes (BoS-19-259 from 09 July 2019). We maintain the views expressed therein. From our perspective there is no need to harmonize national insurance guarantee schemes. | Noted. | Public |
| Insurance Ireland  | Chapter 13 | Insurance Ireland participated in the separate EIOPA consultation on Insurance Guarantee Schemes (EIOPA-BoS-19-259). Nonetheless, we would like to reiterate the indispensable prerequisites and characteristics for a harmonisation of national guarantee schemes. Furthermore, Insurance Ireland believes in a crucial interplay between insurance guarantee schemes and resolution mechanisms. This holds particularly true for cases in which the sole compensation of claimants does not provide for an appropriate solution in the interest of the consumer. In cases where the protection of consumers demands the continuity of insurance policies, i.e. life insurance, sound, effective and efficient resolution mechanisms must be ensured before any guarantee scheme comes into play. Therefore, we urge EIOPA to ensure that the following issues are taken into consideration:Insurance Guarantee Schemes are a valuable measure of last resort of policyholder protection in cases of insolvency. The Irish Insurance Compensation Fund was recently reviewed and adapted to best reflect the needs of the Irish market. We understand and support the initiative of EIOPA to ensure that EU citizens are appropriately covered by guarantee schemes. As the measure focuses on consumers, we believe that the most sensible way for an EU measure would be a “host-approach”. This approach provides that every policyholder is covered by the guarantee scheme of his/her Member State of residence. Accordingly, insurers, irrespective of the location of their headquarters, contribute to this scheme in an equitable manner. This approach ensures that the consumer is appropriately covered in accordance with the social and economic circumstances of the country of his/her residence.Critiques of the host-approach focus on the differentiation between the prudential supervisor in charge (home-supervisor) and the guarantee scheme covering the potential compensation of policyholders (host). We strongly believe that the performance of a public authority – the NCA – should not need to be incentivised. However, as several Member States push for a home-approach, we will discuss the issue. The resulting system requires insurers to contribute to the insurance guarantee scheme in the country where they are located. To allow for a reliable and sustainable fund and risk management, that automatically means that the compensation of policyholders in case of an insolvency can only be the one applicable in the home jurisdiction of the insurer. If not harmonised to a certain minimum, that might leave the policyholder with insufficient compensation. Furthermore, it could only apply to policies which are covered by the home guarantee scheme of the insurer. In addition to the consumer protection aspect, there might be a competitive issue about the home-approach. An inconsistent system of national guarantee schemes might create regulatory arbitrage. Companies, i.e. those with unsound financial positions, might be incentivised to search for the “cheapest” system. To avoid such a situation and create a certain consistency in this safety-net for consumers, a minimum harmonisation is indispensable.The features of this minimum harmonisation should, at least, cover the following:• Products and policyholders in scope,• Minimum maximum compensation levels,• Funding mechanism and minimum contribution.The definition of the products in the scope of an IGS is one of the crucial determining factors. Insurance Ireland strongly believes that the minimum harmonisation should focus on compulsory non-life consumer products, that are consistent across all EU member states, MTPL, being the prime example. Non-life insurance products are usually short-term contracts and the underlying risk does not depend on the personal condition of the insured (health status, age, etc.). For these products, replacement is, usually, a quick process. The compensation through an IGS can, therefore, focus on current claimants This makes the determination of eligible people to be covered by the IGS simpler. The scope should further be limited to natural persons for the purpose of the minimum harmonisation. Natural persons are, usually, most vulnerable. Even small companies can normally acquire specialised consultancy services.In order to ensure, that people are appropriately compensated notwithstanding where they are domiciled in the European Union, a minimum level for the maximum cover should be mandatory for all national guarantee schemes. Prices, costs of living and replacement costs differ significantly across the Union. A policyholder residing in a Member State with higher costs of living should not face financial hardship due to the location of the head offices of the insurer.The crucial factor for fair competition of insurers across the Union is the funding mechanism and the funding level. In order to not distort competition and ensure swift payments to consumers a certain minimum level of pre-funding might be defined (ex-ante funding). In addition, a certain minimum contribution as share of the business written or be some other risk-based contribution by an insurer might be defined. These two factors will ensure that incentives for forum shopping and regulatory arbitrage are limited.For life insurance products, Insurance Ireland and its members agree to the EIOPA assessment that contract continuity is crucial. We further agree with the idea that mechanisms to continue insurance policies might be beneficial. However, we do not agree that an IGS is the right form. In contrast to the EIOPA consultation of July 2019, we believe that a practicable and efficient resolution mechanism is more appropriate. With respect to the proper design of such a mechanism, we refer to the specific chapter of this consultation and our according contribution. | Noted. See previous reply to Insurance Ireland. | Public |
| Lieve Lowet, owner/director, Schuman European Affairs | Chapter 13 | One major comment: in case the EU introduces requirements for all MS to have an IGS, the calibrations should be adapted: see Van Hulle, K., pp 704-705. "…it may be useful to reintroduce the debate on a possible harmonization of insurance guarantee schemes. From an internal market perspective, it is important to ensure a level playing field for policyholders in cross-border business. On the other hand, if all MS have an insurance guarantee scheme that compensates policyholders in the case of an insurance failure, it is also necessary to look at the calibration in the SF in a different perspective. ALthough the present regime does not guarantee that there won't be insurance failures, the confidence level was set at a level that was considered to be sufficiently high, independent from the existence of an insurance guarantee scheme. The introdcution of a fall-back mechanism means that this confidence level might have to be looked at again, so as to avoid the system from becoming too costly for policyholders.". | EIOPA set out the pros and cons of more harmonisation in the field of IGSs and concluded there a minimum degree of harmonisation would benefit policyholders, industry and financial stability as a whole.Furthermore, the consultation paper provided examples/cases of undesirable outcomes for policyholders as a result of the current fragmentations.Solvency II is not a zero-failure regime and the fact that there are already existing national IGSs in place cannot be ignored. |  |
| Department of Finance (Ireland) | Chapter 13 | The Department is pleased that EIOPA has considered the issue of IGSs in a level of detail at this stage of the review and welcome that it is proposing the establishment of a European network of national IGSs across the Member States of the EU, which are sufficiently harmonised and adequately funded. This has been an issue that has proven to be difficult to resolve in the context of the recent negotiations in Council on the Motor Insurance Directive, and our Minister set out his views on this at the December Ecofin meeting. In addition, the Department responded to EIOPA’s recent consultation on this issue in October 2019 (EIOPA-BoS-19-259) and our high-level views below reinforce key aspects of our response to that consultation. | Noted. | Public |
| Department of Finance (Ireland) | Chapter 13 | Ireland already has an IGS for non-life insurance. This is a host-based Scheme in that insurers passporting into Ireland and covering risks based in this State must be members of the Scheme, and make relevant contributions to it. In general, our experience in relation to this type of Scheme is that it has worked quite well. Our preference therefore has always been that should a European system of IGSs be introduced, relevant IGSs would operate in this way. Notwithstanding this, we note that EIOPA is proposing a home-based system. This is something, while not our preference, we could lend support as an alternative approach. However to do so, such an IGS would have to have harmonised funding mechanisms enshrined in level one legislation. It is important also that minimum harmonised rules for IGSs would take into account how a wider European Recovery and Resolution framework for insurers might operate to ensure consistency. Finally, we support the idea that the legal structure for IGSs should be a matter for each Member State, as the current system in Ireland is more of a “process” than an entity, and this has not impacted on its effectiveness. | Noted. See previous reply to Department of Finance (Ireland). | Public |

1. 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). [↑](#footnote-ref-1)
2. EIOPA-BoS-19-259, Consultation on Proposals for Solvency II 2020 Review Harmonisation of National Insurance Guarantee Schemes, page 31, point 107. [↑](#footnote-ref-2)
3. As established under the Act on the Recovery and Resolution of Insurance Undertakings (*Wet herstel en afwikkeling van verzekeraars*) [https://www.eerstekamer.nl/behandeling/20181221/publicatie\_wet\_2/document3/f=/vkug4mdk3syn.pdf](https://www.eerstekamer.nl/behandeling/20181221/publicatie_wet_2/document3/f%3D/vkug4mdk3syn.pdf) [↑](#footnote-ref-3)
4. Skandia Mutual Life Insurance Company is a mutual insurance company incorporated and registered in Sweden, and the parent company within the Skandia group. The Skandia group is one of the largest independent providers of products for long-term savings and investments in Sweden. The Skandia group originally started out its Swedish insurance business in 1855. Skandia offer products and services that cater for various financial needs and security. Its operations are based on a combination of savings, insurance, advice and administration. The number of employees in the Skandia group are about 2,000 and the group has about 2 million customers. As per the end of June 2019, the Skandia group has assets under management in total valued to about SEK 664,000 million. [↑](#footnote-ref-4)
5. Insurance Sweden is the industry organization for insurance companies in Sweden. About 50 insurance companies are members of Insurance Sweden and together they account for more than 90 per cent of the Swedish insurance market. See further <https://www.svenskforsakring.se/en/> [↑](#footnote-ref-5)
6. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). [↑](#footnote-ref-6)
7. That is, Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (hereinafter the “IORP II Directive”) and its national implementation in the Member States. [↑](#footnote-ref-7)
8. See the Government bill 2018/19:158 En ny reglering för tjänstepensionsföretag *[In English: A new regulation for institutions for occupational retirement provision].* [↑](#footnote-ref-8)
9. See Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision. [↑](#footnote-ref-9)