

Comments Template on EIOPA-BoS-19-259 Consultation Paper on Proposals for Solvency II 2020 Review Harmonisation of National Insurance Guarantee Schemes		Deadline 18 October 2019 23:59 CET
Name of company:	International Forum of Insurance Guarantee Schemes	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential, by deleting the word "Public" in the column to the right and leaving only the word "Confidential".	Public
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Consultation Paper on

Proposals for Solvency II 2020 Review

Harmonisation of National Insurance Guarantee Schemes

**Deadline
18 October
2019
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Format, to CP-19-005@eiopa.europa.eu by Friday 18 October 2019.

Reference	Comment	EIOPA
General comments		
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.	
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.	
Q3) Do you agree that the primary objective of an IGS	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	

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<p>can be achieved by means of the two options proposed (i.e. paying compensation and ensuring the continuity of policies)?</p>	<p>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.</p>	
<p>Q4) Do you agree that the continuation of the policies should take precedence in case of life and some long-term-life policies? Please explain your reasoning.</p>	<p>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, <i>Developing Effective Resolution Strategies and Plans for Systemically Important Insurers</i>, 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.</p>	
<p>Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle?</p>	<p>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.</p> <p>Arguments in favour of the home-country principle are:</p> <ul style="list-style-type: none"> - 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. 	

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- 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.

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

IGSs in different countries should be able to enter bilateral cooperation Memoranda of Understanding in their discretion.

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IGS of the home-country ("back office")?		
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.	
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.	
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 jurisdictions 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	

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	agrees to bear risks of market fluctuation or investment failure should not be covered.	
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. Products, like certain surety protection, where the policy primarily protects governments and are purchased by professional insurance buyers may not need to be covered.	
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."	
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.	
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	

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	minimums.	
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 (<i>Issues Paper on Policyholder Protection Schemes</i> , para. 41-48) and the OECD (<i>Policyholder Protection Schemes: Selected Considerations</i> , 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.	
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.	
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 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.	

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contributions (risk-based, fixed rate, other)?		
Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those?	<p>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.</p> <p>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.</p>	
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?	<p>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.</p> <p>Supervisory authorities should be required to promptly involve IGSs on a confidential basis in case of a potential or actual failure of an insurer.</p> <p>The transfer of insurance business between companies from different countries should not reduce the IGS cover of an existing policy.</p>	