

Comments Template on EIOPA-CP-18-003 Discussion Paper on Resolution funding and national IGs		Deadline 26/10/2018 23:59 CET
Name of company:	Bund der Versicherten (BdV – German Association of the Insured)	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p>Please indicate if your comments should be treated as confidential, by deleting the word "Public" in the column to the right and by inserting the word "Confidential".</p>	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. <p>Please send the completed template, in Word Format, to CP-18-003@eiopa.europa.eu by 26 October 2018. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions correspond with the questions included in the Discussion Paper.</p>		
Reference	Comment	
General comments	<p>As Germany's most important NGO of consumer protection related to private insurances (with nearly 50.000 members) we would like to thank EIOPA for the opportunity to publish comments on this consultation.</p> <p>We continue to support EIOPA's objective to develop principles of a minimum degree of harmonisation in the field of insurance guarantee schemes (cf. our comments on EIOPA's Discussion Paper on potential harmonisation of recovery and resolution frameworks for insurers in February 2017). This objective is clearly consistent with the objectives which are already implemented in other sectors of the financial industry (BRRD, FSB Key Attributes etc.). 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,</p>	

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	<p>existence of pre-emptive Recovery and Resolution Plans or not, etc.), it appears to be useful and appropriate to apply a principle-based approach which accordingly takes into consideration these differences. Therefore minimum harmonisation should entail the definition of a common approach to the fundamental elements of recovery and resolution (e.g. objectives for resolution and resolution powers, common set of early intervention powers) which the national frameworks should contain, while leaving room for Member States to adopt additional measures at the national level if needed to better address the specificities of their national markets, subject to these measures being compatible with the principles and objectives set at the EU level.</p> <p>In the long run any potential harmonised approach towards IGS should not only trigger a principle-based harmonisation of national insolvency regimes, but a minimum harmonisation with clear qualitative criteria and quantitative thresholds aiming at establishing a more equal protection of policyholders.</p>	
Q1	<p>We agree with EIOPA's analysis on the potential problems of the existing situation. From consumer's perspective these problems are not only potential ones but real, mainly due to the fact – as EIOPA has stated – that “across Europe 20 member states have in place one or more IGSs, whereas 11 member states do not have an IGS”. So obviously there is no equal level of policyholder protection in the EU. This must not continue!</p>	
Q2	<p>We fully agree with the proposal of the European Commission as outlined in Box 1 (DP, Chap. 1.4).</p>	
Q3	<p>Yes, such a discussion is necessary. In the long run any potential harmonised approach towards IGS should not only trigger a principle-based harmonisation of national insolvency regimes, but a minimum harmonisation with clear qualitative criteria and quantitative thresholds aiming at establishing a more equal protection of policyholders.</p> <p>Of course each EU member state must have the full control (scope and speed) of any changes in that direction. We agree with EIOPA's assessment that a maximum harmonisation (establishment of a single EU-wide IGS) is out of scope.</p>	
Q4	<p>Even if the risk of direct contagion in insurance industry is less pronounced than in the bank sector (there is much less mutual credit lending, etc.), a significant increase of simultaneous</p>	

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	<p>cases of failures and near misses of life insurers was already empirically proved during the financial crisis of 2008/2009 (cf. EIOPA Report: Failures and near misses in insurances. Overview of the causes and early identification, August 2018, p. 21).</p> <p>For years now the risk of insolvency of single life insurers due to the ongoing low interest rate phase is again strongly increasing (cf. analysis of SFCR in 2017 and 2018 by the independent actuary Carsten Zielke).</p> <p>https://www.bunddersicherten.de/presse-und-oeffentlichkeitsarbeit/pressemitteilungen/conditions-of-german-life-insurers-despite-homage-to-solvency-under-tension</p> <p>This urgent aspect is missing in the analysis - and its possible impact on the entire insurance industry. On the contrary the outlined possible moral hazards are simply not relevant (cf. no. 106 of DP, p. 43).</p>	
Q5	<p>A more equal distribution of insurance failure costs to the industry and a more equal level playing field across Member States are crucial arguments in favour of a European network of national IGSs.</p> <p>The involvement of the industry in the failure of insurers, which gives them a direct financial stake in the behaviour of other insurers, will have an additional positive impact on the industry monitoring. The aim of these measures must – of course - be a more effective policyholder protection and an increase in consumer confidence and choice.</p>	
Q6	<p>We fully agree with EIOPA's conclusions: "A more equal and effective protection of policyholders is THE fundamental argument in favour of a more harmonised approach to IGSs."</p>	
Q7	<p>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".</p>	
Q8	<p>No generalized answer is possible. For each insurance class a separate solution has to be found. For life insurances the continuation of contracts is prevalent. For motor insurances the compensation of occurred indemnity claims is prevalent.</p>	

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Q9	<p>We support the home-country principle (cf. no. 136 of DP, p. 53). As long as the level of consumer protection is different in the EU Member States, consumer must at least benefit from the level of protection already achieved in their home country.</p> <p>But the home-country principle should be completed by the requirement for EU branches to participate in the host-country IGS, unless they are covered by their home-state IGS that provides equivalent protection. It should clearly be regulated, which institution (EIOPA, NCA, IGS etc.) is entitled to decide on the equivalence of this protection.</p>	
Q10	We support the combination of the two principles (cf. our comment on Q 9).	
Q11	No. Our view depends on the level of consumer protection already achieved in each country.	
Q12	Life insurances and motor insurances should be covered at minimum. The German model of 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.	
Q13	Yes, at a minimum all mandatory insurance liabilities should be covered by the IGSs. 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.	
Q14	Cf. our comment on Q 12. National IGS should always be free to include other insurance classes beyond the EU proposal.	
Q15	No, there should not be any limits to the covered amounts (with the exception of liability insurances, cf. our comment on Q 13). In Germany the national IGS ("Protector") is entitled to reduce the guaranteed sums of life insurance contracts, if its accumulated assets are not sufficient in order to fulfil its long-term pay-out liabilities. This provision seems to be appropriate.	
Q16	No, only concluded and valid insurance contracts should be covered.	
Q17	This depends on the insurance classes which the IGSs will provide coverage for. Usually natural persons prevail in consumer protection.	
Q18	There should not be any restrictions with regard to the inclusion on policyholder eligibility. For the IGS coverage the only criteria should be whether the contract is valid or not.	

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	If conflicts of interests of particular persons may trigger a non-prudential asset management or even fraud, it is the responsibility of the supervisory authorities to detect these conflicts in time or even to turn on criminal prosecution.	
Q19	For natural persons there should not be any limits of the amount of compensation. For SMEs coverage may be capped per claim following to the legal limits of insured sums.	
Q20	For the life insurance sector a combination of ex-ante and ex-post funding is necessary (cf. our comment on Q 24). For the other insurance classes an ex-post funding seems to be sufficient.	
Q21	The IGSs should only be funded by insurers, because it is their responsibility to guarantee an assets and liabilities management which is successful in the long run. If they fail, tax payers must definitely only be the last resort, but not in the frame of an IGS (cf. our comment on Q 24).	
Q22	In its recent report on Failures and Near Misses in Insurances (August 2018) EIOPA has outlined the parameters of reference for insurance undertakings: size of life and composite insurers reported by using technical provisions and size of non-life insurers by using gross written premiums (figures 4 and 5 on page 18). We agree with these parameters.	
Q23	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.	
Q24	<p>The German example unfortunately shows that the legal limit of obligatory contributions of life insurers 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 937 millions Euro (in 2015). The IGS has the right to ask for additional contributions in case of resolution, and due to additional voluntary measures by the life insurances a total sum of about 9,4 bn Euro may be accumulated (following to "Protektor" website).</p> <p>But this high absolute figure has to be compared to other figures. Following to the 2018 Statistical 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 annual premium equivalent amounted to 7,6 bn Euro in 2017 (all figures in table 30). The total sum of their asset allocations amounted to 909,2 bn Euro in 2017 (figure 45).</p> <p>Allianz Life Insurance alone booked over 20 bn Euro gross premiums and the total sum of its</p>	

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	<p>asset allocations amounted to more than 201 bn Euro in 2017. Allianz represents 23% of the entire German life insurance market.</p> <p>These figures show that the maximum sum of total assets which the national IGS will have at its disposal (9,4 bn Euro) are less than half of the annual gross premiums of Allianz Leben, less than 5% of the total asset allocations of Allianz Leben and a little bit more than 1% of total asset allocation of the German life insurance sector.</p> <p>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. BaFin Year Book 2017, p. 25). Since 2011 the German life insurers are legally obliged to build up this additional capital reserves in order to be able to fulfill their long-term guarantees despite the ongoing low interest rate phase. Already now these additional capital reserves are six times higher than the possible total sum of asset allocations of the IGS, and they will still grow although probably at a reduced rate.</p> <p>The establishment of the ZZR clearly shows that the national IGS will not be able to handle any case of "big" failure, at least with the current assets at its disposal. This conclusion has to be drawn despite the fact that Protektor is directly linked to the KfW Group, a national bank specialized in credit lending mainly for infrastructure investments. This link implicitly proves that even the national legislator does not exclude at all that in a worst case scenario the tax payers will be the last resort for life insurance policyholders.</p>	
Q25	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 (cf. our comment on Q 24).	
Q26	The requirement of disclosure to policyholders of the existence or non-existence of a national IGS must strictly be included. This disclosure must be part of the pre-contractual information duties of the insurers in order to enable an informed decision by the possible customer. This has already been fixed by the PRIIPs regulation. The outlined moral hazard effects by the customers are simply not relevant (cf. DP, no. 104 to 106, pages 42/43), and it is badly surprising enough that EIOPA tries to suggest that there could be any!	