

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:	Bund der Versicherten (German Association of Insured – BdV)	
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Disclosure of comments:● EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Please follow the instructions for filling in the template: ⇒ 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> . Please send the completed template, in Word Format, to CP-19-005@eiopa.europa.eu by <u>Friday 18 October 2019</u>.	
Reference	Comment	EIOPA
General comments	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. In the same way we already contributed the two EIOPA consultations on RRP’s and IGS in February 2017 and October 2018. We continue to support EIOPA’s objective to develop principles of a minimum degree of	

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	<p>harmonisation 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.</p> <p>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.</p>	
<p>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.</p>	<p>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).</p>	
<p>Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please</p>	<p>Obviously recovery and resolution and IGS are very closely linked. An EU-framework of RRP, i.e. a kind of common “toolkit” available to all NCAs, constitutes the necessary complementary element to the proposed harmonisation 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 policy-</p>	

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explain your reasoning.	holders. 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, 2018 and 2019 by the independent German actuary Carsten Zielke). https://www.bunddersicherten.de/presse-und-oeffentlichkeitsarbeit/pressemitteilungen/conditions-of-german-life-insurers-despite-homage-to-solvency-under-tension 2019: https://www.bunddersicherten.de/fbfiles/SFCR-Analyse-2018.pdf	
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.	
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”.	
Q5) What aspects are relevant to be taken into consideration for the	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.	

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<p>effective implementation of the home-country principle?</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>	
<p>Q6) Specifically, should the following options be added to the principles of the home-country approach:</p> <ul style="list-style-type: none"> • 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”)? 	<ul style="list-style-type: none"> • 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. 	

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<p>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?</p>	<p>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).</p>	
<p>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.</p>	<p>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).</p>	
<p>Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)?</p>	<p>Cf. our comment on Q 8.</p>	
<p>Q10) Are there any other considerations to be taken into account</p>	<p>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</p>	

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to select the range of policies to be covered by an IGS? Please explain your reasoning.	is why the model of the national IGS for health insurances "Medicator" cannot be generalized.	
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. Usually natural 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.	
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.	
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.	
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.	

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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).

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 an assets 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 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).
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).

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	<p>Allianz Life Insurance alone booked over 20 bn Euro gross premiums and the total sum of its 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>	
<p>Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those?</p>	<p>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).</p>	
<p>Q18) Are there any other elements that are relevant in the</p>	<p>We fully agree with EIOPA's assessments as pointed out in no. 224 – 228 and 251 of CP (p. 60, 63).</p>	

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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?