EIOPA-BoS-19-259

09 July 2019

Consultation Paper on

Proposals for Solvency II 2020 Review

Harmonisation of National Insurance Guarantee Schemes

Responding to this paper

EIOPA welcomes comments on the "Consultation Paper on Advice on Harmonisation of National Insurance Guarantee Schemes across the Member States of the EU".

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the provided Template for Comments, by email CP-19-005@eiopa.europa.eu by **Friday 18 October 2019.**

Contributions not provided in the template for comments, sent to a different email address or sent after the deadline will not be considered.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

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[1] Public Access to Documents (See link: https://eiopa.europa.eu/Pages/SearchResults.aspx?k=filename:Public-Access-(EIOPA-MB-11-051).pdf).

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1. Introduction

1.1 Context

1. EIOPA received on 11 February 2019 the Call for Advice of the European Commission on the review of Directive 2009/138/EC[2] (Solvency II).[3] The Call for Advice covers a broad variety of topics, including all topics that EIOPA has already started to work on, such as Insurance Guarantee Schemes (IGSs) and macro-prudential policy in insurance.

2. The Call for Advice covers also some topics that were already addressed in EIOPA's Opinion on the Harmonisation of recovery and resolution framework for (re)insurers across the Member States of the EU.[4]

3. EIOPA will respond to the Call for Advice in the form of an EIOPA Opinion, the Solvency II Opinion, which will also include a holistic impact assessment. The Solvency II Opinion will be published for consultation in Q4 2019.

4. This Consultation Paper is a draft response to the Call for Advice item 3.12 on Insurance guarantee schemes. The advice in this paper will be amended with the input of this consultation process and be included in the Solvency II Opinion which will be submitted to the European Commission.

1.2 Extract from the Call for Advice

Insurance guarantee schemes (CfA 3.12)

EIOPA is asked to advise on whether there is a need for minimum harmonising rules for national insurance guarantee schemes. In particular, EIOPA is asked to advise on whether the rules in the following areas need to be harmonised: role and functioning of IGSs, their geographical coverage, cross-border coordination mechanisms, eligible policies, eligible claimants, funding, and policyholder information.

In the context of policies sold via free movement or services or branches, EIOPA is, in particular, asked to consider whether possibly harmonised rules for national insurance guarantee schemes should enable a recourse to the IGS of the home Member State in order to protect policy holders in the other Member States where the undertaking is operating.

Where EIOPA identifies a need to harmonise rules, it is asked to advise which principles should apply.

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[2] 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), OJ L 335, 17.12.2009, p. 1.

[3] See here the Request to EIOPA for Technical advice on the Review of the Solvency II Directive.

[4] See here the EIOPA Opinion.

1.3 Relevant legal provisions

5. Article 26 of Regulation (EU) No 1094/2010[5] (the EIOPA Regulation) states that *"the Authority may contribute to the assessment of the need for a European network of national insurance guarantee schemes which is adequately funded and sufficiently harmonised".*

6. Other relevant articles in this context are:

   - Article 8(1)(i) of the EIOPA Regulation sets out EIOPA's tasks and powers in the area of recovery and resolution of insurers by providing that EIOPA is responsible for *"[…] the development and coordination of recovery and resolution plans, providing a high level of protection to policy holders, to beneficiaries and throughout the Union, in accordance with Articles 21 to 26".*
   - Article 24(2) of the EIOPA Regulation provides EIOPA with the responsibility to *"contribute to ensuring coherent and coordinated crisis management and resolution regime in the Union".*
   - Article 25(2) of the EIOPA Regulation provides that *"[EIOPA] may identify best practices aimed at facilitating the resolution of failing institutions and, in particular, cross-border groups, in ways which avoid contagion, ensuring that appropriate tools, including sufficient resources, are available and allow the institution or the group to be resolved in an orderly, cost-efficient and timely manner."*

1.4 Previous work

7. In 2018, EIOPA published a "Discussion Paper on Resolution funding and national Insurance Guarantee Schemes" to gather feedback from stakeholders on its initial stance to harmonise national IGSs and potential principles for harmonisation.[6] The feedback of stakeholders have been taken into account to the extent possible in this Advice.

[5] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010, p. 48.

[6] In total, EIOPA received 39 responses from:

- 19 industry associations, including Insurance and Reinsurance Stakeholder Group
- 12 insurers
- 3 national IGSs
- 2 national competent authorities (NCAs)
- 1 consumer association
- 1 department of finance
- 1 media/press

The feedback from stakeholders was rather mixed. Respondents from the industry were mainly against the harmonisation of national IGSs, whereas others expressed their views in favour of a minimum degree of harmonisation. The feedback on the technical features of IGSs was also diverge with most of the stakeholders pointing out the advantages and disadvantages of the different options.
The public responses can be found here.

8. In the context of the Discussion Paper, EIOPA conducted a survey among National Competent Authorities (NCAs) about the existing national IGSs in their jurisdictions. The outcome of this survey is also used in this Advice and is referenced to as "EIOPA survey 2018".

1.5 Scope of Consultation Paper

9. In this Consultation Paper, EIOPA did not consider the compensation bodies established under Directive 2009/103/EC[7] (the Motor Insurance Directive).

10. This Directive requires Member States in its Article 10 "*to set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in [this Directive] has not been satisfied"*. In May 2018, the European Commission presented a proposal to amend the Motor Insurance Directive[8].

11. Furthermore, the Consultation Paper does not analyse the differences in national insolvency laws and other potential relevant national laws, such as insurance contract law. These areas deserve further attention and possibly also an assessment of the need for greater harmonisation in these fields.

12. Moreover, any references to differences in treatment of policyholders in this Consultation Paper is related to the differences caused by differences in national IGSs. Differences in policyholder treatment caused by other reasons, such as differences in national insolvency laws, are not taken into consideration.

13. For the sake of simplicity, EIOPA will use the term IGSs or policyholder protection schemes throughout this Consultation Paper. This should however be understood to include alternative mechanisms which pursue the same objective of protecting policyholders in insolvency as IGSs.

2. Identification of the issue

2.1 Background

14. An IGS provides protection, partially or in full, to policyholders when insurers cannot meet their contractual commitments. At present, there are no harmonised EU rules for IGSs as a result of which Member States have chosen their own approach towards policyholder protection schemes.

[7] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, OJ L 263, 7.10.2009, p. 11.

[8] https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3714481_en#pe-2018-3261.

15. A majority of the Member States have decided to establish one or more national IGSs or alternative mechanisms for the protection of policyholders. Table in the annex provides an overview of the existing national schemes across the Member States. For completeness, the table also shows the compensation bodies established under Article 10 of the Motor Insurance Directive.

16. The decision to establish an IGS in the Member States has usually been prompted by (the risk of) insurance failures and the perceived need for policyholder protection in such situations. Some examples are listed below:

    - The Austrian system was created back in 1936 following the failure of an insurer;
    - The origin of the Spanish system can be found in 1984, responding to the needs created in relation to the protection of the policyholders as a consequence of the market reorganisation due to the entrance of Spain in the European Community at that moment;
    - The French life and health fund was created in 1999 following a near failure experience of a life insurer;
    - In Germany, the creation of the health scheme was an initiative of the health insurance sector that aimed to strengthen the trust in the sector following the financial crisis in 2002;
    - In Greece, the scheme was established shortly after the failure of two large life insurers in 2009.

17. Although a majority of the Member States have set up an IGS, the approach they have followed for the design of the IGSs diverges quite substantially from each other. Differences can be observed in terms of the role and functions, geographical coverage, eligible policies, eligible claimants, funding and other features of IGSs (see sections below).

18. In contrast to the insurance sector, the guarantee schemes in other sectors of the financial system have been harmonised at the EU level. In banking, Directive 2014/49/EU[9] (the Directive on deposit guarantee schemes) have harmonised the rules for the protection of deposits, whereas Directive 97/9/EC[10] (the Directive on investor compensation schemes) has harmonised the rules for the protection of investment protection funds.

[9] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, OJ L 173, 12.6.2014, p. 149.

[10] Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes, OJ L 84, 26.3.1997, p. 22.

19. In 2010, the European Commission issued a White Paper on insurance guarantee schemes[11] and argued that the lack of a harmonised approach hinders the effective and equal consumer protection in the EU.

20. The variation in national approaches towards IGSs has consequences for the protection of policyholders as well as the functioning of the internal market.

2.2 Different treatment of policyholders across the EU[12]

21. The differences in national approaches towards IGS have resulted in a situation where policyholders across the EU could have different level of protection in the event of liquidation. Firstly, not all Member States have created a safety net for the protection of policyholders, meaning that the policyholders of insurers located within these jurisdictions would not benefit from IGS protection in the event of failure. In contrast, policyholders with similar policies in other jurisdictions might benefit from IGS protection for potential losses in the event of liquidation.

22. Secondly, differences in policyholder treatment across or even within Member States could arise due to the dissimilarities in the technical design features of the national IGSs, such as the geographical coverage, eligible policies and compensation limits. The outcome of these differences in the design of the IGSs is that policyholders, while holding the same type of insurance policy, might benefit from a different level of IGS protection.

23. For instance, the geographical coverage of national IGSs determines whether the cross-border activities of insurers are covered by the national IGS. Depending on geographical coverage, policyholders insured with the same insurer and/or policyholders within the same Member State might benefit from a different level of protection on similar insurance policies in the event of liquidation.

24. Where an IGS follows the host-country principle, all policyholders within the home-jurisdiction of the IGS are protected, whereas policyholders of domestic insurers residing in foreign jurisdictions are excluded. This leads to the undesirable situation where policyholders insured with the same failed insurer would be treated differently following the failure of the insurer purely depending on their place of residence, even if they hold an identical insurance policy.

25. On the contrary, in Member States where the national IGS operates on the basis of the home-country principle, domestic policyholders would be protected

[11] White paper on insurance Guarantee Schemes /COM/2010/0370 final/, 12.07.2010, 52010DC0370.

[12] The differences in policyholder treatment in the event of insolvency refer to those differences caused by variation in level of IGS protection. Differences in policyholder treatment might already exist due to differences in insolvency law, including the provisions surrounding the creditor hierarchy.

by the national IGS only if the insurer they bought a policy from is headquartered in the same Member State. Policyholders buying a policy via the freedom of services (FoS) or freedom of establishment (FoE) from a foreign insurer, would therefore be protected by the IGS of the country of the foreign insurer if this IGS also follows the home-country principle, while they would not be protected by the IGS of their country of residence in the event of failure.

2.3 Implications for proper functioning of the internal market

26. The examples of the differences of policyholder protection in liquidation also show 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. As described, policyholders in the EU have a different level of IGS protection (if at all) due to current patchwork of national approaches. This could bring a competitive advantage for insurers that are covered by an IGS over insurers whose policyholders would not have access to IGS protection. An important assumption here is that the information is available to consumers and that they use this information when making a decision.

27. Additionally, the level playing field between the different sectors in the financial markets is being distorted. Currently, the consumers of banks and investment firms across the Member States are protected by harmonised EU rules for guarantee schemes, whereas consumers of insurers are lacking such EU harmonised rules. Assuming rational consumers, the sectorial differences in consumer protection arrangements could provide impact the level playing field for competing financial products, such as life insurance products versus saving products offered by banks.

3. Analysis

28. In this section, EIOPA analyses whether there is a need for harmonisation of national IGSs in the EU. Following this assessment, it analyses the main technical features of IGSs and the need for harmonisation of these features at the EU level.

29. EIOPA has duly analysed the costs and benefits of the main options considered from a qualitative point of view; these options are listed in the table below. A quantitative analysis of the (funding) costs will be carried out once the technical details of all options have been considered. EIOPA’s preferred option for each policy option is depicted in bold.

Table 1: Overview of policy options

Policy issue	Options
1. Need for harmonisation of national IGSs in the EU	1.1 No change (maintain status quo) **1.2 European network of national IGSs (minimum harmonisation)[13]** 1.3 Single EU-wide IGS (maximum harmonisation)
2. Need for harmonisation of roles and functions of national IGSs	2.1 Full discretion to Member States 2.2 Compensation of claims 2.3 Continuation of policies **2.4 Continuation of policies and/or compensation of claims**
3. Need for harmonisation of geographical scope of national IGSs	3.1 Full discretion to Member States **3.2 Home-country principle** 3.3 Host-country principle 3.4 Host-country principle plus recourse arrangements
4. Need for harmonisation of eligible policies	4.1 Full discretion to Member States 4.2 Life policies only 4.3 Non-life policies only 4.4 Both life and non-life policies **4.5 Selected life and non-life policies**
5. Need for harmonisation of eligible claimants	5.1 Full discretion to Member States 5.2 Natural persons only **5.3 Natural persons and selected legal persons** 5.4 Natural persons and legal persons
6. Need for harmonisation of timing of funding	6.1 Full discretion to Member States 6.2 Ex-ante funding 6.3 Ex-post funding **6.4 Ex-ante funding complemented with ex-post funding**

3.1 Need for harmonisation of national IGSs at EU level

- *Analysis of options*

30. In most cases, the creation of national IGSs has been prompted by the failure of insurers. The assessment of the need for IGSs is therefore linked to the likelihood and impact of insurance failures taking account of other protection measures. The need for and scope of IGSs might vary across Member States depending on their national markets, including supervisory practices, national

[13] The phrase "a European network of national IGSs" is used to refer to the system of national IGSs and to any potential underlying European regime laying down rules and/or standards for national IGSs (such as their scope and funding). As such, the reference to a European network should be regarded as a body of Union laws harmonising the standards for national IGSs.

insolvency law (e.g. creditor hierarchy) and potential national recovery and resolution framework for insurers,.

31. The focus of the assessment of EIOPA is therefore on the need for harmonisation in the field of policyholder protection schemes at the EU level. EIOPA assessed the potential merits of a harmonised approach towards IGSs versus the merits of keeping the status quo.

- **Option 1: Maintaining the status quo.** No changes are made to the current situation.
- **Option 2: Establishing a European network of national IGSs, which are sufficiently harmonised.** A network of national IGSs is established across Member States. The national IGSs are sufficiently harmonised and adequately funded.
- **Option 3: Establishing a single EU-wide IGS.** A single EU-wide IGS is created at EU level to protect policyholders across the Member States.

Table 2: Overview of arguments

Arguments in favour of…		
… maintaining the status quo	**… a European network of sufficiently harmonised national IGSs**	**… a single EU-wide IGS**
(A) Risk of contagion in insurance is less pronounced	(A) More even protection of policyholders[14]	(A) Even protection of policyholders
(B) Solvency II combined with a low frequency of failures makes IGSs redundant	(B) Cross-border cooperation and coordination between national IGSs	(B) Optimising level playing field
(C) Potential costs of IGSs are not incurred	(C) Minimise reliance on public funds by involving industry	
(D) Moral hazard	(D) Improvement of confidence and choice of consumers	

[14] A full equal treatment of policyholders in liquidation cannot be guaranteed even where a harmonised approach to IGSs is achieved due to other differences in national legislation, such as national insolvency law.

Option 1: Maintaining the status quo

(A) Risk of contagion in insurance industry is less pronounced

32. One of the common arguments against the harmonisation of guarantee schemes in insurance is the comparison with the reasons for harmonising deposit guarantee schemes (DGSs) in the banking sector.

33. In banking, financial stability was one of the main reasons to establish a harmonised approach. The risk of a run on banks was an important driver, i.e. the risk that a large number of deposit holders withdraw their money from a troubled bank. This could result in a loss of consumer confidence and harm other banks and the financial stability as a whole.

34. In insurance, it is widely acknowledged that the 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.

35. Therefore, it is argued that the need for harmonisation of IGSs is less evident. Even if a run on insurers[15] materialises, there are safeguards in place to reduce the potential impact. For instance, the penalties on early termination and the lengthy cancellation procedures would help to dampen the impact of a run on insurers.

(B) Solvency II combined with a low frequency of failures makes IGSs redundant

36. The introduction of Solvency II is another argument used against the need for harmonisation of national IGSs. Solvency II is a risk-based, forward-looking approach to insurance supervision with a primary objective of adequate policyholder protection. As such, Solvency II has significantly improved the supervision of insurers.

37. Additionally, the number of failures in insurance has so far been limited and Solvency II has further reduced the likelihood of failures. This limits the need for IGS protection and harmonisation in this field. Therefore, the focus should be on the continuation of supervisory convergence in order to ensure a consistent application of Solvency II across Member States.

38. Furthermore, the priority given to insurance claims in liquidation, as laid down in Article 275(1) of Solvency II limits the potential losses of policyholder in the event of insolvency.

[15] The case of the Belgian insurer Ethias shows that a run on insurers can occur. Ethias suffered a significant number of cancellation of policies and withdrawals of savings during the 2008 crisis. Consequently, the Belgian Federal State and the Flemish and Walloon regions injected a capital of EUR 1.5 billion into the insurer (European Commission press release).

(C) Potential costs of IGSs

39. An IGS is associated with costs. These include the initial set-up costs that are required to make the necessary legislative and structural changes, and the costs for operating the IGS, such as the costs for the staff and potential investment costs if the scheme is funded on an ex-ante basis. The main cost component is however the cost of protecting policyholders following a failure.

40. The costs of IGS protection could particularly be seen as a problem for small and concentrated markets, where the failure of a large insurer would have to be funded by the rest of the market. This could put the rest of the industry under financial strains and threaten the financial stability.

41. Most of the NCAs responded to the survey (EIOPA survey 2018) that they do not hold record of the initial set-up costs, whereas the operational costs reported by NCAs differ quite substantially across Member States and largely depend on the design and structure of the IGS. The reported costs of IGS protection in past interventions show that these costs ranged from a few million up to EUR 1.3 billion.

(D) Moral hazard

42. The existence of an IGS could give rise to or increase moral hazard behaviour in insurance. This could be on the side of consumers, but less likely also on the side of insurers.

43. Consumers might be less incentivised to do a proper due diligence and not assess the riskiness of insurers when purchasing an insurance policy. Also, consumers might be more inclined to buy policies from insurers covered by an IGS despite their financial situation. This assumes that consumers are well informed and are able to act upon this information, which might only be the case for professional consumers (i.e. financial and non-financial companies).

44. The existence of an IGS is less likely to make insurers less prudent and incentivise them to take on excessive risks: in effect, given that the IGS is expected to have a 100% recovery right against the failed insurer, the final cost of a failure for the insurer is not expected to vary whether an IGS exists or not. An opposite effect could even be expected, as an IGS is expected to recover its claim against the failed insurer in insolvency proceeding, more "effectively" than a large number of isolated policyholders.

Option 2: A European network of sufficiently harmonised national IGSs

(A) More even protection of policyholders

45. 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. In the previous section, it has already been shown that policyholders in the EU currently do not have a similar level of IGS protection

(if any) even if they are consumers of the same insurer. Depending on their residence, policyholders could be treated differently, which is an undesirable situation from the perspective of policyholder protection and internal market.

46. A minimum degree of harmonisation would contribute to achieving a more equal protection of policyholders in the event of liquidation by ensuring that all Member States have an IGS in place with minimum harmonised features. The importance of national IGSs is underlined by the recent cross-border insurance failures in Box 1, which show the potential issues with unequal treatment of policyholders belonging to the same insurer.

47. Minimum harmonised features for national IGSs are also important from the perspective of the internal market. For instance, common rules about the geographical coverage of national IGSs would help to avoid the potential issues with cross-border activities via FoS and FoE as described in Box 1. The case studies show that the lack of common rules about the geographical coverage and funding could result in a financial burden in those Member States where the IGS operates on the basis of a host-country principle and where there is no recourse to the IGS of the home Member State of the failed insurer.

48. Furthermore, the speed at which payments can be made to policyholders in the event of insolvency is another benefit of establishing an IGS (OECD, 2013)[16]. Under normal insolvency procedures, policyholders might face long processes to recover the losses from the estate of the failed insurer. Despite the priority ranking of the claims, the long process of payments made could therefore adversely affect policyholders depending on the type of policies. For instance, the timely payment of claims of pension claims on life insurance policies would be essential.

Box 1: Case study – Denmark

Bankruptcy of Alpha Insurance A/S

- On 4 March 2018, Alpha Insurance A/S (Alpha) was placed in solvent liquidation.
- Alpha is a Danish-based insurance group that operated in Denmark, France, Germany, Greece, Ireland, Italy, Norway, United Kingdom and Spain. Alpha provided mainly insurance policies on motor, workers compensation, construction, legal expenses and general liability. Across Europe, Alpha had approximately 1 million policyholders.
- The Danish Guarantee Fund for non-life insurance undertakings announced that it would cover premium refunds on specific policies for eligible policyholders across the jurisdictions.

Bankruptcy of Qudos Insurance A/S

[16] OECD (2013), "Policyholder Protection Schemes: Selected Considerations", *OECD Working Papers on Finance, Insurance and Private Pensions*, No. 31, OECD Publishing, Paris. http://dx.doi.org/10.1787/5k46l8sz94g0-en

- On 20 December 2018, Qudos Insurance A/S (Qudos) filed for bankruptcy.
- Qudos is a Danish-based insurance group that operated in Denmark, France, Germany, Greece, Ireland, Italy, Malta, Norway, Sweden and the United Kingdom. Qudos mainly provided mainly insurance policies on motor, property, general liability and income protection insurance. Across the EU, Qudos had approximately 400,000 policyholders.
- EIOPA has been in close contact with the Danish NCA to trigger a timely intervention and to ensure equal treatment of affected policyholders throughout the EU who suffered significant losses due to the failure.*
- Following the failure of Qudos, the Danish NCA communicated that the Danish Guarantee Fund for non-life insurance undertakings will be triggered according to the bankruptcy procedure under the regulatory framework existing at that time. Therefore, the Guarantee Fund covers all eligible policyholders of Qudos, regardless of their residence.

Change in the Danish regulation on Guarantee Fund**

- This communication was important as the regulatory framework governing the Danish Guarantee Fund was amended in 2018. As of 1 January 2019, the Danish Guarantee Fund will only cover non-life insurance policies sold in Denmark, either via domestic insurers or through branches and FoS (i.e. the host-country principle).
- The consequence of this amendment is that policyholders of a failed Danish insurance group who live outside of Denmark are no longer (or remain to be un)protected by the Danish Guarantee Fund.
- This means that the policyholders of Alpha and Qudos residing outside of Denmark would have not been protected by the Danish Guarantee Fund, if the insurance groups had failed after this amendment, resulting in a situation where policyholders of the same insurer are treated differently in the EU.

* *Source:* EIOPA
** *Source:* Danish Guarantee Fund

(B) Cross-border cooperation and coordination between national IGSs

49. A minimum degree of harmonisation would also facilitate cooperation and coordination between national IGSs. Arrangements for cooperation and coordination between national IGSs is particularly relevant in case of cross-border failures. Cross-border cooperation and coordination contributes to removing obstacles to the effective and efficient process of providing IGS protection to policyholders.

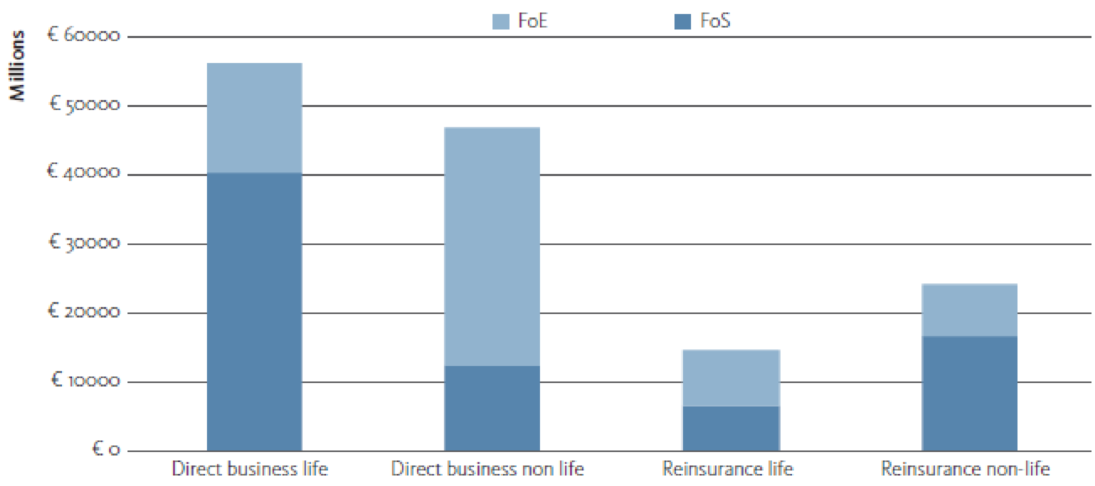
50. The continued increase of cross-border activity in insurance emphasises the importance of a harmonised approach to consumer protection. In the EEA, EUR 66.5 billion gross written premiums (GWP) are reported via FoS and EUR 75.5 billion via FoE (see figure 1). This accounts for approximately 10% of all GWP

in the EEA at the end of 2017, which is an increase of 25% compared to 2016 when the cross-border business accounted for 8% of GWP in the EEA.

51. Also in terms of the number of insurers engaging in cross-border business, an increase can be observed. Out of 2686 (re)insurers under Solvency II, 847 reported cross-border business within the EEA in 2017 compared to 750 in 2016.

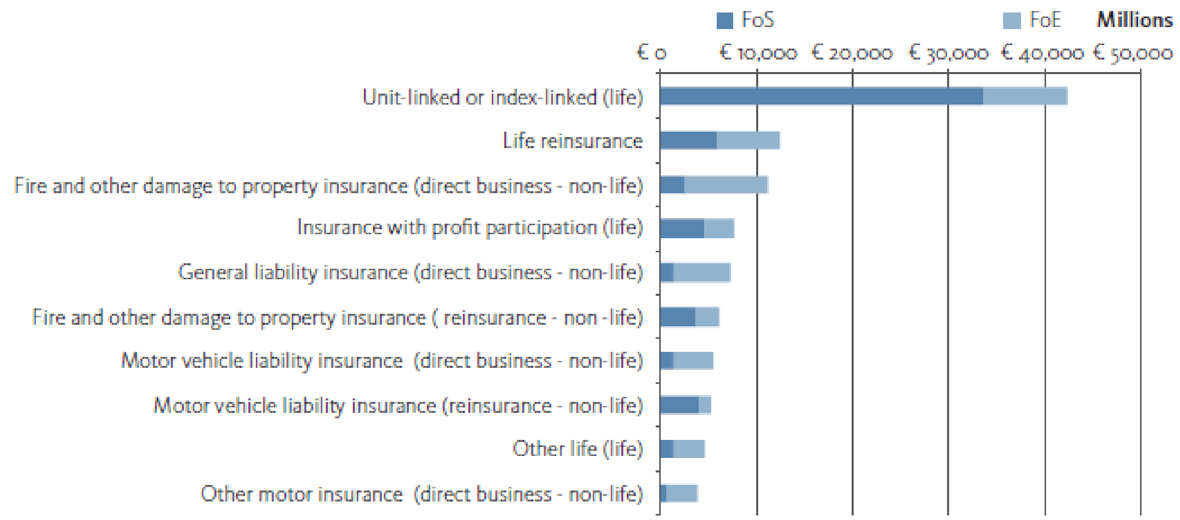
52. The share of the cross-border business to the total EEA insurance market depends on the type of business. The share is 3.85% for direct business life and 3.21% for direct business non-life. Figure 2 shows the top 10 lines of business by GWP for cross-border business at year-end 2017.

Figure 1: Cross-border insurance business (EUR mn) at year-end 2017



Source: EIOPA Annual Solo
Reference Date: 31/12/2017

Figure 2: Top 10 lines of business by GWP (EUR mn) for cross-border business at year-end 2017



Source: EIOPA Annual Solo
Reference Date: 31/12/2017

53. The case study of Romania (see Box 2) highlights some of the issues that domestic IGSs might face in cross-border failures and the underlines the need for cross-border cooperation and coordination.

Box 2: Case study – Romania

- In August 2015, the Romanian NCA withdrew the license of a Romanian insurance group and requested the initiation of a winding-up procedure.
- The insurer had cross-border activities via branches in three Member States. In total approximately 1.8 million, mainly Romanian, policyholders were affected.
- In Romania, any person with a right of claim against failed insurers is entitled to request the opening of a loss file against the national IGS between the date of the financial recovery procedure and the termination of their insurance contract.
- In order to deal with the claim files, the Romanian IGS concluded a Memorandum of Understanding (MoU) and agreed upon a common procedure on the operational aspects of the claim files handling with the national IGS in one of the affected Member States. A common procedure was agreed about the legal framework, scope, activity work-flow and payment issues.
- Thanks to this close cooperation, the authorities could avoid dissatisfaction of clients or any scandals, such as the opening of loss files in host country in the local language. Furthermore, another example of close cooperation is the fact that the host-IGS settled the claims and accounted with the home-IGS; the home-IGS refinanced the 50% of the claim (max. until the half of the own limit).
- Similar discussions had started between the Romanian IGS and one of the other IGSs, although these were not concluded before the required intervention of the Romanian IGS. The Romanian IGS faced several challenges hindering the payment of compensations to policyholders in this particular Member State. These include challenges relating to the compensation sharing, language of the documentation and banking transfer costs.
- Nevertheless, the Romanian IGS has been able to meet most of the claim requests of affected policyholders in this Member State.

(C) Minimise reliance on public funds by involving industry

54. The past financial crisis has shown that public intervention cannot be ruled out, especially, when governments are expected to intervene in troubled institutions in order to minimise the losses to consumers and/or maintain the financial stability. Over the course of the financial crisis, European insurers received a total of approximately EUR 6.5 billion from public authorities.[17]

55. An IGS could help to minimise the reliance on public funds by providing protection to policyholders in the event of an insurer's insolvency. Typically, the costs of an IGS are distributed to the industry and, to the extent these are incorporated into the premiums, the cost of protection is borne by all policyholders. The risk that taxpayers are exposed to cover the losses of

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[17] EIOPA (2017), "Opinion to institutions of the European Union on the harmonisation of recovery and resolution frameworks for (re)insurers across the Member States" (see link here).

insurance failures is therefore reduced, particularly, where there is also a harmonised and effective recovery and resolution framework for insurers.

56. The involvement of insurers in the funding of an insurance failure also gives them a direct financial stake in the behaviour of other insurers, the quality of the frameworks governing the supervision and resolution of insurers. This could lead to improvements in industry monitoring as well as in supervision and resolution (OECD, 2013)[18].

(D) Increase in consumer confidence and choice

57. A well-functioning IGS limits the losses for policyholders in the event of insolvency by compensating policyholders for their losses and/or ensuring the continuation of insurance policies. This additional layer of protection strengthens the confidence in the insurance sector and further promotes consumer demand for insurance products. However, an important condition is that the IGS is adequately funded to cover the policyholder claims.

58. The creation of a European network of harmonised IGSs should help to improve the choice of consumers. Harmonisation would further contribute to the level playing field across the Member States. The potential distortion in competition due to the dispatch of national approaches to IGSs would be reduced and, hence, the consumers' choice will be improved. This assumes that consumers are well informed and take rational decisions based on this information.

Option 3: Single EU-wide IGS

59. The creation of a single EU-wide scheme has two main advantages: (i) it eliminates differences between Member States, hence, brings a higher degree of equality in IGS protection provided to policyholders across the Member States; and (ii) it further removes level playing field issues caused by differences in national IGSs.

60. Nonetheless, a single EU-wide IGS requires considerable further harmonisation in the field of supervisory practices and recovery and resolution. Additionally, this might require the introduction of risk-sharing arrangements between Member States.

61. On the banking side, the creation of European deposit insurance scheme (EDIS) for bank deposits in the euro area was part of broader package of measures to deepen the economic and monetary union and to complete the banking union. In fact, EDIS is the third pillar of the banking union, which is still to be established. In order to have a similar European wide guarantee scheme in insurance requires the establishment of an insurance union, which is currently not considered to be a realistic option.

[18] OECD (2013), "Policyholder Protection Schemes: Selected Considerations", *OECD Working Papers on Finance, Insurance and Private Pensions*, No. 31, OECD Publishing, Paris. http://dx.doi.org/10.1787/5k46l8sz94g0-en

Impact assessment

62. The impact of the options considered on the different stakeholders is summarised below.

Policy issue 1: Need for harmonisation of national IGSs in the EU		
Option 1.1: Maintain status quo (i.e. no change)		
Costs	Policyholders	Policyholders in the EU could have a different level of IGS protection (if at all) following the failure of an insurer depending on their residence.
	Industry	No level playing field between insurers. Maintaining the status quo would be costly for those insurers who are already members of an IGS and who face the competitive pressure from insurers from Member states without an IGS. This could give rise to free riding and the possibility to offer lower prices.
	Supervisors	Supervisors will have to deal with a fragmented landscape of national IGSs across the EU. The current patchwork of national approaches does not facilitate cross-border cooperation and coordination between existing national IGSs, which is essential in cross-border failures.
	Other	Governments might be expected to step in and cover some of the losses of policyholders in the event of failures, particularly in the situation where some of the affected policyholders are compensated by a national IGS for their losses.
Benefits	Policyholders	Harmonisation could potentially lead to higher premiums if potential higher IGS costs are transferred to policyholders.
	Industry	Harmonisation could lead to potential higher costs.
	Supervisors	No material impact expected.
	Other	Administrative burden and costs for governments are lower.
Option 1.2: A European network of sufficiently harmonised national IGSs		
Costs	Policyholders	Potential higher costs for the industry might be passed on to policyholders. Differences in policyholder treatment could still exist due to the fact of minimum harmonisation.
	Industry	The cost of an insurance failure will be borne by the insurance sector. Insurers might potentially face higher costs, unless they already contribute to the funding of an IGS.
	Supervisors	No material impact expected, although supervisors/national resolution authorities will have to involve national IGSs in the resolution process.
	Other	Member States without an IGS (11 in total[19]) will have to establish a scheme (or arrange for a similar mechanism) resulting in one-off establishment costs. Information requests to the NCAs in Member States with IGSs have shown that data about the size of these establishment costs are not available. Member States with an IGS in place might have to make amendments to their existing schemes, resulting in operational and/or management costs.

[19] These Member States are Croatia, Cyprus, Czech Republic, Iceland, Liechtenstein, Lithuania, Luxembourg, Netherlands, Slovakia, Slovenia and Sweden.

Benefits	Policyholders	Minimum degree of IGS protection for all policyholders in the EU regardless of their place of residence.
	Industry	Contributes to level playing field in the EU. Additionally, it could help to increase consumers' trust in the European insurance sector and the single market.
	Supervisors	A minimum degree of harmonisation of national IGSs could facilitate an orderly resolution process of failed insurers.
	Other	Contributes to level playing field between the different financial sectors (i.e. insurance versus banks/investment firms). Helps to minimise reliance on public funds and contributes to the proper functioning of the internal market.
Option 1.3: A single EU-wide IGS		
Costs	Policyholders	Potential higher costs for the industry might be translated into higher premiums for policyholders.
	Industry	Insurers might potentially face substantial higher costs depending on the features of the IGS.
	Supervisors	Efforts to enhance supervisory convergence will be escalated with potential additional costs to supervisors.
	Other	Unless considerable further harmonisation in other fields, such as supervision and recovery and resolution frameworks, is achieved, a single EU-wide IGS might be seen as distribution of costs of insurance failures to the EU as a whole. Risk-sharing arrangements between Member States will have to be established with potential additional costs to industry, policyholders and Member States.
Benefits	Policyholders	Policyholders will have a similar IGS coverage regardless of their place of residence. Contributes to the internal market objectives. Transparency and clarity about the IGS involved.
	Industry	Contributes to level playing field in the EU and is comparable to the system adopted in banking.
	Supervisors	Contributes to the internal market objectives. Transparency and clarity about the IGS involved.
	Other	Contributes to the internal market objectives.

- *Comparison of options*

63. EIOPA's preferred option is to establish a European network of national IGSs which are sufficiently harmonised across the Member States.

64. IGSs provide an essential level of protection to policyholders in the event of insurance failures. The current lack of harmonisation has resulted in a dispatch of national approaches across Member States. Due to the fragmented landscape of national IGSs, policyholders in the EU are currently treated differently in the event of failures.

65. Policyholders could get a different level of protection on similar insurance policies across or within Member States because of different rules governing

national IGSs (if any). It could even be the case that policyholders of the same insurer are treated differently in the event of insolvency due to the location of their residence.

66. Although Solvency II has significantly improved the supervision of insurers and, hence, has reduced the likelihood of insurance failures in the future, it has not fully eliminated this risk. In fact, the recent failures of cross-border insurers, such as the failure of Gable Insurance in 2016, Alpha and Qudos Insurance in 2018, have proven that even in a Solvency II-environment, failures of insurers cannot be avoided. Therefore, the risk of policyholders being exposed to potential financial loss and/or social hardship remains real.

67. EIOPA is of the view that the creation of a European network of harmonised national IGSs, which are harmonised to a minimum degree would be beneficial for policyholders, industry and the overall financial stability in the EU. A European network of national IGSs means that every Member State would need to have in place a national IGS (or equivalent) mechanism with a minimum set of harmonised rules.

68. The harmonisation of national IGSs would result in a more even level of protection to policyholders in the event of failures across the Member States. Additionally, it would facilitate cross-border cooperation and coordination between national IGSs, which is essential for the effective and prompt functioning of IGSs in cross-border failures. This is particularly relevant when considering that the cross-border activities in insurance have been increasing over the years and are relatively high. Harmonisation would also contribute to the proper functioning of IGSs.

69. Furthermore, the existence of an effective protection mechanism is likely to enhance the confidence in the industry and, hence, contribute to enhancing the overall financial stability in the EU. Finally, the reliance on taxpayers' money would be further minimised if policyholders – to a certain extent – are protected by an IGS for the consequences of insurance failures.

70. The costs associated with a creation and management of an IGS feature among the drawbacks of IGSs. They could become an excessive financial burden for insurers, particularly when there are frequent failures or a failure of a sizeable insurer. However, it is more beneficial that the costs of an insurance failure are born by the insurance sector, rather than by public funds. Overall, the benefits such as greater confidence of policyholders in the insurance market would outweigh the costs.

71. Additionally, the existence of IGSs could lead to moral hazard on the side of insurers or policyholders, as they might become less prudent in, respectively, their risk management and insurer's selection process. These potential negative effects should be acknowledged and taken into account in the technical features of IGSs. The method of setting contributions into an IGS

could further mitigate any such moral hazard, e.g. by reflecting the risk profile of each contributing insurer.

72. The comparison of the options against the baseline scenario has been based on their contribution to achieving the following objectives: i) Effective and efficient policyholder protection in resolution and/or liquidation, ii) Ensuring a level playing field through sufficiently harmonised rules and iii) Improving transparency and better comparability. Additionally, the overall contribution to maintaining financial stability in the EU and reducing reliance on public funds has been taken into account. The effectiveness and efficiency of each option to achieving the former three objectives is illustrated in the table below.

Policy issue 1: Need for harmonisation of national IGSs in the EU						
	Effectiveness (0/+/++)[20]			**Efficiency (0/+/++)**		
Options	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability
Option 1.1: No change (maintain status quo)	0	0	0	0	0	0
Option 1.2: a European network of sufficiently harmonised national IGSs	++	+	+	++	++	++
Option 1.3: Single EU-wide IGS	++	++	++	+	+	+

- *Interlinkages with other areas*

73. However, the harmonisation of national IGSs should not be regarded in isolation and be considered in the context of recovery and resolution. IGSs are closely linked to the resolution of insurers.

74. EIOPA is of the view that an effective and comprehensive recovery and resolution framework is essential to ensure the orderly resolution of failing insurers. An orderly resolution is likely to reduce the potential losses of

[20] Effectiveness measures the degree to which the different policy options meet the relevant objectives.

Efficiency measures the way in which resources are used to achieve the objectives. The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

policyholders in insolvency and, generally, avoid destruction of value, which normally happens in insolvency. Subject to actual losses and in view of no creditor worse off principle, IGSs could be expected to pay less in resolution than in insolvency.

75. In addition, IGSs might be an important tool in the resolution process, as resolution authorities might be less hesitant to use the powers at their disposal to ensure an orderly resolution if they know that policyholders will be able to recover potential losses (in full or partial) from an IGS. Furthermore, depending on their role and functions, the funds of national IGSs could also be used to facilitate a portfolio transfer, which is one of the resolution tools.

76. In this context, supervisory convergence is also essential for a harmonised approach towards IGSs. Supervisory convergence ensures a high, effective and consistent level of supervision across Member States, regardless of the location of the insurer's head office. A consistent application of Solvency II across Member States reduces the risk of insurance failures and, hence, the reliance on IGS protection. Any efforts to further strengthen supervisory convergence should therefore be continued. Nonetheless, the harmonisation of IGSs should not be made subject to reaching a certain level of supervisory convergence that is difficult to assess.

- *Proportionality principle*

77. In order to avoid excessive burdens on insurers and Member States, it is essential that the proportionality principle is properly taken into account in a harmonised approach.

78. The legal structure of policyholder protection mechanisms should for instance be left to the discretion of Member States. This means that Member States are able to decide to establish a separate legal scheme or set up an alternative mechanism that achieves the same objectives. This is important from the perspective of proportionality as some Member States already have a well-functioning mechanism in place.

79. The application of the proportionality principle should also be taken into account when defining the harmonised principles for IGSs (see sections below).

- *Advice*

80. EIOPA is of the view that that every Member State should have a national IGS in place for the protection of policyholders in the event of insurance failures. The national IGSs should meet a minimum set of harmonised features and be adequately funded.

81. The exact legal structure of the schemes should be left to the discretion of Member States. This could be a separate national IGS or a mechanism that will deliver a similar outcome provided that it meets the harmonised minimum requirements.

82. EIOPA advises to consider the harmonisation of national IGSs within the broader context of recovery and resolution. EIOPA calls for the harmonisation of national recovery and resolution frameworks for (re)insurers.

Stakeholder questions:

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.

Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning.

3.2 Minimum harmonised principles

83. The technical features of national IGSs determine their functioning and effectiveness in the event of failures. In a harmonised approach at EU level, it is therefore important to establish a minimum set of common principles and/or a common understanding to ensure that some of the issues caused by the current fragmented landscape could be alleviated.

84. In the following sections, EIOPA analyses the need for harmonisation of the following technical elements of an IGS:
    - Role and functioning of IGSs;
    - Geographical coverage;
    - Eligible policies;
    - Eligible claimants;
    - Funding;
    - Cross-border coordination mechanisms;
    - Policyholder information.

3.2.1 Role and functioning of IGSs

85. EIOPA is of the view that an IGS should provide protection to policyholders when an insurer can no longer meet its contractual obligations.

86. EIOPA does not believe that the role of IGSs should include the prevention of insurance failures. This is the primary objective of insurance supervisions and widening the role of IGSs would mean an intervention in the supervisory process. Additionally, it would not be fair to require from insurers that they pay for the costs of rescuing a competitor.

87. An IGS should therefore step in when other protection mechanisms have failed in order to prevent or to mitigate the impact of an insurer's failure. This could take several forms.

- *Analysis of options*

Option 1: Full discretion to Member States

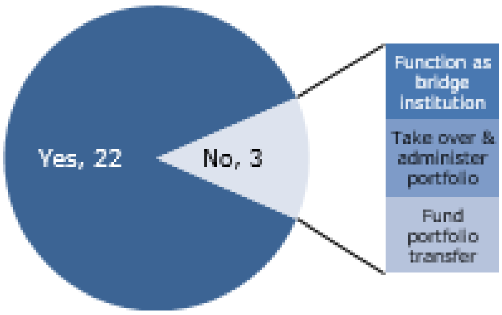
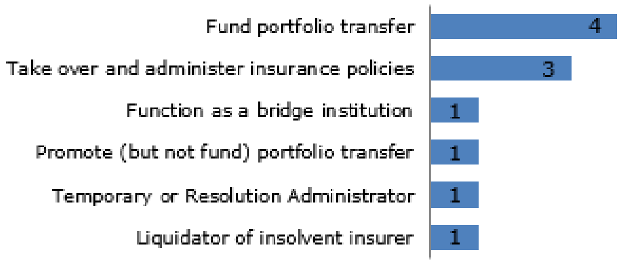
88. This option means that there would be no harmonised principles at the EU level to set the role of national IGSs. Member States would have full discretion to decide on the role and functions of their national IGSs as it is currently the case.

89. Figure 3 shows that the primary function of a majority of the existing schemes is to compensate policyholders for their losses in the event of liquidation. Only three IGSs have been reported to have other roles than compensating policyholders; these IGSs can only ensure the continuation of insurance policies and do not pay compensation to policyholders.

90. Additionally, the figure shows that eight IGSs have roles in addition to paying compensation to policyholders. These additional roles include aspects such as the funding or promotion of a portfolio transfer, taking over and administering insurance policies and acting as a temporary or resolution administrator. Nonetheless, the primary role of these eight IGSs is to compensate policyholders for losses when an insurer is insolvent.

91. EIOPA is of the view that the role and functioning of IGSs are essential elements which determine how policyholders are being protected in the event of liquidation. Despite the fact that most of the existing schemes have a similar role, the lack of any harmonised principles governing the role and functioning could result in a situation of uneven levels of policyholder protection. This could be particularly problematic in the case of FoE or FoS.

Figure 3: Role of national IGSs

a) Compensation to policyholders	*b) Additional roles of IGSs compensating policyholders (8 out of 22 IGSs)*
	

Option 2: Compensation of claims

92. This option means that the only role of an IGS is to pay compensation to policyholders for their losses when an insurer fails. The benefit of this option is that it would be in line with the role and functioning of a majority of the existing IGSs.

93. Additionally, in accordance with the quantitative impact assessment performed by the European Commission for the White Paper on IGSs (2010), it was shown that the funding needs tend to be lower for IGSs that only pay compensation compared to IGSs that facilitate a portfolio transfer. Main reason for this is that compensation is only needed on those policies where policyholders have a claim against the insurer.

94. Nevertheless, from the perspective of policyholder protection, the continuation of policies might be more beneficial, especially for life policies.

Option 3: Continuation of policies

95. The continuation of insurance cover might be more beneficial for policyholders than the pure compensation of their losses, particularly for life or long-term non-life insurance policies where it might be more difficult to find equivalent cover (on similar terms) with an alternative insurer. This argument would be less relevant for most of the non-life policies with a relative short duration and a higher of substitutability level.

96. Nonetheless, the continuation of policies by facilitating a portfolio transfer to another insurer might enhance the confidence in the insurance sector and contribute to the overall financial stability.

Option 4: Compensation of claims and/or continuation of policies

97. According to this option, IGSs would be able to pay compensation to policyholders for their losses and/or ensure the continuation of policies.

98. In principle, paying compensation to policyholders should be the minimum and apply to all national IGSs unless their funds can be used to ensure the continuation of policies with the aim of policyholder protection.

99. In fact, EIOPA is of the view that the continuation of policies should take precedence over paying compensation for life insurance, where reasonably practicable and justified in terms of costs and benefits. This requires, however, some Member State flexibility and discretion, as the characteristics of the national market in combination with the particularities of the portfolio of the failed insurer will largely determine the possibility for facilitating the continuation of insurance policies.

- *Impact assessment*

100. The impact of the options considered on the different stakeholders is summarised below.

Policy issue 2: Need for harmonisation of roles and functions of national IGSs		
Option 2.1: Full discretion to Member States		
Costs	Policyholders	National IGSs will continue to have different roles and functions that might be confusing for policyholders.
	Industry	Industry will have to deal with national IGSs that do not have harmonised principles with respect to their roles and functions.
	Supervisors	Supervisors will have to deal with national IGSs that do not have harmonised principles with respect to their roles and functions.
	Other	The protection of policyholders might get complicated in cross-border failures if national IGSs have different roles.
Benefits	Policyholders	No material benefits identified.
	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	Member State flexibility to adapt the role and functioning of IGSs to the national needs. Moreover, there will be no potential implementation costs to adapt the role and function of existing to the harmonised principles.
Option 2.2: Compensation of claims		
Costs	Policyholders	In some cases, particularly for life policies, policyholders might be better off if their policies are continued instead of receiving compensation for their claims in liquidation.
	Industry	The continuation of policies could have a more positive impact on consumers' trust in the sector.
	Supervisors	For the sector as a whole and the overall financial stability, the continuation of policies might be better in some instances.
	Other	At least three of the existing IGSs will have to make amendments to their roles and functions.
Benefits	Policyholders	For non-life policies, a swift payment of compensations might be more beneficial for policyholders than the continuation of policies, which might take longer than the compensation of claims.
	Industry	The funding needs tend to be lower for IGSs that only pay compensation compared to IGSs that aim to ensure the continuation of policies.
	Supervisors	Clarity about the roles and functions of national IGSs.

	Other	This option is in line with the role and functioning of a majority of the existing IGSs.
Option 2.3: Continuation of policies		
Costs	Policyholders	For non-life policies, a swift payment of compensations might be more beneficial for policyholders than the continuation of policies, which might take longer than the compensation of claims.
	Industry	The funding needs tend to be higher for IGSs that aim to ensure the continuation of policies compared to IGSs that only pay compensation.
	Supervisors	Supervisors/national resolution authorities will have to be involved in the process to find a suitable solution to ensure the continuation of policies.
	Other	A majority of the national IGSs will have to amend their roles and functions.
Benefits	Policyholders	Policyholders might be better off if their policies are continued instead of receiving compensation for their claims in liquidation.
	Industry	Consumers' trust in the insurance sector might be positively impacted.
	Supervisors	Clarity about the role and functions of national IGSs.
	Other	Continuation of the policies might contribute to the overall financial stability.
Option 2.4: Compensation of claims and/or continuation of policies		
Costs	Policyholders	The type of intervention by an IGS (i.e. compensation of claims or continuation of policies) might not be clear in advance.
	Industry	The type of intervention by an IGS (i.e. compensation of claims or continuation of policies) might not be clear in advance.
	Supervisors	The type of intervention by an IGS (i.e. compensation of claims or continuation of policies) might not be clear in advance.
	Other	No material costs identified.
Benefits	Policyholders	Ideally, the optimal solution from the perspective of policyholder protection, industry and financial stability could be chosen between compensating policyholders and/or ensuring a continuation of policies depending on the situation.
	Industry	Ideally, the optimal solution from the perspective of policyholder protection, industry and financial stability could be chosen between compensating policyholders and/or ensuring a continuation of policies depending on the situation.
	Supervisors	Ideally, the optimal solution from the perspective of policyholder protection, industry and financial stability could be chosen between compensating policyholders and/or ensuring a continuation of policies depending on the situation.
	Other	Ideally, the optimal solution from the perspective of policyholder protection, industry and financial stability could be chosen between compensating policyholders and/or ensuring a continuation of policies depending on the situation.

- *Comparison of options*

101. EIOPA's preferred option is to harmonise the role and functioning of IGSs to cover the continuation of insurance policies and/or compensation of policyholder claims.

102. The primary aim of IGSs should be to protect policyholders in the event of insurance failures. This objective can be achieved in several ways.

103. Ideally, the role of national IGSs should therefore not be limited to one role as the optimal IGS intervention depends on the circumstances. For instance, the continuation of policies might be in the best interest of policyholders for life or long-term non-life insurance policies, whereas the swift payment of claims might be the better option in other cases.

104. The effectiveness and efficiency of each option to achieving the defined objectives has been illustrated in the table below.

Policy issue 2: Need for harmonisation of roles and functions of national IGSs						
	Effectiveness (0/+/++)[21]			**Efficiency (0/+/++)**		
Options	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability
Option 2.1: Full discretion to Member States	0	0	0	0	0	0
Option 2.2: Compensation of claims	+	++	++	++	+	++
Option 2.3: Continuation of policies	+	++	++	+	+	++
Option 2.4: Compensation of claims and/or continuation of policies	++	++	+	++	++	+

- *Advice*

105. EIOPA advises that an IGS should be set up as a mechanism with the primary aim to protect policyholders, which can be achieved by:

i) paying compensation swiftly to policyholders and beneficiaries for their losses when an insurer becomes insolvent;

ii) ensuring the continuation of insurance policies (for instance, by funding or promoting a portfolio transfer or taking over and administrating the portfolio as a temporary or resolution administrator).

[21] Effectiveness measures the degree to which the different policy options meet the relevant objectives.

Efficiency measures the way in which resources are used to achieve the objectives. The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

106. At a minimum, national IGSs should be able to perform the former role unless their funds can be used to ensure the continuation of insurance policies.

107. EIOPA is of the view that the continuation of policies should be preferred for life and for some long-term non-life insurance policies, where reasonably practicable and justified in terms of costs and benefits.

Stakeholder questions:

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)?

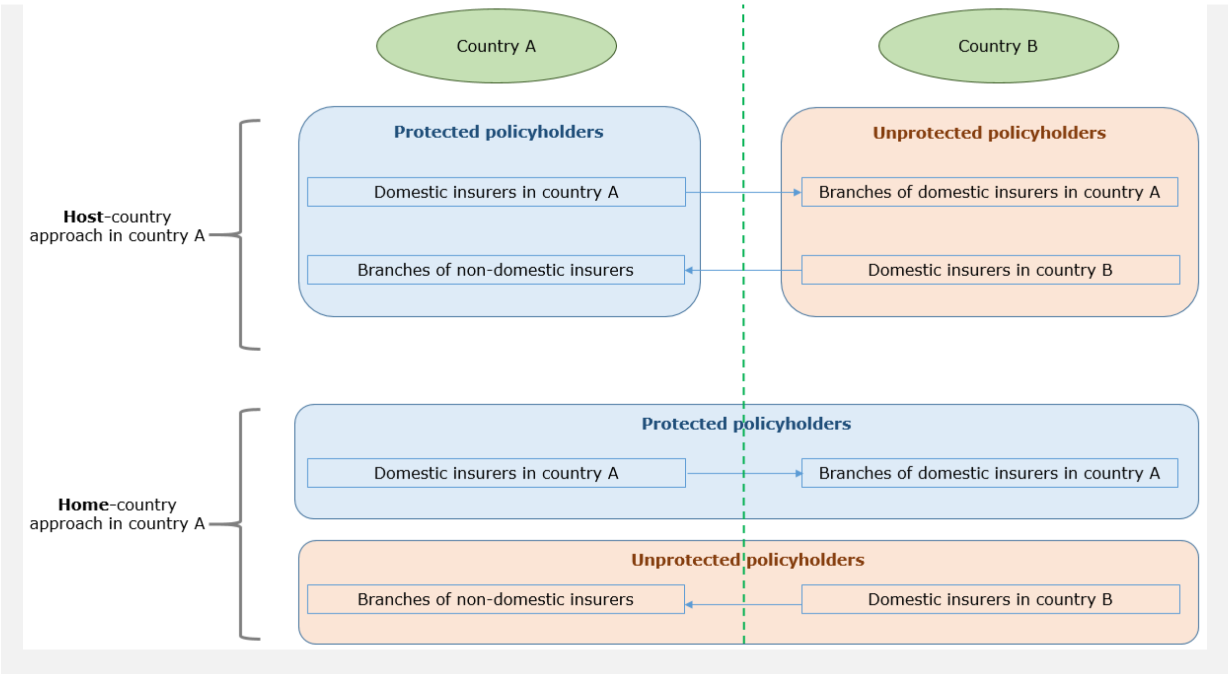
Q4) Do you agree that the continuation of the policies should take precedence in case of life and some long-term-life policies? Please explain your reasoning.

3.2.2 Geographical coverage

108. The geographical coverage determines whether policies sold via FoE or FoS are covered by the domestic IGS in a particular Member State. In principle, national IGSs could be operated on the basis of the host-country principle and/or the home-country principle (see Box 3).

Box 3: Home- versus host-country principle

- **Host-country principle** applies when the domestic IGS covers policies issued by domestic insurers at national level and does not cover those sold in a cross-border context via FoS or FoE (outward). It also covers those policies issued via FoS or FoE of incoming insurers from other Member States (inward).
- **Home-country principle** applies when the domestic IGS covers policies issued by domestic insurers both at national level and abroad via FoS or FoE (outward). The home-country principle does not require incoming insurers, which operate via FoS or FoE (inward) to participate in the IGS.
- The following illustration provides an overview of both approaches, from the perspective of country A.

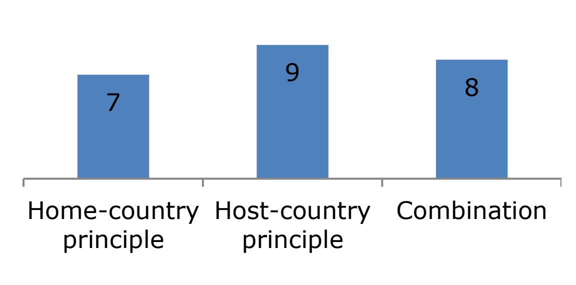


<u>*Analysis of options*</u>

Option 1: Full discretion to Member States

109. Figure 4 shows the geographical coverage of the existing national IGSs. Currently, nine IGSs are operated on the basis of the host-country principle, seven on the home-country principle and eight IGSs on a combined approach.

Figure 4: Geographical scope of existing IGSs[22]



110. For IGSs operated on a combined approach, one of the principles (host- or home-country principle) is usually dominant with some specific elements. For instance, three of the eight IGSs require EU branches to participate in the IGS only if the IGS of the insurer's home country does not provide (equivalent) protection as the domestic IGS.

111. From a cross-border perspective, setting harmonised principles for the geographical coverage of IGSs is essential to ensure that policyholders in the EU are evenly protected. If there is no harmonisation of the geographical scope at the EU level, policyholder protection issues as described in Section 2.2 will remain.

[22] The figure reflects the change of coverage of the Danish IGS from a home-country approach to a host-country approach as of January 2019.

Option 2: Home-country principle

112. The main advantage of the home-country principle is that it is aligned with the provisions that the home-country supervisor is responsible for the authorisation, prudential supervision and liquidation of insurers (i.e. the home-country control principle). From that point of view, it could be argued that it is fair that the costs of failure is paid by the industry (or policyholders) in the Member State responsible for the supervision of the insurers.

113. 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.

114. A drawback of the home-country principle is that national IGSs might face (operational) challenges to locate and identify policyholders of the failed insurer who live abroad. In order to mitigate these challenges, the introduction and harmonisation of other principles will be necessary, such as the principles for cross-border cooperation and coordination, including information sharing, and public disclosure to policyholders.

115. However, in order to be effective, this approach should be associated with effective necessary harmonisation of the level of protection in all Member States.

Option 3: Host-country principle

116. The main advantage of the host-country principle is that it ensures that policyholders within a Member States are evenly protected, as they will be covered by the domestic IGS regardless of the location of their insurer. Any potential competitive distortions among insurers operating in the same Member State would therefore be avoided.

117. One of the drawbacks of the host-country principle is that it requires insurers with cross-border activities via FoE or FoS to participate in all domestic IGSs of the Member States where they have operations. This could become an excessive administrative and financial burden for insurance groups. Moreover, the intervention of IGSs in cross-border failures might be difficult in practice as the authorities responsible for the winding-up proceedings are not identical to the authorities that operate the IGSs outside the home Member State of the insurance group.

118. Finally, the host-country principle raises the issue of the need to introduce provisions for a recourse to the IGS of the home Member State of the failed insurance group. The potential implications of the adoption of a host-country principle without a recourse to the IGS of the home Member States is illustrated in Box 4. The example of France shows that the consequence of having no recourse mechanism could result in a reduction of coverage, hence, a decrease in the protection provided to policyholders.

Box 4: Case study – France

Situation

- In year 2000 the coverage of the French non-life IGS (*Fonds de garantie des assurances obligatoires,* FGAO) was extended to all other mandatory non-life insurance provided by insurers headquartered in France. Previously, it was limited to cover motor liability insurance.
- The French IGS did not cover the insolvency of insurers headquartered in other EU countries, which also did not contribute to the IGS's financing.
- In 2015, the European Commission asked France to change the rules of the FGAO, taking the view that the IGS was discriminating against insurers based in other EU countries as it only covered insurers headquartered in France (see link below to the summary of the case).

Responses and actions

- In response to the Commission's 'reasoned opinion', the French authorities amended their legislation by extending the coverage of the French IGS to incoming EU providers (i.e. to the host-country principle).
- Simultaneously, they restricted the scope of the IGS to the following lines of business (LoBs): third party motor liability, dommage ouvrage (a LoB within construction insurance) and mandatory medical liability insurance.
- This restriction was necessary, as there was a concern that the French industry, and in the end the French policyholders, might have to pay for the failure of foreign insurers which are not supervised by the French NCA (ACPR). A former bill even limited the scope to the French IGS to third party motor liability.
- In fact, the ACPR reported that in the past two years, the following EU insurers active in France through FoS in the LoBs covered by FGAO ceased writing business: Gable Insurance AG, Elite Insurance Company, CBL Insurance Europe DAC and Alpha Insurance. Four of these insurers were active in dommage-ouvrage.* During the same period, only one French insurer supervised by the ACPR failed.
- As a result of this amendment, French policyholders are no longer covered for all mandatory policies as of July 2018. The protection offered by the IGS has been reduced to three mandatory LoBs.

Conclusions

- This case study illustrates that a host-country principle without a right of claim against the IGS of the home Member State of the defaulting insurer may lead to a situation where the country's regulator takes measures to avoid paying the costs of foreign insurers failing. In the French case, the regulators decided to reduce the coverage of the IGS.
- This highlights the importance of the funding feature of IGSs and raises the question of the necessity to introduce rules around reimbursement where IGSs are operated on the basis of a host-country principle.
- Furthermore, the case study demonstrates that policyholders within one Member State may not be protected equally, depending on whether the insolvency incurs

with a domestic or a foreign insurer. Differences stemming from IGS coverage may here add to differences in insolvency laws.

**In a dedicated study published on the ACPR's website, the market ratio for the LoB dommage ouvrage is about 78% on a 10-year period.*

Source: Summary of the infringement case: http://europa.eu/rapid/press-release_MEMO-15-5162_EN.htm and information provided by the ACPR. The case 20144028 was closed.

Option 4: Host-country principle plus cooperation (incl. recourse) arrangements

119. This option introduces the possibility to have a recourse to the IGS of the home Member State of the failed cross-border insurer in order to protect the policy in the other Member States where the insurer is operating. This way the costs of failing are borne by the Member State where the insurer is domiciled. In other words, this option means that the IGS of the host-country serves as the "front office" and the IGS of the home country as the "back office", the final responsible for paying the costs of a failed insurer.

120. One of the benefits of this option is that policyholders in the same Member State are protected by the domestic IGS. This also makes it more convenient for affected policyholders and beneficiaries, as they can present their claims in their country of residence.

121. For this option to be effective, it requires a certain degree of harmonisation of the financing of national IGSs in order to guarantee that the IGS of the host-country is paid within a reasonable period by the IGS of the insurer's home country.

122. Nonetheless, the setting up as well as the implementation of these recourse arrangements between Member States might be difficult and challenging in practice. This approach would require a close cooperation and coordination between Member States, and could be difficult, although not impossible, to implement for types of insurance that only exist in the host and not in the home country. It should be noted, though, that similar "recourse" approach is part of current Commission proposed amendment to the Motor Insurance Directive.

Option 5: Home- plus host-country principle (combined approach)

123. In a combined approach, one of the principles (host- or home-country principle) is usually dominant with some specific elements of the other principle, which need to be carefully designed. The existing national IGSs showed that the elements of the combined approach differs across the Member States.

124. The combined approach could be beneficial for Member States to adopt their approach to fit to their national needs. The combined principle however adds

significant complexity to the functionality of IGSs without clear benefits when the national IGSs are harmonised across Member States.

- *Impact assessment*

125. The impact of the options considered on the different stakeholders is summarised below.

Policy issue 3: Need for harmonisation of geographical scope of national IGSs		
Option 3.1: Full discretion to Member States		
Costs	Policyholders	Policyholders of the same insurer could be treated differently following the liquidation of the insurer depending on their residence.
	Industry	Insurers might be a member of more than one national IGSs and, hence, have to contribute to different national IGSs.
	Supervisors	Supervisors will have to deal with a fragmented landscape of national IGSs across the EU.
	Other	Differences in geographical coverage might complicate cross-border cooperation and coordination between national IGSs.
Benefits	Policyholders	No material benefits identified.
	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	No changes required for the existing national IGSs.
Option 3.2: Home-country principle		
Costs	Policyholders	Policyholders within the same Member State might be protected by a different national IGS and, hence, could receive a different level of protection.
	Industry	Potential lack of level playing field between domestic and non-domestic insurers (if the level of protection is not harmonised).
	Supervisors	Supervisors might face (operational) challenges to locate and identify policyholders of the failed insurer who live abroad.
	Other	Approximately two third of the existing schemes need to amend their geographical coverage. National IGSs might face (operational) challenges to locate and identify policyholders of the failed insurer who live abroad.
Benefits	Policyholders	Policyholders of the same insurer will be protected by the same IGS regardless of their residence.
	Industry	The home-country principle is aligned with the home-country control principle. A harmonised principle at the EU level avoids the situation where insurers are required to become a member of different national IGSs.
	Supervisors	Alignment with the provisions that the home-country supervisor is responsible for the authorisation, prudential supervision and liquidation of insurers (i.e. the home-country control principle).
	Other	Contributes to cross-sectoral consistency.

Option 3.3: Host-country principle		
Costs	Policyholders	Not all policyholders of an insurer are protected by the same IGS.
	Industry	Insurers with cross-border activities via FoE or FoS are required to participate in all domestic IGSs of the Member States where they are active in.
	Supervisors	The authorities that conduct and supervise the winding-up proceedings would be located in the home country of the failed insurance group.
	Other	Approximately two third of the existing schemes need to amend their geographical coverage. The misalignment with the home-country control principle might make the IGS intervention complex in practice. The host-country principle raises the issue of the need for recourse arrangements between Member States.
Benefits	Policyholders	Policyholders within the same Member State will be protected by the same IGS regardless of the location of their insurer.
	Industry	A harmonised principle at the EU level avoids the situation where insurers are required to become a member of different national IGSs.
	Supervisors	No material benefits identified.
	Other	Avoids possible distortions to the level playing field between insurers in the same Member State.
Option 3.4: Host-country principle plus recourse arrangements		
Costs	Policyholders	Not all policyholders of an insurer are protected by the same IGS.
	Industry	Insurers with cross-border activities via FoE or FoS are required to participate in all domestic IGSs of the Member States where they are active in.
	Supervisors	The authorities that conduct and supervise the winding-up proceedings would be located in the home country of the failed insurer.
	Other	The set-up and implementation of the recourse arrangements might be difficult and complex.
Benefits	Policyholders	Policyholders within the same Member State will be protected by the same IGS regardless of the location of their insurer.
	Industry	A harmonised principle at the EU level could avoid the situation where insurers are required to become a member of different national IGSs.
	Supervisors	No material benefits identified.
	Other	Avoids possible distortions to the level playing field between insurers in the same Member State.
Option 3.5: Home- plus host-country principle (combined approach)		
Costs	Policyholders	Complex structure and less transparent compared to a single approach.
	Industry	Complex structure and less transparent compared to a single approach.
	Supervisors	Complex structure and less transparent compared to a single approach.
	Other	Complex structure and less transparent compared to a single approach.

Benefits	Policyholders	Potential more even level of protection for policyholders in same jurisdictions.
	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	Flexibility to adapt IGS coverage to national needs.

- *Comparison of options*

126. EIOPA's preferred option is the home-country principle. The main advantage of this approach is consistency with the *home-country control principle* applied in insurance supervision. It is also the more relevant option considering the importance of the harmonisation of the geographical scope to ensure that issues of unequal policyholder treatment are limited. Moreover, it is also the principle used for the DGS and ICS contributing to the cross-sectoral consistency.

127. The effectiveness and efficiency of each option for achieving the defined objectives is illustrated in the table below.

Policy issue 3: Need for harmonisation of geographical of national IGSs						
	Effectiveness (0/+/++)[23]			**Efficiency (0/+/++)**		
Options	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability
Option 3.1: Full discretion to Member States	0	0	0	0	0	0
Option 3.2: Home-country principle	++	++	++	++	++	++
Option 3.3: Host-country principle	++	++	+	++	++	+

[23] Effectiveness measures the degree to which the different policy options meet the relevant objectives.

Efficiency measures the way in which resources are used to achieve the objectives. The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

Option 3.4: Host-country principle plus recourse arrangements	++	++	+	++	++	+
Option 3.5: Home- plus host-country principle (combined approach)	+	+	+	+	+	+

- *Advice*

128. EIOPA advises that the geographical coverage of national IGSs should be harmonised on the basis of the home-country principle.

Stakeholder questions:

Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle?

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")?

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?

3.2.3 Eligible policies

- *Analysis of options*

Option 1: Full discretion to Member States

129. Figure 5 shows a categorisation of the existing IGSs split into general and special schemes based on the type of insurance policies covered. Most of the existing IGSs are special schemes covering typically one or two types of policies. Seven national IGSs cover a broad range of both life and non-life insurance policies, whereas the other seven schemes cover only life or non-life policies.

130. In order to ensure a minimum level of equal protection of policyholders it is essential to establish harmonised principles for insurance policies eligible for IGS protection.

Option 2: Life policies only

131. Life insurance is characterised by long-term duration contracts with usually a savings or retirement objective. The financial consequences for policyholders could be significant if insurers cannot meet their contractual commitments on life policies, especially when they rely on the pay-outs of their policies, for instance, for their retirement. In addition, the typical long-term nature of life products in combination with the likely difficulties for policyholders to find replacement (against similar conditions) makes IGS protection on these policies essential. In this context, the eligibility of policies providing protection against biometric risks, such as term and whole life assurance, should be carefully considered.

132. Additionally, figure 2 showed that the degree of cross-border insurance business is relatively high for life insurance business. It is therefore advisable to make life policies eligible for IGS protection.

Option 3: Non-life policies only

133. This option would only provide protection to eligible policyholders of non-life policies. Most non-life insurance is characterised by short duration contracts, which could be easily substituted in the event of liquidation of the insurer. Policyholders and/or third party claimants could however still suffer significant losses from the failure of a non-life insurer.

134. Although the losses on some contracts could be rather severe for policyholders and/or third party claimants, it is not advisable to restrict the coverage of IGSs to non-life policies only. The severe financial and/or social consequences that policyholders might face following the failure of life insurers should not be disregarded.

Option 4: Both life and non-life policies

135. This option extends the coverage of IGSs to both life and non-life policies and, hence, presents a more complete protection of policyholders. It can however be questioned whether IGS coverage would be necessary for all types of non-life insurance, particularly in case of commercial policies and/or where the financial hardship of losses from a failure can be expected to be manageable (e.g. in case of travel insurance).

Option 5: Specific life and specific non-life policies

136. This option mitigates some of the drawbacks of the other options by covering a specific range of life policies and non-life policies.

137. At a minimum, the following lines of business should be captured:

(i) policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries; and/or

(ii) lines of business with a high market share (in cross-border business) in Europe.

138. The assessment of the financial and/or social hardship should also consider the potential costs arising from the lack of substitutability.

139. Moreover, when selecting the range of eligible policies, it should be taken into consideration whether the insurance is compulsory as well as the existence of guarantee schemes of other financial sectors.

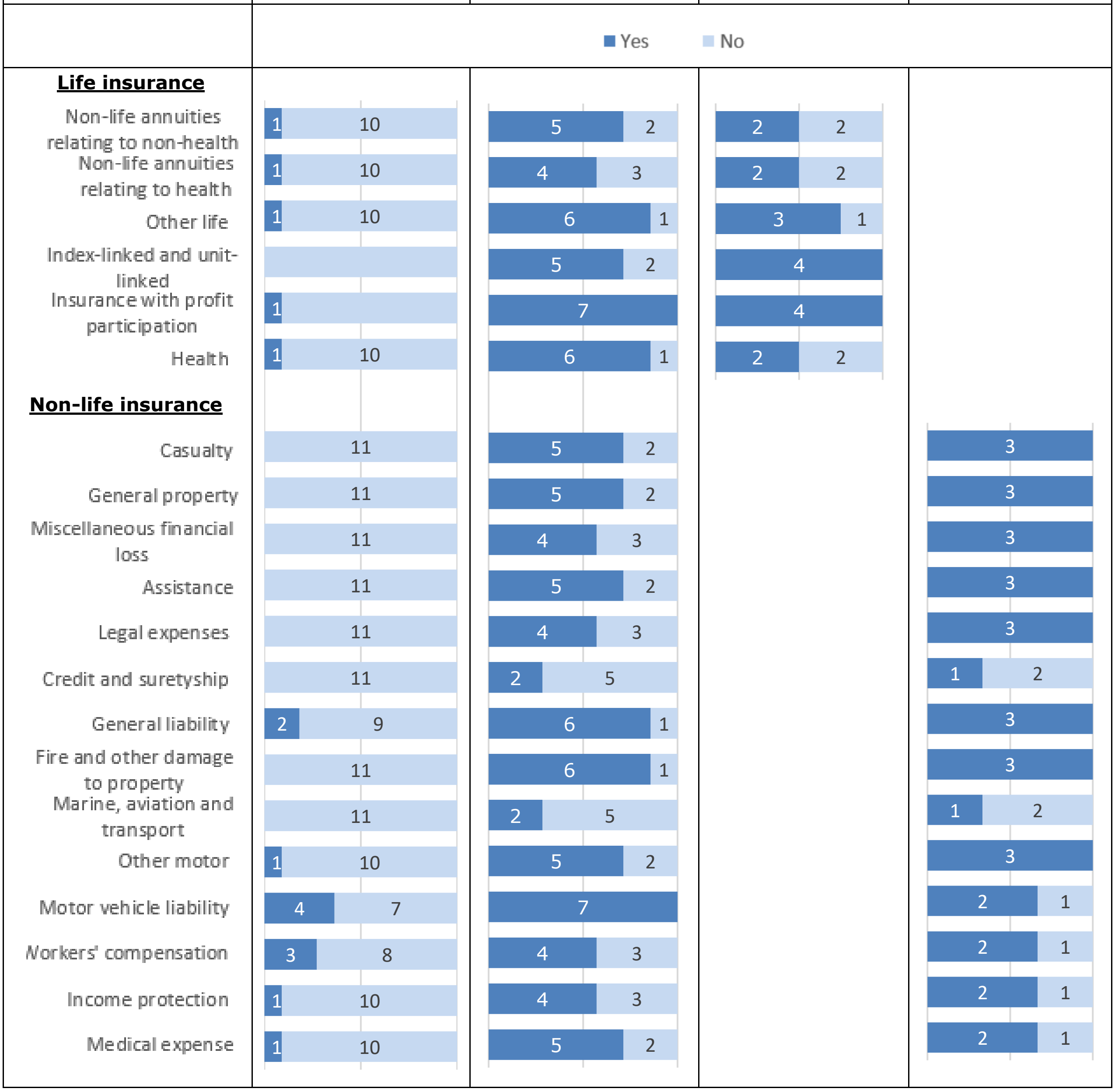
140. In addition, it should be noted that the concrete definition of eligible policies has a significant impact on the costs for IGSs (i.e. the wider the scope, the higher the costs). This should therefore be explicitly taken into account.

141. In order to specify the criteria, EIOPA should develop further guidance in this area.

142. Furthermore, Member States should have the flexibility to go beyond the specific range of policies set at the EU level and extend the coverage to a broader range of policies.

Figure 7: Eligible policies

Type of insurance contracts	Special scheme covering only specific insurance (11 IGSs)	General schemes covering life and non-life insurance (7 IGSs)	General scheme covering life insurance (4 IGSs)	General scheme covering non-life insurance (3 IGSs)



- *Impact assessment*

143. The impact of the options considered on the different stakeholders is summarised below.

Policy issue 4: Need for harmonisation of eligible policies		
Option 4.1: Full discretion to Member States		
Costs	Policyholders	Uneven protection of policyholders in the EU is maintained.
	Industry	There will be no (minimum) level playing field on this element of IGSs.
	Supervisors	There will be no (minimum) level playing field on this element of IGSs.
	Other	There will be no (minimum) level playing field on this element of IGSs.
Benefits	Policyholders	No material benefits identified.
	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	No changes required for the existing national IGSs.
Option 4.2: Life policies only		
Costs	Policyholders	The collapse of non-life insurers could also lead to severe financial hardship for policyholders.
	Industry	All types of life policies would be captured which could become a financial burden on the industry.
	Supervisors	No material costs identified.
	Other	Approximately 14 of the existing national IGSs would need to extend their scope considerably.
Benefits	Policyholders	The failure of a life insurer can often cause very severe financial hardship for policyholders.
	Industry	Limiting the scope of eligible policies reduces the costs for the industry.
	Supervisors	No material benefits identified.
	Other	The scope of eligible policies is broadly in line with the scope of the general schemes covering both life and non-life insurance and schemes covering only life insurance.
Option 4.3: Non-life policies only		
Costs	Policyholders	The failure of a life insurer can often cause very severe financial hardship for policyholders.
	Industry	All types of non-life policies would be captured which could become a financial burden on the industry.
	Supervisors	No material costs identified.
	Other	Approximately 14 of the existing national IGSs would need to extend their scope considerably.
Benefits	Policyholders	The collapse of non-life insurers could lead to severe financial hardship for policyholders.
	Industry	Limiting the scope of eligible policies reduces the costs for the industry.
	Supervisors	No material benefits identified.
	Other	The scope of eligible policies is broadly in line with the scope of 11 existing national IGSs.
Option 4.4: Both life and non-life policies		
Costs	Policyholders	Higher premiums to the extent that the costs for insurers are transferred to consumers.
	Industry	The financial and administrative burden on the industry could be excessive by making all types of policies eligible for IGS protection.

	Supervisors	No material costs identified.
	Other	No material costs identified.
Benefits	Policyholders	Most complete option of policyholder protection.
	Industry	Contributes to achieving a higher degree of level playing field between insurers in the EU.
	Supervisors	No material benefits identified.
	Other	No material benefits identified.
Option 4.5: Specific life and specific non-life policies		
Costs	Policyholders	Not all types of policies would be covered.
	Industry	Potential costs to industry due to the fact that a range of both life and non-life policies are covered.
	Supervisors	No material costs identified.
	Other	No material costs identified.
Benefits	Policyholders	Protection is provided to those policies where the failure of insurers could result in a severe financial/social hardship for policyholders.
	Industry	Ensures a certain degree of level playing field, especially given that policies with a high share in cross-border business would be covered.
	Supervisors	No material benefits identified.
	Other	The exclusion of purely commercial (non-life) policies would be largely in line with the coverage of the existing national IGSs.

- *Comparison of options*

144. In order to have a more even level of policyholder protection across and within Member States, it is essential to set minimum harmonised rules for the policies eligible for IGS protection at the EU level.

145. EIOPA's preferred option is to extend IGS coverage to specific life and specific non-life policies.

146. IGS protection for life policies is essential to alleviate the potential severe financial and social hardship for policyholders and beneficiaries, particularly for policies involving pensions and annuities. Although non-life policies are often short term in nature and more easily substitutable (against similar conditions), the failure of an insurer could cause significant damage to policyholders if they have an outstanding claim at the moment of failure. It is therefore advisable to include also particular type of non-life policies involving retail consumers.

147. The effectiveness and efficiency of each option for achieving the defined objectives has been illustrated in the table below.

Policy issue 4: Need for harmonisation of eligible policies						
	Effectiveness (0/+/++)			Efficiency (0/+/++)		
Options	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability
Option 4.1: Full discretion to Member States	0	0	0	0	0	0
Option 4.2: Life policies only	+	+	+	+	+	+
Option 4.3: Non-life policies only	+	+	+	+	+	+
Option 4.4: Both life and non-life policies	++	++	+	+	+	+
Option 4.5: Specific life and specific non-life policies	++	++	+	++	+	+

- *Advice*

148. EIOPA advises that national IGSs should cover specific life policies and specific non-life policies. The exact criteria for selecting the range of life and non-life policies need to be carefully designed.

149. At a minimum, the following lines of business should be captured:

    i) policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries;

    ii) lines of business with a high market share in cross-border business in Europe.

150. Member States could extend coverage to other lines of business relevant in their jurisdiction.

Stakeholder questions:

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.

Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)?

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.

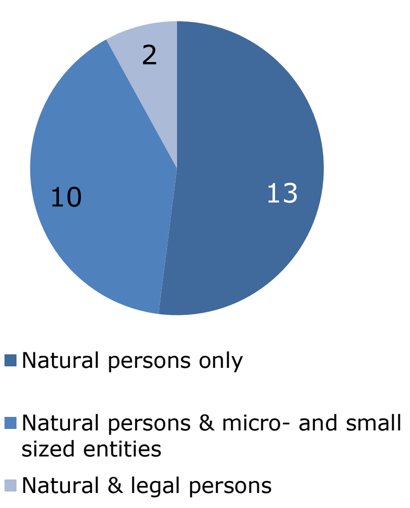
3.2.4 Eligible claimants

- <u>*Analysis of options*</u>

Option 1: Full discretion to Member States

151. Figure 8 shows that 13 of the existing national IGSs provide protection to natural persons solely, 11 schemes extend coverage to natural and micro-and small-sized entities and 2 IGSs cover all natural and legal persons.

Figure 8: Eligible claimants



152. For a number of IGSs, the respective NCAs reported that there are some restrictions on claimants' eligibility.

153. Individuals or entities connected to the insurer, such as board members, directors, managers, including their spouses and relatives up to second grade, are for instance excluded from the scope.

154. In some cases, also shareholders holding more than 5% of the capital of the insurer and those responsible for auditing the financial statements of the insurer are excluded from IGS protection.

155. The lack of harmonisation in eligibility criteria creates an additional layer of complexity in the operation of IGSs, particularly in cross-border failures. For an even level of policyholder protection and the proper functioning of the internal market, the development of harmonised principles for claimants eligible for IGS protection is necessary.

Option 2: Natural persons only

156. This option restricts IGS protection to natural persons only. This covers policyholders but also beneficiaries.

157. This option would be in line with slightly more than half of the existing IGSs. Restricting the coverage to natural persons only limits the coverage and hence the potential costs of IGSs.

158. However, this option might raise concerns about the (uneven) protection for legal persons that resemble retail consumers.

Option 3: Natural persons and selected legal persons

159. This option extends IGS protection to include also selected legal persons that resemble retail consumers, such as micro- and small-sized entities. It can be argued that IGS protection should capture retail and retail-type consumers who do not have the capacity nor resources to assess the financial soundness of insurers based on the information available.

160. Moreover, retail consumers and micro- and small-sized entities are financially more vulnerable than corporate policyholders are. This option would also be in line with the coverage of roughly half of the existing IGSs.

161. This option however requires the development of criteria to define micro- and small-sized entities across Member States.

162. Furthermore, in accordance with the policy of some national IGSs, it could be considered to exclude persons closely connected to the failed insurer from IGS protection. These include board members, directors and managers of the failed insurer who are responsible for the operations of the insurer, hence, could to some extent be held responsible for the failure of the insurer.

Option 4: Natural and legal persons

163. Extending IGS protection to cover all natural and legal persons could be an excessively expensive option. It may also not be fully justified in all cases to include corporate policyholders, as they are better equipped to make an informed judgement based on the information available, assess the financial soundness of insurers and have a greater capacity to manage their risks.

164. Furthermore, the extension to cover all legal persons would require a significant change in the coverage for many existing IGSs; as a far majority of the existing IGSs do not cover corporate legal persons except for micro- and small-sized entities.

- <u>*Impact assessment*</u>

165. The impact of the options considered on the different stakeholders is summarised below.

Policy issue 5: Need for harmonisation of eligible claimants		
Option 5.1: Full discretion to Member States		
Costs	Policyholders	Differences in policyholder eligibility and, hence, policyholder protection, will be preserved and maintained.
	Industry	No level playing field with respect to the eligible claimants across the Member States.
	Supervisors	No material costs identified.
	Other	No material costs identified.
Benefits	Policyholders	No material benefits identified.

	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	Full flexibility for Member States to determine the eligible claimants. No changes required to existing national IGSs.
Option 5.2: Natural persons only		
Costs	Policyholders	Corporate policyholders, including those similar to natural persons, are not covered in an IGS.
	Industry	No material costs identified.
	Supervisors	No material costs identified.
	Other	No material costs identified.
Benefits	Policyholders	All natural persons are included.
	Industry	Limiting the scope to natural persons only reduces the costs to the industry.
	Supervisors	No material benefits identified.
	Other	All existing national IGSs already provide protection to natural persons.
Option 5.3: Natural persons and selected legal persons		
Costs	Policyholders	Large corporate policyholders are not covered in an IGS.
	Industry	Extending coverage to selected legal persons increases the costs of IGS protection.
	Supervisors	No material costs identified.
	Other	A uniform definition of micro- and small sized entities needs to be developed at the EU level.
Benefits	Policyholders	The financially more vulnerable policyholders – i.e. retail consumers and micro- and small-sized entities – are captured.
	Industry	Increases level playing field in the EU.
	Supervisors	No material benefits identified.
	Other	Consistent with the coverage of roughly half of the existing IGSs.
Option 5.4: Natural persons and legal persons		
Costs	Policyholders	Potential excessive costs might be translated into higher premiums for all policyholders.
	Industry	Covering all natural and legal persons might be excessively expensive.
	Supervisors	No material costs identified.
	Other	This option might not be fully justified because of the presumed objective of IGSs – the protection of retail consumers.
Benefits	Policyholders	No differentiation is made between retail and corporate policyholders.
	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	No material benefits identified.

- *Comparison of options*

166. The lack of harmonisation in eligibility criteria creates an additional layer of complexity in the operation of IGSs, particularly in cross-border failures. For an even level of policyholder protection and the proper functioning of the internal market, the development of harmonised principles for claimants eligible for IGS protection is necessary.

167. EIOPA's preferred option is to make natural persons and selected legal persons (at least micro- and small-sized entities) eligible for IGS protection.

168. This is considered to be the preferred option from the perspective of consumer protection as well as cost efficiency. The primary objective of IGS should be to protect retail (or retail-like) consumers. Large corporate 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.

169. The effectiveness and efficiency of each option to achieving the defined objectives has been illustrated in the table below.

Policy issue 5: Need for harmonisation of eligible claimants						
	Effectiveness (0/+/++)[24]			**Efficiency (0/+/++)**		
Options	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability
Option 5.1: Full discretion to Member States	0	0	0	0	0	0
Option 5.2: Natural persons only	+	+	+	+	+	+
Option 5.3: Natural persons and selected legal persons	++	++	+	++	++	+

[24] Effectiveness measures the degree to which the different policy options meet the relevant objectives.

Efficiency measures the way in which resources are used to achieve the objectives. The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

Option 5.4: Natural persons and legal persons	++	++	+	+	++	+

- *Proportionality principle*

170. The proportionality principle is taken into account by excluding large corporate policyholders from the scope of IGS protection.

- *Advice*

171. EIOPA advises 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.

172. Additionally, EIOPA advises to introduce restrictions to exclude persons closely connected to the failed insurer from the coverage (such as the Board of directors and managers of the failed insurer).

Stakeholder questions:

Q11) Which criteria should be used to determine/exclude the eligible claimants?

Q12) Should coverage be extended to large legal persons where the ultimate beneficiary are retail customers (such as large corporates offering pensions for customers)?

3.2.5 Coverage level

173. It is essential to set a harmonised coverage level for claimants at the EU level. The coverage level determines the protection provided to policyholders and beneficiaries.

174. Currently, national IGSs have a very varying coverage level. Table 3 shows examples of the (maximum) coverage levels in place for some of the existing IGSs.

Table 3: Examples of coverage levels of existing national IGSs

Country	Coverage level	Policies covered[25]
Belgium	EUR 100,000 per claimant	Insurance with profit participation (Coverage levels for Fonds de garantie pour les services

[25] See also the Annex for a more detailed overview of the lines of business covered.

		financiers / Garantiefonds voor financiële producten)
Romania	Approx. EUR 100,000 per claimant	All types of (re)insurance policies
Bulgaria	• Approx. EUR 5 million per event for non-pecuniary and pecuniary damages resulting from bodily injury or death; EUR 1 million for damage to property; • Approx. EUR 25 000 per injured person; • Approx. EUR 100 000 per insured person or beneficiary.	• Motor vehicle liability insurance, • Compulsory accident insurance for passengers in public transport vehicles • Insurance with profit participation, index-linked and unit-linked insurance and other life insurance
Italy	Minimum amount of cover of the compulsory insurances	Motor vehicle and craft liabilities, General liability insurance for hunting victims
UK	100% per claimant	Broad range of life and non-life policies
Greece	100% or maximum of EUR 30,000 per claimant for life, 100% or maximum of EUR 60,000 for death and permanent total disability	Broad range of life policies (coverage levels for Private Life Insurance Guarantee Fund)
Latvia	100% or maximum of EUR 15,000 per claimant for life, 50% or maximum of EUR 3,000 for non-life	Broad range of life and non-life policies
Norway	90% or maximum EUR 2.1 million per claimant	Broad range of life and non-life policies
Malta	75% or maximum of approx. EUR 24,000 per claimant	Broad range of life and non-life policies
Ireland	65% or a maximum of EUR 825,000 per claimant	Broad range of non-life policies

175. The harmonised coverage level should be set at such a level that: (i) on the one hand, it does not leave policyholders and beneficiaries exposed to considerable financial or social hardship and (ii) on the other hand, the cost of funding of IGSs remains manageable. The determination of the harmonised coverage level requires further work.

176. Member States should, however, remain to have the flexibility to increase the coverage in their jurisdictions and offer policyholders a higher level of protection.

- *Advice*

177. EIOPA advises to introduce 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 cost of funding of IGSs.

178. Member States could increase the level of coverage in their jurisdiction.

Stakeholder questions:

Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances?

3.2.6 Funding

179. The financing of IGSs should be based on robust funding requirements. EIOPA is of the view that the funds need to be raised from the industry. Under exceptional circumstances, Member States could decide to raise the funds directly from policyholders. This could, for instance, be the case if such a fund raising mechanism already exists in a Member State that is well-functioning (this is currently the case in Spain).

180. This would be in line with the practice of most of the existing IGSs. Most of the existing schemes are currently funded by contributions from insurers. In a few cases, these contributions are supplemented by funds from policyholders and/or the government. Government funding is used to allow timely payments to policyholders and is paid back over time.

181. It is essential that the funding mechanisms are carefully designed. Ultimately, the level of protection that can be offered to policyholders is largely dependent on the amount of funding in the IGS, which also determines the cost to the industry.

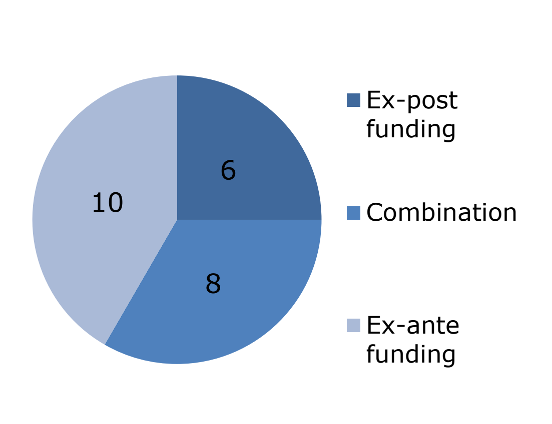
182. The following aspects of the funding need to be considered in a harmonised approach: target level, timing of funding and contributions to IGSs.

3.2.6.1 Timing of funding

Option 1: Full discretion to Member States

183. Figure 9 shows the timing of the funding of the existing IGSs. A small majority of the schemes are funded an ex-ante basis, six schemes are funded ex-post and eight schemes have both elements.

Figure 9: Timing of funding of existing national IGSs



184. The absence of harmonisation at EU level means preserving the differences in the timing of the funding. These differences might have an impact on the protection of policyholders in Member States and do not contribute to enhancing the level playing field in the EU.

Option 2: Ex-ante funding

185. In an ex-ante funded IGS, the funds are raised in anticipation of potential future insurance failures. The main advantage of this option is that it enables the IGS to intervene rapidly and is less subject to moral hazard risk as all insurers – including the failed insurer – would have contributed to the IGS. This approach also reduces the risk of pro-cyclicality at the time of an insurance failure.

186. Nevertheless, the industry could be faced with excessive costs, especially, in the start-up phase if the funding arrangements are not properly designed and managed. The introduction of a transitional period could for instance help to avoid overburdening the industry.

187. Additionally, the set-up and operational/management costs are likely to be higher for an ex-ante funded scheme compared to an ex-post funded scheme. Additionally, ex-ante raised contributions need to be properly managed and invested which requires suitable personnel.

Option 3: Ex-post funding

188. In an ex-post funded IGS, the funds are raised once a failure occurs and losses arise. The main advantage of ex-post funding are that the operational/management costs are limited and that the funds are collected based on actual need (outstanding claims).

189. Nevertheless, ex-post funding is more subject to moral hazard as failed insurers do not contribute to the IGS. Furthermore, raising contributions following the failure of an insurer could potentially have a pro-cyclical effect on the industry.

Option 4: Ex-ante funding complemented with ex-post funding

190. EIOPA is of the view that an appropriate level of ex-ante funding, possibly complemented by ex-post funding arrangements in case of lack of funds should be preferred.

191. This option ensures that upon failure funds are immediately available allowing the IGS to intervene swiftly, while the complementary ex-post funding arrangements alleviate some of the concerns with ex-ante funding. The determination of the appropriate level of ex-ante funding needs further work and careful analysis.

192. In the context of ex-ante funding, the introduction of potential harmonised principles on the governance, supervision, investment/risk management of IGSs should also be considered.

- <u>*Impact assessment*</u>

193. The impact of the options considered on the different stakeholders is summarised below.

Policy issue 6: Need for harmonisation of timing of funding		
Option 6.1: Full discretion to Member States		
Costs	Policyholders	Some degree of harmonisation across Member States would increase the protection of policyholders, particularly in cross-border situations.
	Industry	No level playing field between insurers in the EU.
	Supervisors	No material costs identified.
	Other	No material costs identified.
Benefits	Policyholders	No material benefits identified.
	Industry	No material benefits identified.
	Supervisors	No material benefits identified.
	Other	No changes are required in the current funding structure of national IGSs.
Option 6.2: Ex-ante funding		
Costs	Policyholders	Collected funds might be insufficient to cover the costs at the time of failure.
	Industry	Money is set aside for potential future failures and, hence, cannot be used by insurers. Also, the set-up and operational/management costs are likely to be higher than for ex-post funded schemes.
	Supervisors	Supervisors need to oversee that the funds are properly managed by the IGS.
	Other	No material costs identified.

Benefits	Policyholders	Enables swift intervention by IGSs.
	Industry	All insurers, including those that failed, contribute to the scheme.
	Supervisors	Risk of moral hazard by insurers is limited.
	Other	Reduces the risk of pro-cyclicality at the time of an insurance failure.
Option 6.3: Ex-post funding		
Costs	Policyholders	Potential difficulties to ensure a prompt pay-out to policyholders.
	Industry	Failed insurers do not contribute to the IGS.
	Supervisors	Risk of moral hazard by insurers is higher.
	Other	Risk of pro-cyclicality at the time of failure.
Benefits	Policyholders	No material benefits identified.
	Industry	The operational/management costs are limited and funds are collected based on actual need (outstanding claims).
	Supervisors	The funds in the IGS are limited and hence the risk of mismanagement of funds is reduced.
	Other	No material benefits identified.
Option 6.4: Ex-ante funding complemented with ex-post funding		
Costs	Policyholders	No material costs identified.
	Industry	No material costs identified.
	Supervisors	No material costs identified.
	Other	No material costs identified.
Benefits	Policyholders	Enables swift intervention by IGSs with the possibility to raise additional funds in case of shortages.
	Industry	All insurers contribute a certain amount to the scheme without all contributions being raised ex-ante.
	Supervisors	No material benefits identified.
	Other	Limits risk of pro-cyclicality at the time of failure.

- *Comparison of options*

194. EIOPA’s preferred option is to have ex-ante funding complemented with ex-post funding when needed.

195. This option ensures that national IGSs have a certain level of ex-ante funding with the possibility to raise additional funds following the failure of an insurer in case of shortages (up to a maximum amount). This ensures a swift pay-out to policyholders at the one hand and cost-efficiency for insurers at the other hand.

196. The effectiveness and efficiency of each option to achieving the defined objectives has been illustrated in the table below.

Policy issue 6: Need for harmonisation of timing of funding						
	Effectiveness (0/+/++)[26]			**Efficiency (0/+/++)**		
Options	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability	**Objective 1:** Effective and efficient policyholder protection in resolution and/or liquidation	**Objective 2:** Ensuring a level playing field through sufficiently harmonised rules	**Objective 3:** Improving transparency and better comparability
Option 6.1: Full discretion to Member States	0	0	0	0	0	0
Option 6.2: Ex-ante funding	+	+	+	+	+	+
Option 6.3: Ex-post funding	+	+	+	+	+	+
Option 6.4: Ex-ante funding complemented with ex-post funding	++	+	+	++	+	+

3.2.6.2 Financing of IGSs

197. Member States should ensure that IGSs have in place adequate systems to determine their potential liabilities. The available funding of IGSs should be proportionate to those liabilities. IGSs should be funded by contributions to be made by their members at least annually.

198. Furthermore, a harmonised target level for IGSs should be determined in order to ensure that IGSs have sufficient capacity to absorb losses. Introducing a target level also has the advantage of avoiding that IGSs become a financial strain for the industry.

199. Currently, four national IGSs have been reported to have a target level (minimum level of capital to be maintained in the scheme). In one case it was specified that the capital of the scheme could not fall below one thousandths of the total net technical provisions all the insurers belonging to scheme.

200. In the White Paper on insurance guarantee schemes (2010), the European Commission advocated to introduce an initial target level of 1.2% of the gross written premiums. Over a transitional period a 10 years, this means an annual contribution of 0.12% of gross written premiums from each contributing member of the IGS.

[26] Effectiveness measures the degree to which the different policy options meet the relevant objectives.

Efficiency measures the way in which resources are used to achieve the objectives. The extent to which objectives can be achieved for a given level of resources/at least cost (cost-effectiveness).

201. The determination of the target level requires further work whereby the characteristics of the national markets need to be taken into consideration.

3.2.6.3 Calculation of contributions to IGSs

202. The existing national IGSs raise their contributions often based on a fixed rate in proportion to the size of the insurers' business (see figure 10). Only in one case, the contributions are determined according to the risks of the insurers.

203. The contributions raised by some of the existing national IGSs are shown in table 4.

Figure 10: Contributions base of existing national IGSs

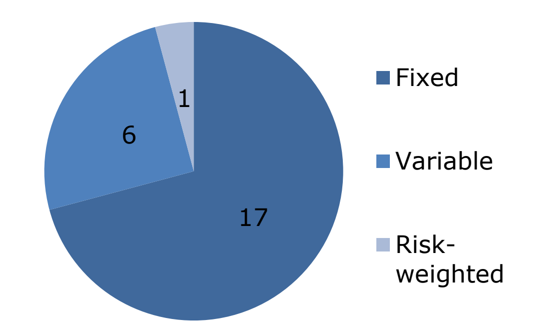


Table 4: Examples of contributions into existing national IGSs

Country	Contributions from industry
Belgium	0,15% of the inventory reserves
Germany	At most, 0.2‰ of net technical provisions (until a sum of 1‰ of the net technical provisions has been reached)
Greece	Up to 1,5% of GWP per class of life insurance
Latvia	0.1% of GWP
Malta	0.125% of GWP
Norway	1,5 % of GWP based on the three latest annual accounts
Romania	1% of gross earned premiums for non-life insurance, 0.4% of gross earned premiums for life insurance

204. In order to ensure a level playing field, it is essential to introduce some harmonised principles at EU level with respect to the contributions into an IGS.

205. The calculation method of the contributions, including the contribution base, needs to be carefully designed and requires further work. The potential benefits and drawbacks of the different options should be duly considered.

206. For instance, contributions based on a fixed rate in proportion to the size of insurers' business (measured in terms of gross written premiums or gross received premiums or technical or mathematical provisions) are simple and consistent with the way most IGSs are currently funded.

207. Additionally, this would prevent potential competitive distortions between small and large insurers and new entrants. Risk weighted contributions, however, lead to a fairer allocation of costs, as insurers with a higher risk

profile, hence, a higher expected probability of default, would contribute more to the funding of IGSs.

208. Concerns about excessive contributions into an IGS could be further mitigated by introducing caps on the annual contributions by insurers.

209. Half of the existing IGSs have been reported to have some type of upper limit on the annual level of contributions that can be raised from an individual insurer or from the industry as a whole.

- *Proportionality principle*

210. The proportionality principle is essential when determining the funding aspects of IGSs. In order to not overburden the industry (in case of ex-ante and ex-post funding) and to avoid creating a system prone to contagion (in case of ex-post funding), a transitional period should be introduced. An appropriate transition period to achieve the target level would help to alleviate the burden on the industry.

211. Additionally, the amount of contributions raised from the industry should be proportional to their size and/or risks.

- *Advice*

212. Member States should ensure that IGSs have in place adequate systems to determine their potential liabilities. The available financial means of IGSs should be proportionate to those liabilities.

213. 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. However, in order to avoid the risk of contagion the ex-post fund raising should be constrained.

214. An appropriate target level for the funding of IGSs should be defined across Member States, taking into account the national market specificities. This 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.

215. Moreover, EIOPA advises to consider the introduction of 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.

Stakeholder questions:

Q14) What should be the relevant criteria to determine the target level for national IGSs?

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)?

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)?

3.2.7 Disclosure

216. Disclosure and transparency promote policyholders' financial knowledge and contribute to better policyholder protection and strengthening the financial stability. Insurers and IGSs should contribute to achieving a higher degree of disclosure and transparency.

217. The introduction of Regulation (EU) No 1286/2014 (the PRIIPs Regulation)[27] has established uniform rules on transparency at EU level and ensures that a common standard for key information documents is established in a uniform fashion.

218. Article 8(3)(e) of the PRIIPs Regulation requires that the product information to retail investors should include (:*"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;".*

219. In accordance with the PRIIPs Regulation, insurers should disclose to policyholders whether their insurance policy is covered by and IGS, and if so, specify which one. Additionally, they should provide basic information about the conditions and potential limitations to the coverage.

220. Additionally, the website of the IGSs should contain the necessary information for policyholders, in particular the information concerning the provisions regarding the process for and conditions of IGS protection.

- *Advice*

221. EIOPA advises to establish requirements for the adequate, clear and comprehensive disclosure to consumers and policyholders about the existence of IGSs and the rules governing the entitlement to coverage under such schemes.

222. Disclosure requirements should apply to both insurers and national IGSs.

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[27] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p. 1.

223. The disclosure requirements should be in accordance with, but not limited to, the requirements set out in Article 8(3)(e) of the PRIIPs Regulation.

Stakeholder questions:

Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those?

3.2.8 Cross-border cooperation and coordination

224. Cross-border cooperation and coordination arrangements, including arrangements for the exchange of information, between national IGSs are essential to ensure the swift pay out to policyholders. These arrangements contribute to achieving greater policyholder protection.

225. Cross-border arrangements should also incorporate measures for cooperation in dealing with compensation claims at national level on behalf of other IGSs.

226. Cross-border cooperation and coordination could also help to overcome potential legal and linguistic barriers in cross-border failures and, hence, mitigate some of the drawbacks of the home-country principle.

- *Advice*

227. EIOPA advises to establish cross-border cooperation and coordination arrangements between national IGSs. This should also include arrangements for the exchange of information and dealing with compensation claims at national level on behalf of other IGSs.

228. In accordance with the principles set out in Article 21(1) of the EIOPA Regulation, EIOPA should have a leading role in ensuring the consistent and coherent functioning of these cross-border arrangements across the EU.

Stakeholder questions:

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?

3.2.9 Review clause

229. EIOPA is of the view that a review clause should be adopted to assess the adequacy of the harmonised principles and where necessary amend the rules. The review should be done at least every five years after becoming the harmonised principles become effective.

- *Advice*

230. EIOPA should conduct a review of the adequacy of the harmonised principles. This should be done at least every five years after the harmonised framework becomes effective.

4. Summary of Advice

The establishment of a European network of national IGSs across the Member States of the EU…

231. EIOPA is of the view that every Member State should have a national IGS in place for the protection of policyholders in the event of insurance failures. The national IGSs should meet a minimum set of harmonised features.

232. The exact legal structure of the schemes should be left to the discretion of Member States. This could be a separate national IGS or a mechanism that will deliver a similar outcome provided that it meets the harmonised minimum requirements.

233. EIOPA advises to consider the harmonisation of national IGSs within the broader context of recovery and resolution. In accordance with the Call for Advice 3.11, EIOPA advises to harmonise the national frameworks for the recovery and resolution of insurers.

…which are sufficiently harmonised and adequately funded.

Role and functioning

234. EIOPA advises that an IGS should be set up with the primary aim to protect policyholders, which can be achieved by:

    i) paying compensation swiftly to policyholders and beneficiaries for their losses when an insurer becomes insolvent;

    ii) ensuring the continuation of insurance policies (for instance, by funding or promoting a portfolio transfer or taking over and administrating the portfolio as a temporary or resolution administrator).

235. At a minimum, national IGSs should be able to perform the former role unless their funds can be used to ensure the continuation of insurance policies.

236. EIOPA is of the view that the continuation of policies should be preferred for life and for some long-term non-life insurance policies, where reasonably practicable and justified in terms of costs and benefits.

Geographical coverage

237. EIOPA advises that the geographical coverage of national IGSs should be harmonised on the basis of the home-country principle.

Eligible policies

238. EIOPA advises that national IGSs should cover specific life policies and specific non-life policies. The exact criteria for selecting the range of life and non-life policies need to be carefully designed.

239. At a minimum, the following lines of business should be captured:

   i) policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries;

   ii) lines of business with a high market share in cross-border business in Europe.

240. Member States could extend coverage to other lines of business relevant in their jurisdiction

Eligible claimants

241. EIOPA advises 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.

242. Additionally, EIOPA advises to introduce restrictions to exclude certain natural and legal persons connected to the failed insurer from the coverage (such as the Board of directors and managers of the failed insurer).

Coverage level

243. EIOPA advises to introduce a 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 cost of funding of IGSs.

244. Member States could increase the level of coverage in their jurisdiction

Funding

245. Member States should ensure that IGSs have in place adequate systems to determine their potential liabilities. The available financial means of IGSs should be proportionate to those liabilities.

246. 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. However, in order to avoid the risk of contagion the ex-post fund raising should be constrained.

247. An appropriate target level for the funding of IGSs should be defined across Member States, taking into account the national market specificities. This 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.

248. Moreover, EIOPA advises to consider the introduction of 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.

<u>Disclosure</u>

249. EIOPA advises to establish requirements for the adequate, clear and comprehensive disclosure to consumers and policyholders about the existence of IGSs and the rules governing the entitlement to coverage under such schemes. These requirements should apply to both insurers and IGSs.

250. The disclosure requirements should be in accordance with, but not limited to, the requirements set out in Article 8(3)(e) of the PRIIPs Regulation.

<u>Cross-border cooperation and coordination</u>

251. EIOPA advises to establish cross-border cooperation and coordination arrangements between national IGSs. This should also include arrangements for the exchange of information and dealing with compensation claims at national level on behalf of other IGSs.

<u>Review clause</u>

252. EIOPA should conduct a review of the adequacy of the harmonised principles. This should be done at least every five years after the harmonised framework becomes effective.

Annex: Overview of existing national IGSs

Country	Name of IGS	Type of business lines covered by IGS
Austria	Deckungsstock	• **Non-life insurance:** Health and accident insurance, as far as these are operated in a manner similar to life insurance • **Life insurance:** All types of life insurance
Belgium	Agence fédérale des Risques professionnels / Federaal Agenschap voor Beroepsrisico's	• **Non-life insurance:** Medical expense insurance, income protection insurance and workers' compensation insurance • **Life insurance:** Annuities stemming from non-life insurance contracts and relating to health insurance obligations and annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations
	Fonds de garantie pour les services financiers / Garantiefonds voor financiële producten	• **Life insurance:** Insurance with profit participation
Bulgaria	Compensation Fund of the Guarantee Fund	• **Non-life insurance:** Motor vehicle liability insurance, compulsory accident insurance for passengers in public transport vehicles • **Life insurance:** Insurance with profit participation, index-linked and unit-linked insurance and other life insurance
Croatia	N/A	
Cyprus	N/A	
Czech Republic	N/A	
Denmark	Guarantee Fund for non-life insurance companies	• **Non-life insurance:** Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Marine, aviation and transport, Fire and other damage to property, General liability, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance
Estonia	Pension Contracts Sectoral Fund of the Guarantee Fund	• Pension contracts which are insurance contracts for mandatory funded pensions
Finland	Joint guarantee payment system - Patient Insurance Centre	• **Non-life insurance:** General liability insurance (statutory patient insurance only)

	Joint guarantee payment system - Worker's Compensation Centre	• **Non-life insurance:** Workers' compensation insurance (statutory workers' compensation insurance only)
France	Fonds de garantie des assurances de personnes	• **Life insurance:** All types of life and health insurance
	Fonds de garantie des assurances obligatoires	• **Non-life insurance:** Motor vehicle liabilities and construction insurance
	Fonds de garantie des dommages consécutifs à des Actes de Prévention, de Diagnostic ou de Soins dispensés par des professionnels de santé	• **Non-life insurance:** Medical liabilities
Germany	Sicherungsfonds für die Lebensversicherer	• **Life insurance:** Insurance with profit participation, index-linked and unit-linked insurance and other life insurance
	Sicherungsfonds für die Krankenversicherer	• **Life insurance:** Health insurance
Greece	Private Life Insurance Guarantee Fund	• **Life insurance:** Insurance with profit participation and index-linked and unit-linked insurance
	Auxiliary Fund	• **Non-life insurance:** Motor vehicle liabilities in the event of insolvency of motor insurers
Hungary	Kártalanítási Alap	• **Non-life insurance:** Motor vehicle liabilities in the event of insolvency of motor insurers
Iceland	N/A	
Ireland	Insurance Compensation Fund	• **Non-life insurance:** Motor vehicle liability, Other motor, Fire and other damage to property, General liability, Credit and suretyship, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance
Italy[28]	Fondo di garanzia per le vittime della strada	• **Non-life insurance:** Motor vehicle and craft liabilities
	Fondo di garanzia per le vittime della caccia	• **Non-life insurance:** General liability insurance for hunting victims
Latvia	Fund for the Protection of the Insured	• **Non-life insurance:** Accident, health (insurance against illnesses), motor transport (except railway transport), property insurance against damage by fire and natural disasters, property insurance against other damage, motor vehicle owner third party liability insurance, general third party liability insurance and assistance insurance • **Life insurance:** Life, marriage and child birth, tontine, capital redemption transactions and annuity

[28] An IGS for mandatory medical liabilities was introduced by the national law no. 24 of 2017, although its regulatory implementation has not yet been finalised.

Liechtenstein	N/A	
Lithuania	N/A	
Luxembourg	N/A	
Malta	Protection and Compensation Fund	• **Non-life insurance:** Medical expense, Workers' compensation, Motor vehicle liability, Other motor, Fire and other damage to property, General liability, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • **Life insurance:** Life and annuity, marriage and birth, permanent health insurance, pension fund management, social insurance
Netherlands	N/A	
Norway	Garantiordningen for Skadeforsikring	• **Non-life insurance:** Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Fire and other damage to property, General liability, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • **Life insurance:** Annuities stemming from non-life insurance contracts and relating to health insurance obligations and annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations
Poland	Ubezpieczeniowy Fundusz Gwarancyjny[29]	• **Non-life insurance:** Compulsory motor TPL and farmers TPL insurance, compulsory insurance of the farm buildings being the part of the agricultural farm, other compulsory insurance contracts • **Life insurance:** Life insurance contracts
Portugal	Fundo de Acidentes de Trabalho	• **Non-life insurance:** Workers' compensation
Romania	Policyholder Guarantee Fund	• **Non-life insurance:** All contracts • **Life insurance:** All contracts

[29] Ubezpieczeniowy Fundusz Gwarancyjny (UFG) is responsible for payment compensations and benefits to the injured parties in traffic accidents and collisions caused by uninsured motor vehicles' owners and uninsured farmers (each of these groups is obliged to have valid third party liability insurance (TPL)) and is also responsible for making payments to the injured parties in traffic accidents when the person liable has not been identified. Additionally only in case of the bankruptcy of insurance undertaking, UFG satisfies the claims of the entitled persons from:

- compulsory motor TPL and farmers TPL insurance,
- compulsory insurance of the farm buildings being the part of the agricultural farm,
- compulsory insurance resulting from separate acts or international agreements ratified by the Republic of Poland, imposing on certain entities (persons) the obligation to be insured and life insurance contracts in the amount of 50% of eligible receivables to an amount not exceeding in PLN equivalent of 30,000 EUR at the average exchange rate published by the National Bank of Poland (NBP) as valid on the date of declaration of bankruptcy, dismissal the motion of the bankruptcy declaration or discontinuance of bankruptcy proceedings or ordering of compulsive liquidation.

		• **Reinsurance:** All contracts
Slovakia	N/A	
Slovenia	N/A[30]	
Spain	Consorcio de Compensación de Seguros	• **Non-life insurance:** Medical expense, Income protection, Workers' compensation, Motor vehicle liability, Other motor, Marine, aviation and transport, Fire and other damage to property, General liability, Credit and suretyship, Legal expenses, Assistance, Miscellaneous financial loss, General property, Casualty insurance • **Life insurance:** Health, Insurance with profit participation, Index-linked and unit-linked, Annuities stemming from non-life insurance contracts and relating to health insurance obligations, Annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations
Sweden	N/A	
United Kingdom	Financial Services Compensation Scheme	• **Non-life insurance:** Broad range of non-life insurance • **Life insurance:** Health, Insurance with profit participation, Index-linked and unit-linked, Annuities stemming from non-life insurance contracts and relating to health insurance obligations, Annuities stemming from non-life insurance contracts and relating to insurance obligations other than health insurance obligations

[30] It should be noted that the scheme established under the MID (Guarantee Fund of Slovenian Insurance Association) is intended for the payment of:
- damages caused to injured parties by drivers of uninsured and unknown motor vehicles and trailers,
- damages caused to injured parties by uninsured aircraft or other flying devices,
- damages caused to injured parties by drivers of uninsured boats,
- claims for passengers in public transport following an accident, if the owner of the means of transport does not have an insurance contract, *and*
- part of the compensation not paid from the bankruptcy estate of an insurance company bound to pay damages and against which bankruptcy proceedings have been instigated.