Directie Financiële Markten

Datum
12 oktober 2020

Question 1: What could be the renewed objectives of European legislation for insurance companies ?

On a scale from 1 to 9 (1 being “not important at all” and 9 being “of utmost importance”), please rate, and if possible rank, each of the following proposals.
Policyholder protection: 8
Financial stability: 6
Fostering investments in environmentally-sustainable economic activities: 9
Fostering long-term investments: 9
Ensuring fair & stable single market: 8

If you identify other political objectives, please specify them and give a rating of their importance from 1 to 9 for each of them:

Note: We have rated the policy goals as to how we believe they should be ranked for the review of the directive. In other words, we do not believe that financial stability is in any way unimportant, but that the topic is not the highest priority for the review, as many financial stability elements are adequately captured in current legislation

As other political objectives, we identify the following:
- Harmonization of an R&R framework and the introduction of the ability to change policy holder contracts in order to foster continuity of contracts and policyholder protection: 8.
- Establishing and maintaining a level playing field between insurance groups located with their head office within the EU and those with their head office outside the EU: 8.
- Increase the role of insurers to give the policyholders the proper advice in order to reduce claims caused through climate change or other ESG risks: 7.
- In addition we would like to refer to the two added non papers that have been send to the EC in cooperation with France and France and Italy. 9

Question 2: In light of market developments over the recent years, in particular the low or even negative interest rates environment and the Covid-19 crisis, what should be the priorities of the review of the European legislation for insurance companies?

On a scale from 1 to 9 (1 being “low priority” and 9 being “very high priority”)? Please rate, and if possible rank, each of the following proposals.
Ensuring that insurers remain solvent: 7
Ensuring that insurers obligations to policyholders are fulfilled: 7
EU Green Deal: 9
CMU: 9
Facilitating insurers' ability to offer (sufficiently) high returns to policyholders: 6
Long term guarantees: 6
Ensuring that insurers do not face liquidity issues: 5
Preventing build-up of systemic risks: 5

If you identify other priorities, please specify them and give a rating from 1 to 9 to each of them:

Note: We have rated the policy goals as to how we believe they should be ranked for the review of the directive.

- Another priority would be to ensure that life insurance contracts can be continued after the failure of a life insurance undertaking, e.g. through portfolio transfer to another insurer. In the interest of reducing administrative costs and making the transfer possible, it should be possible to change these insurance contracts and their terms: 8.
- Review the use of the consolidation method within Group supervision for international groups with insurance entities in third countries, (see our answer for question 44) 8.
- Stimulate the advisory role towards policyholders for non- life insurance companies with respect to ESG risks (see our answer for question 41) 8.
- In addition we would like to refer to the two added non papers that have been send to the EC in cooperation with France and France and Italy. 9

Question 3: Have the recent changes to the prudential framework regarding equity investments appropriately addressed potential obstacles to long term investments?
No.

Please specify what the remaining obstacles are, and how to address them while preserving the necessary prudential safeguards to ensure policyholder protection:
The Minister of Finance of the Netherlands supports the objective to improve the framework for long-term equity (LTE) in art. 171 a. One of the application criteria is hard to fulfill and reduces the applicability of this module significantly.

We are in favor of the improving criterion (e), the requirement that long term equity investments should be held for 5 years on average. The requirement that an insurer is not allowed to trade in shares of a company if the company is visibly making the wrong choices, hampers good risk management, including acting upon ESG risks, and will not benefit equity prices in the long term. If one is of the opinion that insurers have an important role in reversing climate change, they should not be prevented from voting with their feet. In addition, it should be prevented that additional new restrictions are designed for this module. Investing in green equity is an especially forward-looking business activity for which flexibility is needed. Creating new restrictions and rules would only hamper good risk management and the forward-looking perspective.

Question 4: Does the prudential framework set the right incentives for insurers to provide long-term debt financing to private companies, including SMEs (i.e. to invest for the long-term in long-maturity debt instruments)?
Please indicate the statements with which you agree:
No, and I have another proposal to address this issue.

Specification
The non-rated loans for SME's in Europe and green bonds in general should be moved from the spread risk module and incorporated into the Credit default risk module. Within the Credit default risk module, the capital charges are not related to the duration of debt financing and therefore less related to ratings of CRA's. So it would give the right incentives to invest in a forward-looking manner with a

long-term perspective. Another improvement would be that partial government guarantees and/or collateral can be taken into account as risk mitigators and – consequently – as capital charge reducers. The goal of this is to reduce the capital charges on those investments that the European Commission would like to stimulate, without detracting from the risk orientation of the solvency II framework.
Applying the dynamic modelling of the volatility adjustment within the SCR would also reduce the capital charges for SME bonds and green bonds, however it would be a less-focused measure that in addition would introduce a lot of new complexity and implementation costs.

Question 5: Do you agree or disagree with each of the following proposed change to quantitative rules in Solvency II?

- We should make it less costly for insurers to invest in SMEs: Agree
- We should make it less costly for insurers to invest in environmentally sustainable economic activities and associated assets (so-called "green supporting factor"): agree:
- We should make it more costly for insurers (and therefore provide disincentives) to invest in activities and associated assets that are detrimental to the objective of a climate-neutral continent (so-called "brown penalizing factor"): agree.

Please explain:
The capital requirements framework should remain risk-based. Changes in the capital requirements should only reflect changes in the risk assessment. Research increasingly demonstrates that environmentally sustainable economic activities are associated with lower risks as compared to activities that are detrimental to the objectives of a climate-neutral continent. See for example the publication of the Dutch central bank (DNB) “Waterproof” from 2017 or “Issues Paper on Climate Change Risks to the Insurance Sector” by the IAIS from 2018. The next step should therefore be that the quantitative rules in Solvency II take better account of climate-related financial risks.

Furthermore, we do believe that it is important that insurance companies have the right incentives to invest in sustainable activities and disinvest in activities that are detrimental to the objective of a climate-neutral continent. On balance, smaller innovative companies without a long history of data do lack the possibility to achieve a proper rating of a CRA and therefore are currently, in comparison to rated bonds and government bonds, at a disadvantage and not attractive to invest in. By reducing the value of having a rating within the Solvency II framework, we believe that we give insurers a better incentive to invest in the future and for the green impact. See also our answer to question 4 for how we envision the way forward when it comes to the right incentives to provide long-term debt financing to green investing private companies.
By improving the long-term equity module (art 171a) we also give insurers the possibility to invest in innovative companies. The, on average, higher expected returns on green investments in combination with additional disclosure requirements and consumer pressure will give the proper incentives for insurers to invest in the green factor. In question 41, we further elaborate on the role we see for insurance companies in the transition to a sustainable economy.

Question 6: Does Solvency II appropriately mitigate the impact of short-term market volatility on the solvency position of insurance companies?:

No.

Please indicate how the framework could mitigate the volatility of: fixed-income assets stock markets

The choice for the total balance sheet approach and market consistent valuation is a good choice. Its advantages should not be decreased in this review. However the day-to-day volatility in financial markets, especially for fixed-income assets that are important for the CMU and the green deal, should be removed from the spread risk module and incorporated within the Credit default risk module (see also given solution in the answer to question 4). With respect to the investments in the stock market that are of use for the CMU and green deal, the new long term equity module (art 171a) that is mentioned in question 3 of this questionnaire should be improved as mentioned in our answer to question 3.

In addition, the Volatility Adjuster that is especially of use for fixed- income assets should be improved. The VA is designed to reduce the day to day market volatility within the Solvency II balance sheet. However, the current design gives artificial volatility for those insurers with another investment portfolio than the reference portfolio even at the moment that the risk profile of this portfolio is the same or lower. This makes the Solvency II figures less understandable for investors and policy holders. Therefore the VA should be improved in such a way that the artificial volatility is reduced significantly for those insurers that have chosen for an investment portfolio that, on average, is not more risky than the reference portfolio of EIOPA but that does have a significantly different volatility attitude as the reference portfolio. One way forward could be to give insurers more flexibility in using the level of VA calculated by EIOPA in such a way that those insurers are allowed to use an “on 8 quarters moving average” lower VA than the calculated one’s by EIOPA in the case that the VA is positive. The insurers already have the right incentive to use the VA only for smoothing the short term volatility, otherwise their Solvency II SCR position would not be trustable and reliable. This would give insurers the possibility to use a VA that fits with their fixed-income investments without reducing the prudence of the system. Besides this, no additional complexity must be introduced. A strict rule-based approach of the VA will reduce possibilities of insurers to invest forward looking. Insurers must be able to take their role and chose for sustainable investments.

Question 7: Does Solvency II promote procyclical behaviours by insurers (e.g. common behaviour of selling of assets whose market value is plunging or whose credit quality is decreased), which could generate financial instability?:

Yes.

Please indicate how the framework could avoid procyclical behaviour by insurers:

Effects of downgrades by CRA are procyclical. While the ratings are important for the level of capital requirements within the spread risk module, they only have limited relevance as they follow negative developments in a procyclical manner. They are backward-looking and are as such a bad predictor for future events and changes such as climate change. Ratings do not care about the CMU and ESG factors. Rating downgrades for long-term bonds would only give insurers the incentive to intensify investments into short-term corporate bonds or government bonds in order to reduce their capital requirements within the spread risk module.

More diversity in assets held by insurers (also in the non-rated part) should therefore be welcomed. Diversification would prevent a dash for the exit and a further drop in assets prices in situations where all insurers are heavily invested in the same, well-rated asset classes that are then downgraded because of events in the past. We should reduce the reliance on external ratings in Solvency II. One way forward is to use the Credit default risk module instead of the spread risk module for more investment categories (see also our answer to question 6).

In addition, insurers should be given more flexibility in using the VA, as that would make the VA more effective and give insurers more opportunities to invest in long-term loans and bonds and in diversifying their asset mix (see our proposal in question 6).

Question 8: Some stakeholders claim that Solvency II has incentivised insurers to shift investment risk to policyholders. Do you agree with this statement?:
Yes, but it is not the most important driver

Question 9: Do you agree with the International Monetary Fund that public authorities should aim to provide disincentives to the selling of new life insurance products offering guaranteed returns?:
From the point of view of a policyholder: No
In terms of financial stability: No

Please explain:
The IMF bases its opinion on current, extraordinarily low, interest rates. Providers' freedom of contract should not be hampered by disincentives when these providers offer products that comply with all applicable standards, rules and regulations. The future is uncertain and nobody can predict future long term risk free interest rates, however as soon as interest rates are at a higher level this market will come alive again. Certainly at the moment that the guarantees to policyholders are on average matched by low risk assets with more or less the same duration, there is no reason to discourage the selling of new life insurance products that offer guaranteed returns. The Matching adjustment within Solvency II is based on this principle. Once the design of the Matching adjustment is improved in such a way that the required matching test is not designed line-by-line but portfolio-based we can welcome even in the current market new life products with a small positive return.

Question 10: In light of the Covid-19 crisis, have you identified any major issues in relation to prudential rules that you were unaware of or considered of lesser importance prior to the pandemic?:
No.

Please elaborate:
The pandemic has shown that the most impactful events cannot be predicted by looking into the past. The Solvency II framework shows that maintaining buffers and having market-based valuations of assets and liabilities lead to good risk incentives. This shows that insurers have become more robust, even for risks that are not visible in statistics, that in principle are only backward looking.

When going forward from this pandemic, the lessons learned should not lead to additional capital requirements to cover yet another possible risk. This would increase the price of new insurance products while not even increasing coverage and lead to less attractive insurance policies and additional concerns of insurability. Instead we should give insurers the chance to build up their buffer capacity to a level above the SCR buffer required by Solvency II. In principle only the free buffer capacity above the SCR can be used to cover financial losses.

Question 11: From the point of view of policyholders, would it be acceptable to waive Solvency II requirements to insurance companies that belong to a group, if the group as a whole is subject to "strengthened" supervision?:
No.

Please explain:
In the worst case scenario, the winding down procedure, the policyholder can only claim his rights towards the insurance entity, the legal entity who concluded the contract with the policyholder. Group supervision therefore remains secondary and should be employed for the safety of policyholders of European insurance entities. The focus of Solvency II should remain on solo supervision. With respect to the requirements for insurance groups at group or holding level we should take into account that high extra requirements within the EU will only chase away insurance groups that are currently located within the EEA. It will reduce the European level playing field for insurance groups. Once an insurance group decides to move its head office outside the EEA, the European NCA's have lost their influence at holding level anyway.
A better way to prevent the further use of branches instead of legal entities for expanding the insurance business towards other member states is to reduce diversification effects between the various lines of business. The use of branches will increase the complexity in recovery and resolution planning and may result in financial stability issues.

Question 12: Should the European legislation be amended to better take into account insurers' exposure to and interconnectedness with the broader financial sector and the real economy? Please indicate the statements with which you agree.: Yes
MA
The insurance industry in itself does not pose many systemic risks. Therefore, we have to be very careful when developing new macro-prudential tools. However, it is important that all major insurance companies have an adequate recovery plan. And that resolution authorities are established for the larger insurance groups within the EU that are well prepared with adequate resolution tools.
An effective micro-prudential supervisory system that promotes a fair and level playing field between the smaller and larger insurance companies, combined with adequate recovery and resolution planning, are key components of macro-prudential risk management.

The moment large insurers have a competitive advantage (as a result of too many diversification advantages within the SCR between insurance lines) and small insurers can be priced out of the market, not only macro-prudential risks may increase but also more insurability issues will pop op.

We should also prevent that the Solvency II framework stimulates insurance groups to start branches instead of legal entities. The reason is that this would make recovery and resolution of insurance groups more complicated and it may result in macro prudential risks.

Question 13: From the point of view of policyholders, should the scope of small insurance companies, which are not subject to Solvency II be extended?:
Yes.

Please explain:
We see currently in the Netherlands a large gap between the smaller non-life insurers that are not within the scope of Solvency II and the non-life insurers that are within the scope of Solvency II. If the scope of the small insurance companies for non-life is extended, these companies can grow again. This would improve the competition between the smaller and larger non-life insurance companies. Solvency II is too complex especially for the simple, small non-life companies.

Question 14: Should public authorities have less discretion when deciding whether insurers may apply simplified approaches and/or implement Solvency II rules in a more proportionate and flexible way? Please explain your reasoning (if needed):
Yes.

Please specify the criteria that should be introduced in the European legislation, in order for an insurer which meets them to be automatically granted the use of simplified approaches and/or a more proportionate and flexible application of the rules:
We would like to advocate a threshold below which the smaller non-life insurers that have to apply Solvency II are given the possibility to use the simplified methods as the standard method. Once the NCA does have evidence that the simplified method is not prudent enough, the NCA can prohibit the use of the simplified method.

Question 15: Should the exemptions and limitations always be subject to the discretion of the public authorities? Please indicate the statements with which you agree:
The framework should also include some clear criteria for automatic exemption and limitation

Please specify:
The limitations and exemptions set out in Article 35 of the Solvency II Directive give effect to the proportionality principle in a principle-based manner. We believe that it benefits the proportionality of the system if a harmonized, more concrete interpretation of this principle is developed for supervisors. The supervisor will have to retain the option of exercising its supervision as efficiently and effectively as possible. Therefor exemptions should not become fully automatic.

Question 16: Should the European framework take into account the specific features of not-for-profit insurance companies (e.g. democratic governance, exclusive use of the surplus for the benefit of the members, no dividend paid to outside shareholders)?:
Yes.

Please specify the areas of the framework, which should be adapted (quantitative requirements? governance requirements? etc.):
The Solvency framework should continue to take into account the specific features of mutual associations that are not primarily aimed at the distribution of profits or limited companies that have a not-for-profit business model. We can agree with minimum harmonisation of governance requirements, however additional national rules should be allowed. This is of particular importance for the Dutch healthcare system, in which private insurance companies provide insurance schemes related to social protection, such as health insurance policies. This system necessitates legislation anchoring public conditions. An example is the influence that policyholders have on the strategy and policy of these health insurers. Moreover, we like to point out that in the Netherlands but probably also in other Member States civil codes already contain provisions about governance which should be taken into account.

Question 17: How can the framework facilitate policyholders' and other stakeholders' access to the SFCRs?:

The current framework is sufficient, as it already requires insurers to publish their SFCR on their website if they own one	Yes
The framework should clearly require that insurers' publication on their website is easily accessible for the public	Yes
Insurers should be required to send (electronically or by mail) on a regular basis a summary of the SFCR to each policyholder	no
Insurers should be required to send (electronically or by mail) the SFCR to each policyholder who explicitly requests for it	yes
Other options	

Question 18: If you have already consulted a SFCR, did you find the reading insightful and helpful, in particular for your decision making on purchasing (or renewing) insurance, or investing in/rating an insurance company? Please indicate the statement(s) with which you agree:
The reading was insightful

Please specify:
The currently published quantitative data are particularly useful. If the choice will be made to reduce the level of requirements for public disclosures, our preference is to reduce the level of qualitative requirements. In the Netherlands the tax authorities use the Solvency II market consistent balance sheet and detailed available own funds data. Under the EU Anti Tax Avoidance Directive of 17 June 2016 (ATAD 1), EU Member States are required to introduce a general interest deduction limitation in the form of an earnings stripping rule. This rule that discourages the use of debt for funding is extended to insurers and banks by using these supervisory disclosures.

Question 19: Which information should be provided to policyholders on insurers' financial strength, business strategies and risk management activities? What should be the ideal format and length of the SFCR?:
In the SFCR particular interest should be given to quantitative information on insurers' financial strength such as the Solvency II balance sheet, the SCR, MCR with additional details in order to be able to understand those figures. Ideally, the extended qualitative requirements with regard to business strategies and risk management should be reduced to an executive summary whereby more

information should be provided on their responsibility to reverse the climate change and ESG requirements in a broad sense.
The goal should be to reduce the length of the average SFCR.

Question 20: Some insurers belong to wider insurance groups, which also have to publish a Solvency and Financial Conditions Report at group level (so-called "group SFCR”). Do policyholders (current or prospective) need to have access to information from group SFCRs?:
Yes.

Please specify the format and content of the information that should be disclosed to policyholders in group SFCRs, and what would be the appropriate frequency of publication of such reports:
In the group SFCR the focus should also be on the quantitative information (balance sheet, own funds, SCR, MCR, etc). This information is as well used by Dutch tax authorities (see answer to question 18). It gives a clear understanding of the financial position of the group and thereby is also relevant for policyholders next to this information on solo level. The frequency should be each year.

Question 21: Should all insurers publish a SFCR on a yearly basis? Please indicate if you agree or disagree with the following statements:
Yes, all insurers should publish a SFCR on a yearly basis. All policyholders have the same rights for protection and insight into the financial situation of their insurance company. There is no reason to differentiate between policyholders.

Question 22: Some insurers use their own internal models to calculate their solvency requirements, after approval and ongoing supervision by public authorities, and not the prescribed standard approach defined by the legislation. For those insurers that use an internal model, should European legislation require them to also calculate their solvency position using standard methods for information purposes, and to disclose it to the public?:
No, insurers that use their own internal models should not be required to publicly disclose their solvency position using standard methods, although they should be required to calculate it and to report it to public authorities.

Please specify:
The issues stemming from such a disclosure are that it could negatively influence the share prices of insurance undertakings using an internal model. From a perspective of clear communication it may give confusion if there are two levels of SCR.
If the NCA deems the internal model appropriate and sufficient, there should be no reason to require undertakings to disclose their methods. In addition, the current rules for internal models in Solvency II are sufficiently rigorous. However from a supervisory perspective it remains important to be aware of the SCR levels based on the standard approach. These levels are for example important at the moment that our National Resolution authority becomes responsible for the insurance company because of a structural breach of the SCR and or MCR.

Question 23: When the Home authority does not take the necessary measures to prevent excessive risk taking or non-compliance with the 30

European rules by an insurer for its cross-border activities, should the Host authority be provided with additional powers of intervention, in order to protect policyholders?:
No.

Please specify the additional powers needed:
Although we recognize that the protection of European consumers is currently still largely dependent on where they live and on where they take their insurance products from, we do not believe that additional powers should be introduced. Instead, other steps can be taken to improve the protection of policyholders in a cross-border context. In particular, we need to enhance the European framework to (i) foster supervisory convergence and improve discipline on market players, (ii) improve information sharing and collaboration between home and host authorities, and (iii) provide for harmonization of the recovery and resolution framework throughout the Union.
First, convergence in the application of supervisory rules is necessary for consumer protection, and the supervisory process should be equivalent in all Member States. The Solvency II review appears to be an appropriate occasion to introduce peer reviews and collaboration platforms, public recommendations from EIOPA and binding mediation by EIOPA in the context of these platforms.
Secondly, on top of convergence in the application of supervisory rules, we need to foster preventive cooperation between supervision authorities, thus reinforcing the ability for the host authority to exert its product supervision powers. For instance, and as proposed by EIOPA, article 149 of the Solvency 2 directive could be complemented to provide for an exchange of information between home and host authorities when an undertaking intends to do cross-border business or modify its activities. The host authority should be informed on a continuous basis on the activities that are actually being conducted by undertakings on its market.
The two aforementioned improvements should be complemented by the creation of a European insurance recovery and resolution framework. Please see our answer to question 25 for more details.

Question 24: Should the supervision of cross-border activities by insurers be exercised by national authorities or by a European authority?:
By national authorities, with European coordination where needed.

Please elaborate:
The primary task of supervision should remain with the Member States, however coordination by a European authority could be appropriate where NCAs are not in a position to solve any problems by themselves.

Question 25: Do you consider that insurers and public authorities are sufficiently prepared for a significant deterioration of the financial position or the failure of an insurer and that they have the necessary tools and powers to address such situations, in particular in a cross-border context?:
No.

Please specify the instruments or harmonised powers that are needed at each stage of preparation (i.e. recovery planning, resolution planning, resolvability assessment) and at various stages of intervention (i.e. during early intervention, recovery or resolution):

Regarding cross-border situations specifically, see our answer to Q23.
Early intervention measures should not be harmonized due to the heterogeneity of the European insurance market. The current harmonised procedure surrounding the ladder of intervention (SCR/MCR) enshrined in the Solvency II Directive provides sufficient protection, and additional early intervention measures ought to be left to the Member States due to the difference in insurance markets. Also, some specific early intervention powers, such as the possibility to freeze or seize assets in the context of early intervention should be accompanied by a removal of the current prohibition of the localisation of assets, i.e. assets should be required to be located in the EU. Dutch supervisory practice has revealed that the transfer of assets to a third country can be a critical obstacle to their accessibility in the execution of recovery and resolution measures.
In extreme situations, a recovery and resolution (R&R) system harmonized at EU-level is required. The 'simple' winding down in insolvency is not always in the best interest of policyholders, especially for long-term insurance like life insurance. In many cases R&R, including portfolio transfer, is preferable for policyholders because of the costs of finding new insurance (incl. possibly higher premiums due to higher risk profile).
Winding up of a failing insurer under normal insolvency proceedings may result in social unrest and damage the real economy. These effects are especially harmful in the case of life insurance claims, especially where policyholders depend on these as a (significant) source of income.
Prior to initiating the resolution measures, the SII ladder of intervention should be exhausted, unless it is clear in advance that the recovery measures will not lead to sufficient improvement of the financial position of the insurer.

Question 26: Should it become compulsory for all Member States to set up an IGS, in order to ensure that a minimum level of policyholder protection is provided across the EU?:
No.

Please explain:
The Netherlands recognises that the current, fragmented, situation where some Member States have IGS and/or Recovery and Resolution (R&R) systems in place and others do not, does not optimally protect policyholders, especially where it concerns cross-border insurance activity. The Netherlands supports a level of minimum harmonisation to ensure that rights of policyholders in the EU are sufficiently protected.
However, different levels of IGS protection across the EU as such are not necessarily indicative of the level of policyholder protection across the EU. This is also influenced by other factors, such as the presence and the design of an R&R framework including preferential rights of policyholders in case of a failure of an insurance company and the question whether the payments to policyholders can be provided for throughout insolvency proceedings. Therefore, the focus should be on the level of policyholder protection across the EU, starting with a harmonized recovery and resolution framework with options for MS to buttress the policyholder protection through additional national legislation such as improvements in insolvency proceedings and IGS funding.

Question 27: Which of the following life insurance products should be protected by IGS?:
No life insurance products

Please specify which life insurance products should not be covered and explain why:
R&R is preferable to liquidation and IGS, especially in the life insurance business. In many cases R&R, including portfolio transfer, is a preferable option for policyholders because of the cost aspect of finding new insurance cover (including possibly higher premium) and because of the current low interest rate environment no new life insurance cover is offered any more. Additional IGS protection should remain a member state option (see our anwer to question 28 for further elaborations).

Question 28: Which of the following non-life insurance products should be protected by IGS?:
Health: No
Workers Comp: No
Fire & damage: No
GL: No
Accident: No
Suretyship: No
Other: Don’t know/no opinion

Please elaborate:
In general our position is that the choice of arranging an IGS should remain a member state option. It depends clearly from market situations (is it a closed book or growing market), the availability of alternative solutions for example the specific national insolvency proceedings, the relevance of an insurance product for the national social security, whether in a the Member State the choice is made to introduce an IGS. Most insurance products are designed locally, based on local tax rules, and local civil codes and local social security systems.

In the Netherlands we have introduced an IGS for those health insurance products that are part of our national social security system. This scope of this IGS system is in consistence within the Coordination Regulation (883/2004/EG). However this does not mean that all member states should have an IGS for health insurance products.

We should rather work on convergence in the application of the current supervisory rules for consumer protection. The supervisory process should be equivalent regardless of the member state in which the entity is supervised, in order to avoid risks of adverse regulatory arbitrage while ensuring that country-specific products are well-understood by all affected supervisors in the Union. The action of EIOPA through its supervisory convergence plan is welcomed in that regard, notably regarding peer-reviews and collaboration platforms, which were strengthened in 2019 through the addition of article 152b in the Solvency II directive.

In general, longer-term non-life insurance policyholders that receive periodic disability insurance payments benefit more from portfolio transfer than compensation of premiums paid and/or value of the contract. We question the necessity of an IGS in that context. In those cases, R&R could be more beneficial to those policyholders and provides sufficient protection already.
In cases of short term non-life insurance, policyholders generally will choose within a few months after the failure for another insurer to be sure that they can continue their coverage. Therefore, in those cases, winding-down proceedings

would be a more obvious solution, especially if the winding-down proceedings foresee that policy holders that experience a claim within three months after the failure receive also privileged claims during the winding down proceedings. Also here the continuation of a significant part of the payments to policyholders throughout insolvency proceedings is provided for, an IGS is also not needed.

Question 29: Should all mandatory insurance be covered by IGS?:
No.

Please specify:
The insurance market is still mostly a national market of insurance products with very specific characteristics, caused by differences in cultures and civil code provision. Simply deciding that all mandatory insurance is covered by IGS would not harmonize anything, however by adding this requirement it would interfere in National Government financial budget responsibilities.

Question 30: If your insurer fails, what would you prefer?:
It depends on the type of insurance policy

Please explain:
In general the role of a safety net for policyholders of life insurance companies should be to ensure the continuation of payments during resolution or insolvency proceedings. Compensating losses incurred through policy transfer (continuation) could create an unlevel playing field with, for example, pension funds. This is one of the reasons why the Netherlands has not opted for an IGS in such circumstances, but has instead opted for bail-in (including the no creditor worse off principle) in combination with a provision within the winding-up proceedings in order to provide for continuation of payments to policyholders of life insurance products with savings elements throughout resolution and insolvency proceedings. Life insurance policies without savings elements and non-life policies will be terminated. However, coverage will continue for 3 months in order to give the possibility to conclude a new contract. (see also our anwer to question 28 and 29).

**Question 31: The coverage level of IGS determines the level of protection
provided to policyholders. Should the European legislation set a minimum
coverage level at EU level?**:
No.

Please specify:
Insurance products differ too greatly. Full harmonisation of policyholder protection through a rule-based IGS in all Member States would require that not only the principles of those schemes (home or host) are harmonized, but also clear definitions of what constitutes an insurance product. If a minimum level of protection is harmonised in EU law, such provisions should include:

- the level of protection the IGS should offer;
- the aim of the scheme: i.e. compensation or continuation of payment for a given period;
- which insurance policies should be covered.

Additionally such a full harmonisation would require further harmonisation of insolvency procedures and the insurance contract definitions in the National civil codes

Question 32: In order to limit the risk of insurance failures and protect financial stability, should public authorities have the power to temporarily prohibit redemptions of life insurance policies? Please indicate the statement(s) with which you agree.:
Yes, in cases where a specific insurer is in financial distress, and as long as long as policyholders would be better off than in the event of the insurer’s failure.

Question 33: In order to limit the risk of insurance failures and protect financial stability, should public authorities have the power to reduce entitlements of a life insurer’s clients (e.g. reducing the right for bonuses that policyholders were initially entitled to receive)? Please indicate the statement(s) with which you agree:
Yes, as a last resort measure, and as long as policyholders would be better off than in the event of a failure.

Such a power should not be applied before an insurance undertaking finds itself in severe financial problems. The Dutch R&R framework for insurers allows the NCA to apply a bail-in mechanism, in the context of which it may also reduce the entitlements of a life insurer’s clients. This mechanism is a resolution mechanism, and should therefore be seen as a last-resort power. A no-creditor-worse-off-than-in-liquidation safeguard governs the limits of this power.

Question 34: Please specify whether other exceptional measures than those mentioned in Question 32 and Question 33 should be introduced in order for public authorities aiming to preserve insurers’ solvency and financial stability to intervene timely and in an efficient manner during exceptional adverse situations. Please also clarify if those measures should apply at the level of individual insurers or widely to the whole sector:
No other exceptional measures should be introduced.

Question 35: In your view, should the framework provide for flexibility to alleviate certain regulatory requirements during exceptional adverse situations?:
Yes.

Please specify:
The Solvency II regime has become rather complex. To a certain extent this is caused by the complexity of the insurance business as such. However, it is worth considering whether the current complexity in the capital calculation contributes to good risk management gives the proper incentives in times of exceptionally adverse situations. Solvency II suffers from too much complexity which also creates unintended effects.
One unintended effect is, that because of the importance of diversification effects within the calculation of the SCR, an insurer undergoing difficulties could be encouraged to acquire new insurance activities which provide for diversification, rather than to adapt its risk profile by reducing its size. In other words, the framework could paradoxically incentivize an insurer to jeopardize more policyholders when trying to recover, rather than mastering its risk. This

phenomenon could be corrected through reducing the largest diversification effects within the underwriting risks (between the various branches, the new business etc), while lowering capital charges for long term green and CMU investments (see also our answer at question 6) so as to maintain the same level of prudence.

In addition within Solvency II the level of SCR should not increase automatically (e.g. because of a lack of diversification effects) at the moment that an insurer decides to go in run off because of the reductions of diversification effects within the SCR.

Question 36: Are there additional types of natural catastrophes that might become relevant to the broader insurance sector in the next years and therefore warrant an inclusion in the standard approach for the calculation of capital requirements (e.g. drought or wildfire)?
Yes, but the calibration of capital requirements is not possible at this stage, as the data will only become available over the next years

Please indicate the source of available data:

Please elaborate your answer to question 36:
Antwoord:
We do think it is important to include additional natural catastrophes in the standard approach when possible. We recognize the analysis of the European Commission that large insurance companies are able to include these additional natural catastrophes in their internal models, but that small and medium-sized insurance companies often rely on the standard model. They simply do not have the capacity to work with internal models. It is therefore important to update the standard model as well.
However, what we find it even more important is that insurance companies are incentivized to not only include these catastrophes into their risk models, but also take action to prevent their occurrence. Insurance companies can play an important role in stimulating companies and individuals to prevent claims caused by natural catastrophes and reduce the further negative effects of the climate change or even reduce the climate change, for example by advising clients on what types of roofs can withstand heavy rains better or how an agricultural company can prevent droughts. The scenario-based catastrophes should stimulate insurers to take action in reducing these risks in such a way that we do not create further insurability issues.

Question 37: Beyond the general rules on the use of data, should Solvency II rules explicitly require insurers to assess whether the data used in the valuation of liabilities to policyholders captures sufficiently trends caused by climate change?

- Yes, and requiring this assessment is of medium importance

Question 38: Beyond the general rules on the use of data, should Solvency II rules explicitly require insurers to assess whether the data used in an internal model captures sufficiently trends caused by climate change?

- Yes, and requiring this assessment is of high importance
- Don’t know/no opinion

Question 39: Should Solvency II rules for insurers explicitly require climate scenario analyses as part of the qualitative rules ("Pillar 2")?

- Yes, and climate scenario analyses are of high importance
- Yes, and climate scenarios analyses are of medium importance
- Yes, but climate change scenario analyses is of low important
- No
- Don’t know/no opinion

Please explain what opportunities and challenges you foresee for the insurance industry when it comes to climate scenario analyses including, for example, whether standardisation of these scenarios would be useful:

Implicitly, Solvency II already offers the opportunity to include climate risks in the qualitative rules of pillar 2. Namely, article 262 of the Commission Delegated Solvency II Regulation (EU) 2015/35 stipulates that an insurer's Own Risk and Solvency Assessment (ORSA) must be forward-looking and include: “the risks the undertaking is or could be exposed to, taking into account potential future changes in its risk profile due to the undertaking's business strategy or the economic and financial environment, including operational risks.” Guideline 5 of the framework also states that ‘The undertaking should evidence and document each ORSA and its outcome’.

However, it is important to explicitly include climate scenario analyses. Namely, this would oblige insurance companies to better take climate-related risks into account and would contribute to their capacity-building in this area. We know that the climate will change significantly and might do so on short to medium term, so the earlier insurance companies gain expertise in this area, the better. The explicit mention of climate scenarios would also give supervisors a more firm basis to also enforce on this.

It might be difficult however to standardize the use of climate scenario’s. The effects of climate change can vary a lot between regions. A standardized approach might overlook these differences and ask insurance companies to work with scenarios that not fit their situation well. It would therefore be best to work with a framework for climate scenario analyses. This framework should give certain guidelines, but also leave room for varying local circumstances. Supervisors are already working on the basis for such a framework. For example, the Dutch national supervisor (DNB) has published good practices for the integration of climate-related risks in the ORSA. These good practices are still quite general, but could be filled in with more details.

It is important that this framework does not become unnecessarily complex. The benefits of additional insight trough climate scenarios should outweigh the administrative burden that is associated with operationalizing these scenarios, especially for small and medium-sized insurance companies. Additionally, it should be clear that this framework is there to aid the risk assessment process, not to completely substitute it. The future is uncertain and scenario analyses are never able to predict everything. It is important that they become a part of a qualitative and quantitative risk assessment process.

Question 40: In your view, does Solvency II contain rules that prevent the practice of impact underwriting by insurers?

Insurers currently already give policyholders advice on how to reduce claims. It is part of the job of an insurer next to risk-based pricing. Reducing the risk of claims and the level of claims is a way to reduce the impact of the climate change. However, this incentive is not explicitly incorporated within the Solvency II legislation. That is why we advocate that insurance companies are given a more explicit advisory role in stimulating new and existing policyholders (companies as well as individuals) to prevent claims caused by natural catastrophes and in order to further reduce the negative effects of the climate change or even reduce the climate change, for example by advising clients on what types of roofs can better withstand heavy rains or how an agricultural company can prevent droughts or how a customer can help to reduce climate change within their specific situation. The insurer can give the proper incentives to policy holders through risk based pricing.

Question 41: Do you have proposals for changes others than those provided in your answers to Question 5 and Questions 36 to 40 that would make Solvency II a more conducive framework for sustainable activities by insurance and reinsurance companies?
We would like to stress that insurance companies play an important role in the prevention of climate-change related damages. Insurance companies can for example advise a homeowner on how to prevent a flooding of his premises or an agricultural company on how to prevent drought. We believe that insurance companies should take more responsibility and more action in this area. This would benefit the transition to a sustainable economy, but would also result in lower claims from clients. It could be investigated how this new responsibility can be given effect, for instance by anchoring it in legislation or through alternative measures. In any case, it should explicitly state that insurers should facilitate or stimulate preventive measures undertaken by their clients.

Question 42: Should the European legislation introduce enhanced requirements for insurers to monitor and manage information and communication technology (ICT) risks, including cyber-risks as part of their risk management practices ("Pillar 2")?:
Yes.

Please specify:
Although insurance undertakings should already take such risks into account under the existing framework, Solvency II could specify that risks stemming from digitalisation must be taken into account in risk management. This could serve to further underscore the increasing threat from such risks. Preference for qualitative rules.

Question 43: Should the European legislation consider that cyber-insurance is a distinct class of insurance, which would need to be subject to its own authorisation process by public authorities?:
No.

Please specify:
This would only result in additional complexity within the Solvency II framework.

Question 44: Should the legislation differentiate intragroup and extra-group outsourcing, and introduce “lighter” requirement in the former case?:
No

Please specify:
See also our answer to question 11. However we do have a proposal for another alleviation.

Currently the Solvency II Directive unintentionally encourages international insurance groups with activities in non-equivalent third countries with their head office in the EU to move their head office out of the EU. This is caused by the requirement that an international insurance group is required to comply with the Solvency II valuation rules and capital requirements for all their (non-equivalent) third country insurance business. This results in a double set of prudential rules for this third country insurance business: the local and Solvency II prudential rules. For the part of the group that is located outside the EU, it will result in double supervisory filing requirements, making the default SII consolidation method for group supervision an incentive to move the head office outside the EU. This solvency II information doesn’t give information about any risk that the insurance group is close to a breach of local (non-EU) capital requirements. If such an event occurs, the insurance group could initiate a transfer of required own funds from its EU operations towards the non-EU part of the group. The current SII framework does not provide insights or warnings for such occurrences.

Moving a head office outside the EU would not result in an improvement of the prudential supervision of such a group. Hence, an EU supervisor will receive less or even no supervisory information from the head office once it is located outside the EU. Also, it would reduce the business activities of such a group within the EU and thereby negatively influence the employment possibilities of EU citizens.

Only in the case that the EC or EIOPA has decided that a third country is equivalent or temporarily equivalent an insurance group may apply for the deduction and aggregation method in group supervision and will send the local supervisory capital positions to the group supervisor. Our proposal is therefore to delete the equivalence requirement for using the deduction and aggregation method in group supervision.

Additional information

Non paper: Towards the level 1 review of the Solvency II Directive
Submitted by France and the Netherlands

Non paper: Protection of policyholders within the Solvency II framework
Submitted by France, Italy and the Netherlands