Insurance Recovery and Resolution Directive

Key asks ahead of the trilogues

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1 Introduction

Insurance Ireland welcomed the proposals by the European Commission (EC) establishing a recovery and resolution framework for insurers (IRRD). Insurance Ireland believes that sound recovery and resolution (R&R) measures can be an essential addition to the common supervisory framework for insurers in the EU. To create a positive impact for the EU Single Market, consumer protection and financial stability, it is important that the final IRRD will ensure regulatory and supervisory consistency and convergence.

The EC proposal fails to provide that necessary consistency and convergence. The proposal heavily relies on national markets and includes a degree of optionality which will allow all existing national regimes to be compliant with the framework, but it does not create a level-playing-field. The lack of harmonisation will maintain or even increase the fragmentation of the regulatory framework across the EU. Currently only a handful of Member States operate national R&R regimes. Developing consistent R&R regimes across the EU from the beginning would enhance a consistent regulatory framework to the benefit of consumers and competition in the EU Single Market.

The EC also misses the opportunity to develop an insurance-oriented regime. A strong inspiration has been taken from the banking framework. Fundamental differences have been completely ignored. One of the most imminent examples is the difference of banks and insurers at the stage of a resolution decision. While the withdraw of assets and liquidity in the resolution situation of a bank immediately creates customer detriment, insurers will still have substantial assets available.

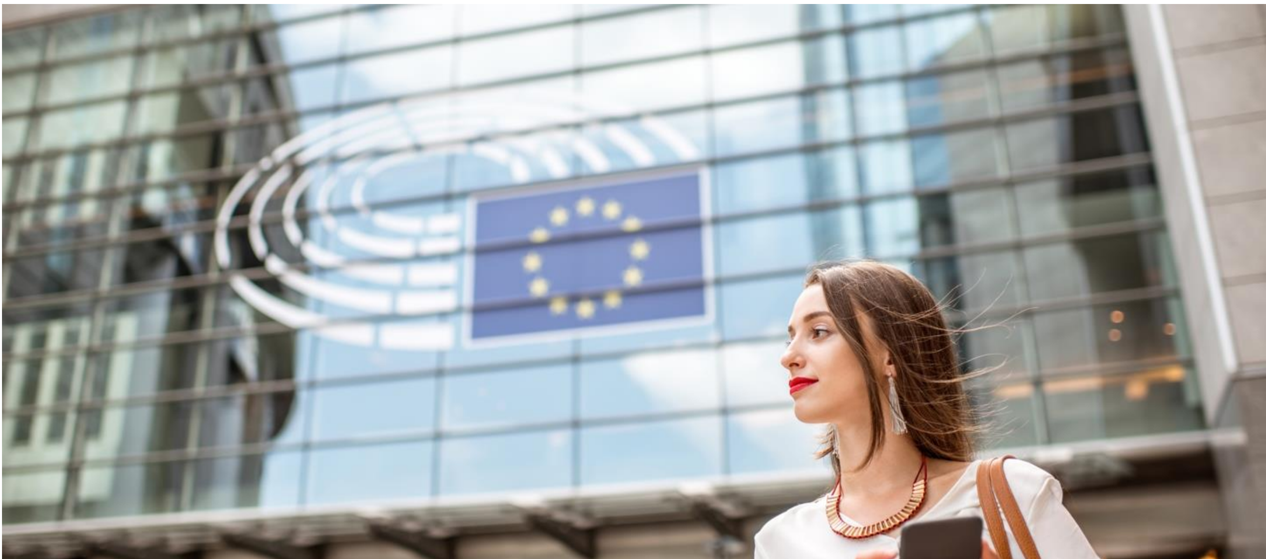
Looking at the Solvency II framework and considering the Solvency II Minimum Capital Requirement (MCR) as the trigger for entering resolution, insurers regularly have sufficient assets to cover all their liabilities – the difference might be in the level of confidence with which liabilities can be covered under the assumptions of risk in Solvency (a 1 in 200 event). Thereby, liquidation and resolution are very different moments in a winding-up procedure of an insurer compared to banks. Flaws which are resulting from the misperception of applying banking rules to insurers need to be removed.

For a compatible EU framework a consistent scope must be the starting point. The EC proposes a complex definition of the scope of the IRRD based on national markets and a horizontal scope including all groups. For Insurance Ireland, a consistent approach focused on groups which includes all groups above a certain threshold (e.g., total assets of more than 25 bn Euros) is necessary. This approach would also be consistent with the international framework which the EC references in its proposal. In addition, reinsurance undertakings, captive insurance undertakings and captive reinsurance undertakings should be excluded.

Group R&R plans should include plans for subsidiaries and branches and thereby create a common and EU-wide definition of the scope. Insurance Ireland acknowledges that individual insurers might create a potential risk. The EC proposes criteria for the identification of such risks and Insurance Ireland supports this approach. However, the fact that an undertakings provides its services outside the EU Member State of its authorisation must not be considered as one of these criteria by itself.

Insurance Ireland regrets that the EC did not propose a legislative proposal for the harmonisation of Insurance Guarantee Schemes (IGS). A harmonised framework of IGS would have completed the EU regulatory framework for insurers together with the IRRD. In addition, the lack of an IGS proposal creates problems for the consistency of the IRRD and potentially moral hazard for resolution decisions involving more than one competent authorities.

The European Parliament and the Council made considerable efforts to amend the EC proposal in a meaningful and targeted manner. However, the resulting European Parliament Report (hereafter: ***the EP Report***) and the Council General Approach (hereafter: ***the CGA***) only address some of the flaws of the EC's proposal. In this paper we will exlore the different positions on the table ahead of the inter-institutional negotiations *("trilogues"*) and define suggestions from the perspective of the Irish insurance industry.



2 Key asks of the Irish Insurance Industry

Insurance Ireland appreciates the efforts of the institutions to harmonise R&R regimes across the EU. Unfortunately, the EC proposal and the CGA fall short in terms of making the necessary step towards a European consistent approach towards R&R. The lack of consistency will fortify the existing divergence and lead to the development of further national regimes which are not consistent with a future consistent regime. The EP Report makes some efforts to reduce the room for divergence in the IRRD proposal. Insurance Ireland strongly supports these ambitions.

Particularly, regarding the scope of the IRRD and the lack of a proposal for the harmonisation of IGS are welcome. It will be important that the compromises reached during trilogues ensure consistency. The definition of the scope for group and solo level coverage of the R&R plans is overlapping, if not conflicting. The EP Report addresses this substantial flaw of the EC proposal. Insurance Ireland believes that a scope based on groups and accompanied by the identification of other critical entities would be the appropriate way ahead.

Furthermore, Insurance Ireland is concerned that the consequent application of the principle of proportionality across the supervisory framework (Solvency II + IRRD) is not enshrined in the IRRD. Deleting proportionate measures and exclusions in the IRRD undermines the proportionate application of the future provisions. A subset of measures applying by default to LRPU and captives should be ensured.

Regarding the funding of resolution actions, Insurance Ireland remains of the opinion that the primary objective of harmonised resolution funding should be administrative and operational costs. Further funding principles highly depend on the interaction between IGS and R&R regimes. The lack of harmonisation of IGS (and the IRRD as it stands) prevents an effective harmonisation of the provisions on funding models to the benefit of consistent policyholder protection and fair competition.

For the Irish insurance industry, the following 5 key aspects need to be addressed:

1. Define a scope which is fit-for-purpose;
2. Safeguard the supervisory intervention ladder;
3. Ensure effective and efficient funding arrangements;
4. Ensure efficient collaboration between competent authorities;
5. Develop a harmonised framework for guarantee schemes.

Insurance Ireland is strongly committed to supporting the improvement of IRRD and stands ready to support.

3 The Priorities in Detail

3.1 Define a scope which is fit-for-purpose

The EC propose that 80% of the market in each Member State should be in scope for the new recovery measures and 70% of each national market should be included in the scope for resolution. The relevant markets are defined as life, non-life, reinsurance for life and reinsurance for non-life. Insurance Ireland doubts that there is such a market-distinction in practice. Further, the EC provides that all groups should be in the scope of the new framework.

While it is unclear to Insurance Ireland how these two determinations of the scope should be linked in, it does also consider both determinations as inappropriate, not sufficiently targeted and not fit-for-purpose. The EC references the international framework provided for by the International Association of Insurance Supervisors (IAIS). This framework only applies to Internationally Active Insurance Groups (IAIGs), the largest and most internationally-active insurance groups globally.

Insurance Ireland agrees to an approach which puts groups into the focus of the determination of the scope. Insurance groups cover the largest share of the EU insurance market. On that basis, Insurance Ireland suggests that all groups with total assets of more than 25 bn Euros should be included in the scope of the IRRD. The scope should also be consistent for both R&R purposes.

Group R&R plans, which resolution authorities develop, should cover subsidiaries and branches in a proportionate way. Thereby, an overall coverage of the EU Single Market will be created which allows for a consistent and convergent application of the harmonised regulatory framework.

Currently, the EC proposal foresees that national competent authorities (NCAs) might include subsidiaries into the scope of the measures. Insurance Ireland considers this provision extremely harmful for the consistency of the framework. Disagreement with the appropriateness of group plans which cover a subsidiary should be settled in the college of supervisors and the similar set-up which is to be created for resolution authorities. Otherwise, national fragmentation, duplicative requirements and an unlevel-playing-field will be the result.

Insurance Ireland understands that certain undertakings which are not subject to the scope, as defined above, might be important for certain national markets. The EC already proposes criteria for the identification of particular risk. Insurance Ireland agrees to this approach.

Insurance Ireland notes that the risk criteria for the determination of additional undertakings/groups to be brought into the scope includes *"cross-border activity"*. *"Cross-border activity"*, by itself, is not a valid risk factor. The Member State of authorisation does not impact

the underlying risk. Against this background, Insurance Ireland agrees with the EC that interdependence or a dominant market share would present a risk (with or without cross-border exposure). The cross-border criterion should be deleted.

Finally, Insurance Ireland believes that reinsurers and captives should remain out of the scope of the IRRD.

Reinsurance is a business-to-business activity, with limited policyholder protection implications, and there is no evidence in history that reinsurance contributes to systemic risk or financial instability. The application of regulation to reinsurance needs to be proportionate. Regarding entity-based systemic risk, the 3 biggest reinsurers in the EU combined total assets represent 0.1% of the total financial assets in the world. The 10 biggest global reinsurance groups represent no more than 0.3% of the total financial assets in the world.[1]

Regarding activity-based systemic risk, reinsurance is primarily about property, casualty and biometric risks. Those risks are not linked to the financial cycle and therefore traditional reinsurance activities, like insurance activities in general, are not subject to *“bank-run”* or risk of fire sales. Specific risks, e.g., climate change, do not create systemic risk for the reinsurance sector insofar as the related risks will fully materialise over the longer term. Reinsurers can manage their exposure to transition risk and adjust the pricing of their policies to the changing cost of risk in a timely manner.

Regarding behaviour-based systemic risk, reinsurance activity covers in particular long tail risks and thus, from an Asset-Liability-Management perspective, reinsurers invest through the cycle and are not prone to herding behaviour.

Regarding captives, their nature differs significantly from other insurers, which write a balanced portfolio of diversified risks in different Lines of Business covering a multitude of policyholders in the market. Captives usually write a limited number of Lines of Business, for risks which are linked to the industrial/financial group to which they belong, with stability with regard to the type of risks underwritten over time. Captives have a business strategy oriented to optimisation of insurable risk financing of the parent company and to find optimal reinsurance solutions. The business strategy of a captive does, usually, not pursue market share gain and keeps the business rather static across the years and therefore strategic risks tend to be close to zero. Captives tend to face decreasing probabilities of insolvency over time as profits are normally collected over time and redirected to capital. The static nature of the business allows to calculate the worst case in a deterministic way by adding up the limits of the underwritten contracts.

[1] Global Monitoring Report on Non-Bank Financial Intermediation 2018, *https://www.fsb.org/wp-content/uploads/P040219.pdf*

The EP Report substantially improves the proposal with regards to its overall scope and the scope of the specific recovery and resolution measures. In contrast to the EC proposal (and the CGA), the EP Report proposes a consistent approach covering parent undertakings established in the Union, insurance holdings and mixed financial holdings, and branches of undertakings established in third countries. For conglomerates, the EP proposes that there is only one consistent plan established. This clarity is much appreciated.

In addition, the EP Report deletes the Member State options and flawed minimum market coverage threshold proposed by the EC. This requirement is replaced by a specific market coverage threshold of 3% market share. The accuracy of this measure will depend on the definition of the respective markets. The resulting scope recognises the proportionate application of Solvency II – particularly with regards to the future LRPU category.

Furthermore, the EP Report ensures that duplicative measures for entities which are part of a group should be avoided. The EP proposes that where a group recovery/resolution plan sufficiently covers a subsidiary of that group no additional plan shall be required (Art. 7 and Art. 10 of the EP Report). While their remains an inconsistency due to the potential conflict between this exemption and the powers of NCAs to include additional undertakings into the pre-emptive recovery plan requirement (Art. 5 (2) second subparagraph), the EP Report should be supported. A clarification might be necessary that the empowerment of Article 5 (2) second subparagraph should only apply where the undertaking is not subject to a group plan.

A further inaccuracy of the scope in the EP Report results from the onerous definition of *"significant cross-border activities"*. Due to the (nearly) catch-all approach taken by the EP Report (as well as by the CGA and the EC proposal), (nearly) all insurers conducting cross-border business are in scope of the measures. Nonetheless, Insurance Ireland considers the approach taken by the EP to ensure consistency between the definitions under Solvency II and IRRD valuable.

3.2 Safeguard the supervisory intervention ladder

Solvency II already provides for a strong set of measures which undertakings have to comply with in case of a (likely) breach of their Solvency Capital Requirements (SCR). In case an insurer is likely to breach its SCR, supervisory authorities will request the respective insurer to present a conclusive plan on how it intends to restore its SCR within 3 months. This period can be extended by the supervisor upon request by the insurer. Where a supervisor is not convinced that the insurer is in a position to restore its compliance with its SCR, further supervisory measures are taken, e.g., the withdraw of the license to conduct new business.

In addition to the SCR, Solvency II foresees the MCR. The SCR is the capital necessary for an insurer to fulfil all its obligations with a confidence level of 99.5% for each of the 27 risk

categories under Solvency II. The MCR is a lower capital requirement which regularly should be between 25% and 45% of an undertaking's SCR. While this share might appear to be low, the MCR regularly exceeds the future liabilities of that undertaking. The prudent and conservative design of Solvency II creates a high-level of security – the gold standard of global insurance regulation.

If an undertaking breaches the MCR, the authorisation is withdrawn and the undertaking will be under supervisory control. It has to be noted that this situation does not materialise quickly or unexpectedly to the relevant supervisor as close engagement has already taken place since the undertaking breached the SCR. Actions, like the withdrawal of authorisation to write new business and management measures to avoid the breach of the MCR, will have been taken in line with the R&R provisions foreseen in Solvency II. It is important to note that an insurer which is breaching its MCR remains fully operational and can fulfil its obligations. Ordinary winding-up procedures for insurers, i.e., life insurers can take many years and the consumer detriment, if any, materialises over time (unlike banks).

The EC proposes that this ladder of supervisory intervention should be expanded with additional triggers for supervisory intervention measures ahead of the breach of the SCR and MCR. Insurance Ireland is of the opinion that these additional triggers do create uncertainty and an unnecessary level of inconsistency. For a consistent design and application of the framework, the hard triggers established and applied under Solvency II should be confirmed in the IRRD.

These provisions present one of the most concerning example of the IRRD proposal where provisions from the BRRD have been copy-and-pasted without taking into consideration the particularities of the insurance business model and the nature of Solvency II compared to the Basel regime for banks. First of all, an insurer which complies with its MCR is very unlikely to not being able to fulfil its liabilities. The nature of the insurance business model ensures that even in case of a breach of the MCR assets are still available and future liabilities will be covered to a (very) large extent. It is also important to recall that an SCR of 100 means that the insurer can fulfil all future liabilities with a 99.5% confidence level and considering that all the risks considered in the Solvency II framework are taken into account. The risk framework of Solvency II is far more sophisticated and exhaustive than what the simplistic methodology of the Basel framework provides for.

Only the factual breach of the SCR and MCR should trigger supervisory intervention or the need deploy recovery plans.

Allowing for interventions ahead of the breach of the SCR for recovery actions implicitly increases the SCR. This implicit increase means that the 99.5 Value-at-Risk principle of Solvency II is undermined. Thereby, such a proposal has a substantial political and technical impact on the whole Solvency II framework rather than being a technical nuance of the IRRD proposal.

Any resolution intervention before the breach of the MCR undermines the recovery activity of the undertaking. It is very likely to lead to a conflict of interest between the potential recovery of the financial soundness of an undertaking and its resolution. Particularly in cross-border cases, soft triggers for the resolution decision might lead to a conflict of interest between the NCAs involved and potentially target conflicts between safeguarding the interests of customers in different Member States.

No substantial improvements to the EC proposal are included by the EP Report or the CGA regarding the measures contradicting the Solvency II intervention ladder. Clarifications between the mandates of the different authorities or the respective mandates within the functions of an authority should be ensured.

3.3 Ensure effective and efficient funding arrangements

Resolution funding is a second major area of misunderstanding for the differences between insurance and banking business models and the situations in which a resolution decision might be adopted. As outlined above, insurance undertakings regularly have sufficient assets to cover their liability in the event of a breach of the MCR, which should be the trigger for a resolution decision. In addition, the liabilities of an insurer only materialise over time, either in the event of claims or (for some life insurance products which involve an investment component) with the maturity of the contract. Mass surrenders and bank-run-like scenarios are highly unlikely.

In consequence, the timeline and funding needs for the resolution of an insurance undertaking differ substantially from the situation for banks. Remaining assets can cover all or, at least, a substantial share of the future liabilities of the insurer. Furthermore, the materialisation over time of liabilities makes it difficult to assess funding needs at the moment of the decision of a resolution. As an example, a life insurance undertaking which breaches its MCR still holds substantial assets against its liabilities. The nature and business model of insurance requires the undertaking to manage its liabilities against its assets and vice-versa. Therefore, the realisation of liabilities and assets is linked to a high degree of certainty. Moreover, unlike banks, for life insurance policyholders, it is much more important that the policy continues than to get a quick compensation.

The IRRD foresees that both assets and liabilities of an insurer in resolution can be continued to be managed in a run-off or sold to ensure the continuity of the policies. In such a case, the costs for the resolution are very likely to be administrative rather than actually compensating policyholders. Even where there might be a need for funding for the compensation of a policyholder, this need will occur over time and not at a single moment.

These particularities of the insurance industry must be reflected in the IRRD framework and potential additional provisions on the funding of resolution. The ex-ante funding and creation of hedge funds is not sensitive or efficient. Rather than creating an additional layer of capital needs, the coverage of the administrative costs and, in exceptional cases where it might be necessary, compensation should be funded by the industry on an ex-post basis.

The EC's proposal does not include provisions on the funding of R&R regimes. Insurance Ireland believes that there is no need for including provisions on the specific funding rather than emphasising the dynamic of the resolution process for insurers. For consistency and convergence, it might be of beneficial to include provisions avoiding excessive additional funding.

Insurance Ireland notes that the existence of an IGS plays a vital role for the completeness of the supervisory framework. The absence of a proposal by the EC to harmonise IGS leaves a gap in the framework for the immediate compensation of open claims, i.e., for non-life insurance policyholders. The lack of an IGS proposal should not be compensated by bringing IGS elements into the IRRD and undermining the effectiveness and efficiency of the R&R regime.

The CGA does not substantially change the EC proposal with regards to funding arrangements broadly stating that funding arrangements should be in place. The EP Report goes a significant step further proposing that a funding arrangement as a mix of ex-ante and ex-post funding arrangements.

Insurance Ireland believes that a certain harmonisation might be beneficial to avoid regulatory arbitrage in this area. At the same time, Insurance Ireland strongly emphasises the differences in function and purpose between R&R and IGS. R&R must not be the implementation of IGS through the backdoor. A designated proposal on IGS should be the aim.

Resulting is the question of what should be subject to the funding arrangement. Consistent with the applicable regime in the Netherlands, Insurance Ireland believes that resources for the administrative and operational function of the NCA should be ensured. In Ireland, the Insurance industry is funding its supervisor, the Central Bank of Ireland (CBI) as well. The integration of the resolution function within the CBI should be sufficient to ensure the provision of these resources.

In contrast, the ex-ante funding should not include any of the costs related to the actual resolution addressing shortfall and compensation. Where an actual shortfall between an

insurers' assets and liabilities further funding should be sourced and exclusively on an ex-post basis. Creating additional *"pots of money"*.

3.4 Ensure efficient collaboration between competent authorities

Solvency II provides for a well-proven system for the collaboration of NCAs which are involved in the supervision of an insurance group – the colleges of supervisor. The NCA of the EU Member State of authorisation of the group's ultimate parent is leading the college formed by all NCAs from the other EU Member States in which the group has subsidiaries and branches which represent more than 5% of gross-written premiums (gwp) of the group participate. Supervisors of Member States where the group operates branches with less than 5% of its total gwp can be invited as well. In addition, EIOPA can attend the colleges as observer.

The system proved to be effective and efficient and should be maintained for the purposes of the IRRD. Particularly when the authority responsible for R&R is identical with the supervisory authority, there are substantial economies of scale. Exchange between NCAs, discussion of potential disagreements and dispute settlement can be effectively steered through the colleges. Where disputes cannot be settled between supervisors, EIOPA has a mandate to mediate.

A close cooperation between NCAs is also important for the IRRD. As the winding-up of a group, its subsidiaries or its branches can have an impact on more than just the market of activity, it is essential that NCAs closely cooperate. This cooperation should not only start with a resolution decision, but already at the point of development of the group recovery plans and resolution plans. NCAs collaboration should ensure that the group plans appropriately reflect the situation in Member States other than the one where the ultimate parent is established.

The collaboration between NCAs is the key factor that R&R regimes can operate effectively. Divergent views between NCAs result in duplicative or contradicting decisions. They would present a severe risk for consumers and financial stability. Furthermore, individual decisions by NCAs which are not closely coordinated with the supervisory college can lead to moral hazard for the NCA decision-making process.

Notwithstanding the involvement and collaboration between NCAs, the application of the provisions should be proportionate to the nature, scale and complexity of the risks of the group and its subsidiaries and branches and the risks related to its winding-up. Despite the collaboration, the responsibility for the supervision of the group and also its recovery and resolution plans should remain with the lead supervisor.

Finally, it has to be considered how NCAs from Member States where a group or its subsidiaries carry-out business under the freedom to provide services (FoS) are involved. Insurance Ireland believes that the NCAs of Member States where the group exclusively carries out FoS business should be informed about any relevant development. Information should be made available on the actual recovery and resolution plans, and also about decisions and actions taken by the college. It could be considered that these NCAs can be invited to attend to supervisory college sessions if recovery or resolution action is envisaged.

The EC proposal is not sufficiently defined in terms of responsibilities, mandate and procedures with regards to groups operating subsidiaries in different EU Member States . It is important to clearly differentiate between two cases of cross-border collaboration. In cases where an insurer conducts business under FoS or FoE, the prudential supervisor as well as the resolution authority is the home NCA. Collaboration between the home NCAs with host NCAs is extremely important to effectively and efficiently prevent customer harm. Due to the lack of supervised entity, the host NCA does not have a mandate to make a resolution decision. In contrast, where a group has subsidiaries in more than one EU Member States, national supervisors collaborate in the colleges of supervisors. Similar procedures must be ensured in the R&R context.

The EP Report provides for an important step in the right direction. The consistent group-wide approach to R&R measures in Article 5, 7, 9 and 10 must be applied throughout the IRRD. These amendments strengthen the provisions which are already provided for in Articles 68, 70 and 71 of the EC proposal. The further clarification in Article 71 (4a) of the EP Report with regards to independent decision by a single NCA is much appreciated. These amendments should be supported in the trilogue.

3.5 Develop a harmonised framework for guarantee schemes

Insurance Ireland strongly regrets the decision by the EC to not propose a framework for the harmonisation of IGS. The EC should be urged to develop a proposal as soon as possible.

IGS are a valuable measure of last resort of policyholder protection in cases of insolvency. Insurance Ireland highlights EIOPA's statement that IGS are not an isolated issue, but closely linked to the newly proposed R&R mechanisms.[2] Particularly as the distinction between some existing IGS mechanisms and resolution mechanisms is difficult. For example, the German IGS for life insurance undertakings (i.e, Protektor AG) and the empowerment of the Dutch resolution authority to create bridge or run-off institutions lead to similar

[2] See paragraph 13.3 of the of the EIOPA *"Opinion on the 2020 Review of Solvency II"*, EIOPA-BoS-20/749.

outcomes. While the former is considered a resolution mechanism, the latter is branded as an IGS. Therefore, Insurance Ireland considers important that the discussion on both issues will be linked.

The focus of IGS should be on the consumer. Insurance Ireland believes that the most sensible way for an EU measure would be to focus on the consumer. This would result in a *"host-approach"*. This approach provides that every policyholder is covered by the guarantee scheme of his/her Member State of residence. Accordingly, insurers, irrespective of the location of their headquarters, contribute to this scheme in an equitable manner. While this approach ensures that consumer are appropriately covered in accordance with the social and economic circumstances of the country of their residence it might lead to inefficiencies for insurers becoming members of multiple schemes.

Notwithstanding the advantages of the host-approach, Insurance Ireland understands that the discussion between Member States in the context of the Motor Insurance Directive led to dropping this option and to push for a home-approach. Hereunder, Insurance Ireland discusses the issue in more detail.

The home-country principle requires insurers to contribute to the IGS in the country where they are located. Allowing for a reliable and sustainable fund and risk management, means that the compensation of policyholders in case of an insolvency could reasonably only be the one applicable in the home jurisdiction of the insurer. If not harmonised to a certain minimum, it might leave the policyholder with insufficient compensation. Furthermore, it could only apply to policies which are covered by the home IGS of the insurer.

In addition to the consumer protection aspect, the home-approach might have a competitive issue too. In addition to the piecemeal in the protection of consumers, an inconsistent system of national IGS might create regulatory arbitrage. Undertakings, i.e. those with unsound financial positions, might be incentivised to search for the *"cheapest"* system. To avoid such a situation and create a certain consistency in this safety-net for consumers, a minimum harmonisation is indispensable.

The features of this minimum harmonisation should, at least, cover the following:

- Products and policyholders in scope;
- Minimum maximum compensation levels;
- Funding mechanism and minimum contribution.

Insurance Ireland generally believes that the definition of the products in the scope of an IGS should be compulsory (non-life) consumer products. However, the determination of compulsory products across Member States differs significantly. Therefore, Insurance Ireland recommends to primarily focus on those products which are required consistently

across all EU Member States, being Motor Third-Party Liability the main example. It would also allow to replace the insufficient proposal under the Motor Insurance Directive by a more comprehensive and EU-wide approach.

Most non-life insurance products (except health insurance products) are short-term contracts and the underlying risk does not depend on the personal condition of the insured (health status, age, etc.). For these products, replacement is usually simple. Therefore, the compensation through an IGS can focus on open claims. This makes simpler the determination of eligible people to be covered by the IGS. Furthermore, the scope should be limited to natural persons for the purpose of the minimum harmonisation. Natural persons are usually the most vulnerable. Even smallest companies can acquire specialised consultancy services and should be excluded.

In order to ensure that people are appropriately compensated, notwithstanding where they are domiciled in the EU, a minimum level for the maximum cover should be mandatory for all national guarantee schemes. Prices, costs of living and replacement costs differ significantly across the EU. A policyholder residing in a Member State with higher costs of living should not face financial hardship due to the location of the insurer.

A fundamental factor for fair competition of insurers across the EU is the funding mechanism and the funding level of the IGS. In order to not distort competition and ensure swift payments to consumers, a certain minimum level of pre-funding might be defined as ex-ante funding.

In addition, a certain minimum contribution as share of the business written or some other risk-based contribution by an insurer might be defined. At the same time the definition of a maximum contribution is advisable to ensure that no single insurer is overly burdened. These three factors will ensure that incentives for forum shopping and regulatory arbitrage are limited.

As an alternative to both home- and host-approach, an insurance specific IGS model could be envisaged. In such a system, insurers might reserve certain funds for the compensation of policyholders based on their risk-exposure, on an aggregated and harmonised level. In this case, funds could be distributed to the respective schemes in the markets the insurer is active, in cases of an insurer's insolvency. Through such a measure, it can be ensured that the failing insurer is participating in the compensation of claimants and the appropriateness of coverage of consumers. In order to ensure the availability of funds in the case of insolvency, it is suggested that these *"contributions"* to the system of IGS is clearly separated and under supervision of the NCA in charge and a trustee. Changes to the according funds will have to be approved by the trustee (and the supervisor).

The benefits would be:

- An increased transparency of the appropriateness of the contribution of an insurer to the system of IGS;
- Reduced administrative costs for the fund management as long as the fund is not activated;
- A risk-based and proportionate approach reflecting the risk inherent in an insurer's business;
- The failing insurer reserved funds to compensate for its own resolution – less free-riding;
- Policyholder benefit from the investment return on the funds insurers allocate on their behalf which would usually go into the publicly managed IGS fund.

For life insurance products, Insurance Ireland believes that contract continuity is crucial. Continuing insurance policies might be more beneficial for the consumer than simple compensation mechanisms. An IGS is not the right form for such function.

Insurance Ireland believes that a practicable and efficient resolution mechanism is more appropriate (e.g., the German and Dutch solutions). If an IGS function is foreseen, it might be envisaged to provide for a lump sum compensation for cases which cannot be settled to the resolution mechanism.

Primary source of funding should be the remaining assets of the insurer. Where these assets are insufficient to provide for this lump sum, an IGS function might be triggered. It should be assessed if that mechanism would be better included in the R&R mechanism as additional power for the resolution authority (like in the Netherlands) rather than creating another administrative body.

As for the IRRD, reinsurance and captive undertakings should be excluded from the scope.

Insurance Ireland strongly supports the ambition of the EP to ensure that a legislative proposal harmonising IGS is presented by the EC in due course.

The CGA weakens the initial mandate which the EC assigns to EIOPA to assess the options for an EU-wide harmonisation of IGS. Member States also make a link between the, often non-existing, IGS and R&R. Any direct financial reliance of R&R procedures on IGS should be avoided.

The EP Report should be supported in the trilogue.

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