



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND
CAPITAL MARKETS UNION

The Director-General

Brussels

FISMA.D.4/RH/ml/fisma.d.4(2022)2590397

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Subject: Amendments to Solvency II and proposed framework for the recovery and resolution of insurers and reinsurers¹

Dear Chair, Dear Ambassador,

On 22 September 2021, the Commission adopted a proposal for amendments to the Solvency II Directive² and a proposal for a framework for the recovery and resolution of insurance and reinsurance undertakings³.

As part of its Better Regulation agenda, legislative proposals and accompanying impact assessments adopted by the Commission and submitted to the European Parliament and Council are open for public feedback. This letter summarises the feedback received through the Commission webpage between 23 September 2022 and 13 January 2022.

¹ Unless otherwise specified, the term “insurer” is intended to refer to insurers and reinsurers throughout this letter.

² COM(2021)581, 2021/0295(COD)

³ COM(2021)582, 2021/0296(COD)

Feedback

24 stakeholders (4 insurance companies, 11 insurance or reinsurance associations, 3 other business associations, 4 NGOs, 1 academic and 1 citizen) from 10 countries (Belgium, Czechia, France, Germany, Ireland, Italy, Luxembourg, Sweden, Switzerland, and the United Kingdom) submitted comments to the Commission's consultation. Contributions are available at the Commission's 'Have your say' webpage⁴. Contributions received did not systematically cover all aspects of the proposals.

1. AMENDMENTS TO DIRECTIVE 2009/138/EC ("SOLVENCY II")

Most stakeholders expressed support for pursuing an increased contribution from the insurance sector to the EU's high-level political objectives. Several respondents expressed the view that the Solvency II Directive has provided high quality prudential rules that made the financial system overall safer. While those stakeholders opposed a general overhaul, they were supportive of targeted improvements to the current framework.

1.1. Proportionality

Stakeholders' views on the proposed increase in the size thresholds for the exclusion of insurers from Solvency II rules varied. Several insurance stakeholders called for higher thresholds. However, one academic considered the proposed thresholds as too high and called for transparency to the public on whether or not Solvency II rules are applied for a specific insurer.

Stakeholders generally welcomed the proposal to create a new framework for the identification of low-risk profile insurers. Some insurance stakeholders expressed the view that the criteria for the identification of low-risk profile insurers should be modified. A number of differing proposals were made as regards the criteria on the size of low-risk profile insurers. Some considered size as irrelevant whereas others proposed laxer criteria on size or more flexibility for Member States as regards the criteria on size. One business association expressed the view that all captive insurance and reinsurance undertakings should qualify as low-risk profile insurers. Several insurance stakeholders called for an expansion of the areas where simpler rules would apply to low-risk profile insurers.

Despite of the general support for the new proportionality framework, a few insurance stakeholders were still concerned about the supervisory practices as regards the new framework. One insurance stakeholder said the new framework should not interfere with the cases where proportionality is already applied successfully in practice.

1.2. Supervisory reporting and public disclosure

Several insurance stakeholders welcomed the proposals to make disclosures required by insurers more fit for purpose, in particular as regards the possibility of a single regular supervisory report at the level of an insurance group, the new structure for the solvency and financial condition report (SFCR) or the possibility that reporting deadlines are extended where required by exceptional circumstances.

However, several insurance stakeholders also expressed concerns that the burden related to disclosure requirements may increase in light of other developments, such as potential changes to quantitative templates set out in implementing technical standards. To that end, several proposals

⁴ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12461-Insurance-&-reinsurance-firms-review-of-prudential-rules-Solvency-II-Directive-en>

for a further reduction of disclosure requirements were made. Some respondents suggested that the part of the SFCR that is addressed to stakeholders other than policyholders should only cover quantitative data. One respondent suggested that SME insurers and/or mutual insurers should only be required to disclose publicly the information that should be addressed to policyholders and no information that would be addressed to other parties. Another stakeholder expressed the view that the disclosures in the SFCR should be restricted to a factual description of an undertaking's current situation and not contain any hypothetical scenarios or sensitivity analyses.

Several insurance stakeholders also stated the view that reporting of standard formula calculation should not be imposed on insurers that have received supervisory approval to use an internal model.

As a final point, several insurance stakeholders expressed their opposition to the proposed minimum harmonisation of audit requirements on prudential disclosures. One of those stakeholders suggested to allow for flexibility as regards the parties that can provide assurance if an audit requirement is nevertheless pursued.

1.3. Long-term guarantee measures

As regards the proposed changes to the volatility adjustment, several insurance stakeholders welcomed the higher general application ratio, the new macro component of the volatility adjustment, and that, in deviation from EIOPA's advice, no requirements linked to the liquidity of liabilities were proposed.

However, one insurance stakeholder noted that both excessive and deficient compensation through the volatility adjustment would remain possible. Some insurance stakeholders suggested that the general application ratio could be raised even further than in the legislative proposal. Several insurance stakeholders opposed changes to the risk correction of the volatility adjustment.

One insurance stakeholder criticised the operational burden caused by the proposed rules on the modelling of the volatility adjustment within internal models. Some other stakeholders called for allowing a modelling of the volatility adjustment in the calculation of the capital requirements with the standard formula.

Concerning the rules on the extrapolation of the risk-free interest rate term structure, one insurance stakeholder welcomed that the proposal would provide more clarity on the starting point of the extrapolation. However, several insurance stakeholders were concerned that the new extrapolation method would result in more volatility of capital requirements. Several of those stakeholders suggested that a high convergence speed should be pursued to limit volatility. Some of those stakeholders called for more specification on those aspects in the amendments to the Solvency II Directive.

As regards the proposed changes to the symmetric adjustment to equity capital charge, some insurance stakeholders suggested to make the use of the symmetric adjustment optional for insurers. A few other insurance stakeholders stated their opposition to the proposed changes as they are concerned the changes may lead to higher volatility in capital requirements.

1.4. Macro-prudential tools

While one NGO expressed disappointment that several recommendations of the European Systemic Risk Board were not adopted, several insurance stakeholders questioned the need for macro-prudential rules claiming that current rules already provide high levels of security, including against macro-prudential risks. One insurance stakeholder also called for avoiding gold-plating beyond the standards of the International Association of Insurance Supervisors.

As regards the specific amendments to the rules on the “own risk and solvency assessment” (ORSA), some insurance stakeholders stated the view that insurers should not be required to take an “inside-out” perspective as regards potential macro-economic risks. Another insurance stakeholder expressed concerns that the undertaking-specific nature of the ORSA could be undermined.

Several insurance stakeholders expressed the view that the proposed requirements on liquidity risk management would cause high burden without bringing sufficient benefit. Some of those stakeholders warned that the rules might also lead to lower investment returns for insurers and result in lower retirement income for savers. One of the insurance stakeholders suggested that, if liquidity reporting requirements are pursued, a lower reporting frequency should be considered. Another insurance stakeholder suggested to consider such requirements only at group level.

1.5. Sustainability risks

Several NGOs welcomed the proposal for clearer rules on how climate risks should be taken into account in insurers’ ORSA. On the one hand, some of the NGOs called for more specification on the required long-term climate change scenario analysis and one of those NGOs also called for more environmental scenario types to be covered and for public disclosure of the outcome. On the other hand, one insurance stakeholder expressed concern that the undertaking-specific nature of the ORSA could be undermined.

As regards the proposed European Insurance and Occupational Pension Authority (EIOPA) mandate on the risk characteristics of environmentally sustainable or harmful investments, all NGOs submitting feedback called for higher capital requirements related to new extraction of fossil fuels. An opposing view was expressed by an insurance stakeholder who cautioned against considering “brown penalising” factors and, likewise, “green supporting” factors.

1.6. Group supervision

As regards the amendments to the rules on the supervision of insurance groups, some insurance stakeholders welcome the introduction of a dedicated minimum capital requirement for the group level.

Several insurance stakeholders also expressed concerns that the amendments are generally too far reaching and lack justification. For instance, one stakeholder mentioned the supervisory power to request restructuring of a group and another the group-level supervision in the case of horizontal structures.

However, some other insurance stakeholders were of the view that the amendments should be expanded further to improve clarity of the rules, e.g., as regards the use of the *mutatis mutandis* formula in the rules on liquidity management and the supervisory power to exclude companies from scope of group supervision.

1.7. Cross-border supervision

A variety of comments were made on the proposed rules as regards the supervision of insurance business under the freedom to provide services or the freedom of establishment (“cross-border insurance business”).

On the one hand, some insurance stakeholders expressed support for a centralised gathering by EIOPA of information on refusals of an authorisation.

On the other hand, several insurance stakeholders also expressed concerns about potential impediments to cross-border business and called to preserve the single point of contact role for the supervisory authority of the home Member State. To this end, some insurance stakeholders

submitted proposals. One stakeholder called to avoid new requirements on companies with cross-border businesses where there are already colleges at group level. Another stakeholder called for an exemption of reinsurers from specific rules on cross-border insurance business, stating that geographical diversification is an essential part of the business model of many reinsurers. Some stakeholders suggested to pursue digital supervisory cooperation platforms between supervisory authorities to avoid additional burden on companies.

Finally, some insurance stakeholders questioned whether the proposed deadlines in the context of a breach of the minimum capital requirement are appropriate given the need for urgent action in such situations.

1.8. Other comments

Some of the comments submitted by stakeholders concerned areas not addressed in the Commission's legislative proposal. One insurance stakeholder asked to add clarifications on the market access for third country reinsurers and on policyholders' cancellation rights to the list of amendments to the Solvency II Directive.

Several insurance stakeholders commented on the Communication that was adopted together with the legislative proposal and that set out the Commission's intentions for amendments to the delegated acts adopted under the Solvency II Directive. Most of those comments concerned the criteria for long-term equity investments, the capital requirements for interest rate risk and the calculation of the risk margin.

Finally, one citizen referred to abuse by insurers of their possibilities to modify contractual terms. The citizen suggested to specify more clearly the possibilities for insurers in that context.

2. PROPOSAL FOR A FRAMEWORK FOR THE RECOVERY AND RESOLUTION OF INSURANCE AND REINSURANCE UNDERTAKINGS (IRRDR)

The majority of the respondents, who have provided responses in the framework of Better Regulation feedback, represented stakeholder groups from the insurance industry (10 out of 12 responses). Many of these respondents found the harmonisation of recovery and resolution rules for insurers largely unnecessary and disproportionate and pointed out the likely high compliance costs.

2.1. General objectives and focus

Several respondents argued that although the objective of policyholder protection pursued by the IRRDR is important, it can be better achieved through a better enforcement of the existing supervisory measures under the Solvency II Directive. In contrast, a few respondents agreed that a harmonised recovery and resolution framework is a useful addition to the Solvency II, for better protecting policyholders and ensuring a level playing field, especially in the context of cross-border business.

The majority of the respondents believed that the proposed Directive is not sufficiently tailored to the specificities of the insurance business and relies too much on provisions adapted from the Bank Recovery and Resolution Directive⁵ (BRRD). Such concerns were particularly highlighted by stakeholder groups representing mutual/cooperative insurers and reinsurers who argued that the current provisions do not sufficiently cater for the specificities of the relevant business models.

⁵ Directive 2014/59/EU

Some respondents raised concerns about the role of EIOPA under the proposal. In particular, they perceived a risk of shift in the balance of power between EIOPA and the national authorities and, by extension, an increased risk of conflicts between EIOPA and national authorities in times of crisis.

The funding of resolution, in the absence of a proposal by the Commission for a minimum harmonisation of Insurance Guarantee Schemes (IGSs), raised a concern amongst some stakeholders, especially in relation to cross border group resolution.

2.2. Scope of application (Article 1)

A few respondents argued that the proposed framework has a very broad scope of application. Although the group approach, followed in the proposal, is viewed as a positive element by many stakeholders, the alleged, automatic, inclusion of all groups in the scope was not considered to be proportionate as not all insurance group failures have the potential to disrupt the financial markets and the real economy.

Two of the respondents argued that a revision of the scope of application with respect to reinsurance groups is required and that, due to the nature of their business, either a case-by-case application based on risk criteria, or a total exemption from the scope would be preferable.

2.3. Planning requirements and proportionality elements (Articles 4-13)

Many respondents agreed that the minimum market coverage criteria for determining the scope of the pre-emptive recovery and resolution planning requirements should be discarded, as they may have a disproportionate impact on small insurers and national markets.

Other respondents argued for more national discretion in the selection of the insurers to be included in the scope of the planning requirements and that an approach focused on risk-based criteria should rather be followed. As regards planning for groups, some respondents supported the proposal's group top-down recovery and resolution planning approach and, unless there is an absence of joint decision on a group recovery plan, no obligation at subsidiary level should exist.

Stakeholders representing mutual/cooperative insurers emphasised the need for excluding the possibility for the authorities to request to a mutual to put in place recovery and resolution strategies that involve demutualisation.

Several respondents welcomed the proportionality elements accompanying the planning measures included in the proposal. One respondent expressed the view that specific, simplified obligations should be considered for reinsurers, by default, given the characteristics of reinsurance business. Other respondents called for more national flexibility in the application of simplified obligations or conversely for more granularity in the eligibility criteria.

2.4. Resolvability (Articles 13-16)

Many stakeholders raised concerns about the degree of intrusiveness of the measures and proportionality of the powers awarded to national authorities for removing impediments to resolvability. One respondent called for more clear and measurable parameters to be introduced in the Level 1 text. In contrast, another respondent called for more national flexibility to be introduced in the respective provisions.

The issue of financial conglomerates that is not explicitly addressed by the proposal has been raised as a concern by one stakeholder.

2.5. Resolution conditions, resolution tools and powers (Article 19 and Articles 26 -52)

A few respondents expressed concerns as regards the consistency of the triggers for resolution and the supervisory intervention ladder under Solvency II, highlighting that a power provided to resolution authorities for initiating resolution action before a Minimum Capital Requirement (MCR) breach undermines the supervisory and recovery efforts and should be avoided.

Regarding resolution tools, two respondents suggested that the tools should not interfere with existing national IGSs, which in some Member States have similar functions to those envisaged under the IRRD for the bridge institution tool.

Stakeholders representing mutual/cooperative insurers expressed general concerns about the potential application of the write-down tool to policy holders' claims, and more specifically to mutual/cooperative insurance undertakings, considering that in such cases, the policy holders are also the owners of the undertakings. The possibility of "demutualising" mutual/cooperative insurers as part of the application of transfer tools was also raised as concern by the same stakeholders.

2.6. Amendments to the Solvency II Directive, including on preventive measures (Article 83)

Some respondents expressed concerns that the proposed amendments provide supervisory authorities with the power to intervene in sound undertakings which fulfil all financial requirements and thus effectively change the current supervisory ladder of intervention under Solvency II. Two respondents found the measures to be useful, although one respondent would welcome more clarity to be introduced in the measures.

2.7. Relations with third countries (Articles 72-77)

A few respondents asked that the recovery and resolution regime should follow a group approach, including for non-EU groups headquartered in equivalent jurisdictions or jurisdictions that provide similar safeguards in terms of the recovery and resolution of undertakings. In other words, the presence of a group recovery or resolution plan supervised by an equivalent third country supervisor should lift the obligation to prepare entity-level plans, on the same conditions as for EU groups for which group-level plans exist.

Yours sincerely,

Electronically signed

John BERRIGAN

c.c.: Alban GENAIS, Chair of the Council Working Party for the Solvency II Review package

Ilze JUHANSONE, Secretary-General of the European Commission