

Protection of policyholders within the Solvency II framework

Submitted by France, Italy and the Netherlands

The Solvency II framework is a one of a kind example of harmonization of financial rules in Europe, and has done a lot for consumer protection by strengthening the insurance sector and making it more resilient. Notably, it provided for strong requirements regarding own funds and risk management, while ensuring transparency regarding the solvency situation of undertakings. The single market also helped the European market develop in the interest of consumers, who gained access to a wider choice of products in all member states. This freedom to provide services is a milestone for the integration of the European Union, and should be preserved.

However, it is worth noting that the protection of European consumers is still dependent on where they live and on where they take their insurance products from. In this regard, the latest developments in several member states which experienced multiple collapses of cross-border business over the past years advocates for a European initiative on these two issues. In those situations, it appeared that country-specific products were difficult to supervise for home supervisors, all the more that the level of prudence may have been different from one state to another. Moreover, when difficulties are arising, there is no way at the moment to ensure that cross-border businesses would be treated equally in all concerned member states, nor that policyholders would be compensated the same way. Thus, there is room for improvement on several points so that we are able to give policyholders a fair and equivalent protection across the European Union. **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 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.

The 2020 review is an occasion to reinforce such platforms, making it clearer that they can result in public recommendations from EIOPA - as in article 16 of the 1094/2010 regulation- with an accelerated comply or explain procedure. Such a provision could also be complemented with the possibility for EIOPA to launch a **binding mediation** –as in article 19 of the same regulation- in the context of these platforms. Moreover, since the insurance market is still country specific when it comes to products design, we support the recommendation from EIOPA’s draft advice providing that host authorities, which are the most expert about their national market, are able to **evaluate the home authority understanding of products** that may not exist in the home member state, and bring their help to explain them if necessary.

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, as information sharing is key for the integrity of the single market. In this regard, the provision on *ex ante* notification obtained in the context of the ESAs review (article 152a) is a step in the right direction, which will enhance communication between supervisory authorities at the moment of authorization. Beyond, there is still room for improvement in order to foster preventive information sharing between competent authorities: 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. This new provision along with article 152a would thus allow for continuous information sharing. In order to ensure a high level of consumer protection in the single market, the host authority should be **informed on a continuous basis** on the activities that are actually being conducted by undertakings on its market. In any case, cross border situations should be monitored frequently. Such information sharing, which could include prudential reporting, should be realized without delay, to maximize its efficiency.

Thirdly, such progresses would be usefully complemented by the creation of a European insurance recovery and resolution framework, as mentioned by the European Commission in its call for advice. Indeed, although the Solvency II directive contains a title on the reorganization and winding up of insurance undertakings, it does not address the recovery and resolution issue, which is of great importance since winding up of a failing significant insurer under normal insolvency proceedings may damage financial stability and the economy and delay settlement of policyholders' claims. This is particularly harmful in case of life insurance claims on which policyholders may be dependent for their income. Against this backdrop, several member states already developed national recovery and resolution regimes, or at least preventive and resolution supervisory powers. A European framework, dedicated to the insurance sector, would be much more efficient to address the case of a failing insurer with cross-border activities. Its current absence results in a situation in which policyholders receive an unjustifiable difference in the level of protection from one member state to another.

This is why we support a minimum harmonization initiative at European level, taking into account the specificity of the insurance sector. In our view, such a framework should deal with some key issues: identification by each member state of a national resolution authority, scope of the resolution in terms of insurance undertakings, preventive recovery and resolution plans, conditions and criteria for the entry into resolution, powers and tools given to national resolution authorities¹, and cooperation between authorities on a cross-border basis. In this regard, we broadly welcome the draft advice published by EIOPA which covers the main topics for harmonization, notably the toolbox of preventive and resolution powers and the reflections about triggers of intervention.

To improve the level of consumer protection in the EU in the insurance sector, several subject matters need to be addressed consistently and at the same time. Altogether, these reforms would strengthen the single market, giving more confidence to policyholders while enhancing financial stability.

¹ For instance, and without being exhaustive, such a toolbox could encompass the abilities to transfer portfolios, and to create bridge institutions and management vehicles for run-off.