



The European Federation of Insurance Intermediaries

La Fédération européenne des intermédiaires d'assurances

## BIPAR RESPONSE

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### **Commission's Consultation on the White Paper on Insurance Guarantee Schemes**

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*BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 46 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.*

## I. GENERAL COMMENTS

BIPAR welcomes the opportunity provided by the European Commission to comment on its “preferred options” listed in the White Paper on Insurance Guarantee Schemes which is an important issue to insurance intermediaries and their clients.

BIPAR would like to underline that the risk of insurance failures is limited. This is an important difference with the banking sector where, although control is also very strict, the increasing complexity and creativity can more often lead to serious consequences for the consumers. It is therefore important that the European Commission recognizes the differences between the banking and insurance sectors in drafting its Directive on insurance guarantee schemes. BIPAR is however aware that the risk of failures is real in the insurance sector and the fact that the Solvency II framework does not provide a zero-failure environment has to be taken into account.

BIPAR is of the opinion that mechanisms should be put in place to protect private policyholders in the event an insurance company becomes insolvent and that they should extend to cross border activities. These mechanisms are also important in helping to maintain consumer confidence in the sector. They would act as an additional layer of policyholder protection in the event of insurers’ failure. It should however be ensured that the existence of such a mechanism has no effect on the quality of the supervision and rules on solvency.

## II. ANSWERS TO THE EUROPEAN COMMISSION’S PREFERRED OPTIONS

### 3.1. Nature of possible EU action

The Commission proposes to establish at EU level a coherent and legally binding framework on IGS protection, applicable to all policyholders and beneficiaries, by means of a directive as defined in Article 288 TFEU

*BIPAR Answer:*

A majority of BIPAR members supports this initiative that would enable the establishment of IGS in all EU Member States. In this context a Directive, which will ensure a minimum harmonisation, is the adequate instrument. It is important that an equal protection of consumers (policyholders and beneficiaries) and fair competition between undertakings (or a so-called “level playing field”) are ensured.

Our Swedish member association however believes that guarantee schemes indeed offer protection against systemic risk, but that this is not applicable to the insurance sector and that it could lead to consumers having to pay higher premiums. They believe that the new Solvency II Framework Directive and the new supervisory authority EIOPA offer a sufficient level of protection.

### 3.2. Level of centralisation and role of the IGS

The Commission advocates the establishment of an IGS as a last-resort mechanism in each Member State.

*BIPAR Answer:*

A majority of BIPAR members is of the opinion that IGS should be put in place in all EU Member States to protect policyholders or beneficiaries in the event an insurance company becomes insolvent, in particular in the framework of cross-border activities. They also agree with CEIOPS's 2009 recommendation in this respect, that is to say that such mechanism should leave Member States some flexibility to choose among a number of techniques to find the best solution in each individual case.

These mechanisms are also important in helping to maintain consumer confidence in the sector. They would act as an additional layer of policyholder/beneficiary protection in the event of insurers' failure.

It should however be ensured that the existence of such a mechanism has no effect on the quality of the supervision and on the rules on solvency.

### 3.3. Geographical scope

The Commission advocates harmonising the geographical scope of IGSs on the basis of the 'home country' principle.

*BIPAR Answer:*

A majority of BIPAR members believes that all policyholders/beneficiaries of a failed company should receive the same degree of protection.

They favour a home Member State principle that would deliver equal treatment of consumers (policyholder / beneficiary) protection without IGS having to be harmonised across countries. This also allows for companies, their branches and services business to be covered by the IGS in the Member State where the company is authorised.

To this end it is important that an alignment exists between supervisors and any compensation body. The Solvency II Directive introduced a new split of competencies between home and host supervisors for the supervision of cross border groups. BIPAR believes that it is important that the European Commission ensures coherence between the Solvency II Directive and its future framework of IGS.

### 3.4. Policies covered

The Commission advocates that IGSs should cover both life and non-life insurance policies

*BIPAR Answer:*

A majority of BIPAR members believes that all classes of policies should be covered.

It is clear that both forms on insurance (life and non-life) can have important consequences for consumers, in the event of the failure of an insurer. The financial consequences can be extremely serious: in case of a home burning down, a major liability claim following a motor accident, an insured pension, etc....

BIPAR believes that the existence of IGS for unit-linked life insurance where policyholders and beneficiaries might experience serious financial losses as a result of insurers' failures, should be seriously considered.

### 3.5. Eligible claimants

The Commission advocates that IGSs should cover natural persons and selected legal persons

*BIPAR Answer:*

A majority of BIPAR members believes that eligible claimants should be limited to personal consumers (both policyholders and other beneficiaries covered by the insurance contract) and small firms with a turnover under a fixed limit.

To this regard, we wish to indicate that the Payment Services Directive has a definition of 'micro-enterprise' which might be useful. It is defined as an enterprise which:

- (a) employs fewer than 10 persons; and
- (b) has a turnover or annual balance sheet that does not exceed €2 million.

The majority of BIPAR members furthermore believes that reinsurance should be excluded, as well as large risks.

### 3.6. Funding

The Commission advocates that IGSs should be funded on the basis of *ex-ante* contributions by insurers, possibly complemented by *ex-post* funding arrangements in case of lack of funds, which should be calculated according to the individual risk profiles of the contributors. An appropriate target level for funding should be set, with a suitable transition period. The Commission is ready to consider harmonised compensation limits and other reductions in benefits, provided that appropriate coverage of policyholders and beneficiaries is guaranteed for all relevant classes of insurance and in all Member States.

*BIPAR Answer:*

Contrary to what the Commission proposes, a majority of BIPAR members would favour an ex-post funding. They believe that ex-post funding better matches liabilities. Also, there is

less chance of a systemic risk in insurance compared to the banking sector. As a result any failure of an insurer is likely to be an isolated case. Additionally, unlike with a bank failure the call on any guarantee fund is likely to be gradual, payments being required as insured claims are settled and these can often be spread over many years. The pattern of failures of EU insurers confirms this to be the case. This pattern of payout, to a large extent, also negates any procyclicality arguments with ex ante funding of an insurance scheme.

Ex-ante funding builds up a fund which may unnecessarily add to consumer costs (if there is never a call). Also, a prefunded scheme would in any event have to be recapitalised if it is called upon. Finally, prefunded systems are characterised by investment risk and they would have to pay fund managers, generating higher costs.

With regard to the protection amounts and limits, BIPAR believes that full protection would increase moral hazard and that is why some limitations are necessary.

The Dutch and Swedish BIPAR member however favour an ex-ante approach.

They believe that IGS should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of lack of funds. They believe that ex-ante funding offers more protection for consumers. The gradual build up of the fund will probably not lead to price increases. They believe that ex-post funding however, could lead to sudden price increases for consumers.

### **3.7. Portfolio transfer and/or compensation of claims**

The Commission advocates that IGS should at least and within a pre-defined period of time compensate policyholders and beneficiaries for losses when an insurer becomes insolvent.

*BIPAR Answer:*

A majority of BIPAR members agrees that IGS should compensate policyholders and beneficiaries for their losses (compensation of claims) as a minimum.

The transfer of portfolio seems to be a reasonable solution depending on the products and on what is practicable in the circumstances of a particular failure. It is absolutely preferable in the case of life insurances in term of consumer protection and where it is cost effective.

BIPAR remains at the disposal of the European Commission and looks forward to contributing in more detail to further discussions.