

The [Solvency II Directive](#) introduced a new solvency regime that has been applicable since 1 January 2016 to about 5,000 (re)insurance undertakings in the European Economic Area (EEA). It provides that some areas must be reviewed by the Commission in 2020 (e.g. methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement standard formula). Other parts of the Solvency II framework have been identified as deserving a reassessment, such as the supervision of cross-border activities of insurers and the possible need of minimum harmonised rules on Insurance Guarantee Schemes (IGS).

On 22 September 2021, the European Commission adopted its **review of the Solvency II Regime** in the context of the EU's post pandemic recovery. The review consists of:

- a [legislative proposal to amend the Solvency II Directive](#),
- a [communication on the review of the Solvency II Directive](#) (the amendments to the Solvency II Directive will be supplemented by Delegated Acts at a later stage. The Communication sets out the Commission's intentions in this regard) and
- a legislative [proposal for a new Insurance Recovery and Resolution Directive](#).

The Commission explains that the proposals aim to strengthen European (re)insurers' contribution to the financing of the COVID-19 recovery, to progress the CMU and to channel funds towards the European Green Deal. It estimates that its proposed reform of capital requirements could lead to the release of up to €90 billion of (re)insurers' capital in the short term at EU level.

■ Amending the Solvency II Directive

Below are some interesting proposed changes to Solvency II Directive from an intermediaries' perspective:

Proportionality

- The proposal introduces greater proportionality by allowing more small (re)insurers to be exempted from the Solvency II Regime and by creating a more suitable framework for (re)insurers identified as having a low risk profile (new concept);
- The proposal allows low-risk profile undertakings to assign one person to hold several key functions.

Quality of supervision /Supervision of cross-border business

- The proposal aims to improve the quality of supervision in relation to ongoing compliance with prudential rules, cross-border (re)insurance business and (re)insurance groups, and consequently to ensure that consumers are better protected when buying insurance products in other Member States.

For example, it is proposed that each refusal of an authorisation, including the reason, will be notified to EIOPA and recorded in a database which can be consulted by supervisory authorities. The monitoring of compliance with fit and proper requirements as regards members of the administrative, management or supervisory body (AMSB) or persons that have other key functions in the insurance or reinsurance undertaking, will be enhanced. Supervisory authorities will be allowed to request the removal of an AMSB member or key function holder.

- The provisions on authorisation are amended by a requirement on applicants to provide information on previous rejections or withdrawals of authorisation in other Member States and on supervisory authorities to take that into account in the assessment of applications. In the context of the authorisation process, supervisory authorities will also be informed about intended cross-border business.

- The proposal also includes minimum requirements regarding the exchange of information between the supervisory authorities in home and host Member States concerning the insurers and their activities in the host Member State.

For example Article 33a on Supervisory cooperation between home and host supervisory authorities states that in the event of significant cross-border activities carried out by insurance and reinsurance undertakings under the right of establishment or the freedom to provide services, the supervisory authority of the home Member State shall cooperate with the supervisory authority of the host Member State to assess whether the insurance undertaking has a clear understanding of the risks that it faces, or may face, in the host Member State.

This cooperation shall cover the following aspects: (a) the system of governance including the ability of the head office's management to understand the cross-border market specificities, risk management tools, internal controls in place and compliance procedures for the cross-border business; (b) outsourcing arrangements and distribution partnerships; (c) business strategy and claims handling; (d) consumer protection.

It is interesting to note that for the purpose of this Article, 'significant cross-border activities' are "insurance and reinsurance activities carried out by an insurance or reinsurance undertaking under the right of establishment and those carried out under the freedom to provide services in a given host Member State, which exceed 5 % of the annual gross written premium of the undertaking, measured with reference to the last available financial statement of the undertaking".

- It is also proposed that insurance undertakings notify material changes and emerging risks related to ongoing cross-border insurance activities. Supervisory authorities should exchange such information. EIOPA's role in complex cross-border cases where the supervisory authorities involved fail to reach a common view in a cooperation platform, is enhanced. Timely access to information by a supervisory authority of a host Member State is ensured.

- The supervisory authority of the host Member State is empowered to request from the supervisory authority of the home Member State information on the solvency position of the undertaking and, in case of strong concerns, to request carrying out a joint onsite inspection. EIOPA is given a role in resolving disagreements between supervisory authorities.

Reporting

It is proposed to refine the rules on transparency to better adapt disclosures required from (re)insurers to the information needed by recipients. Policyholders will be better informed on the financial situation of their insurer. For example, it is proposed to modify the structure of the Solvency and Financial Condition Report (SFCR) by undertakings and groups, splitting its content into a part addressed to policyholders and a part addressed to other stakeholders.

Others

- Insurers will be incentivised to invest more in long-term capital for the economy;
- Insurers' financial strength will take better account of certain risks, including those related to climate, and be less sensitive to short-term market fluctuations;
- The whole sector will be better scrutinised to avoid that its stability is put at risk.

■ **Legislative proposal for a new insurance recovery and resolution Directive**

This proposal addresses crisis management (preventive powers, pre-emptive recovery planning and resolution) in relation to all insurance and reinsurance undertakings established in the EU that are subject to the Solvency II framework.

In addition, as the failure of an entity affiliated to a group can impact the solvency and the operations of the whole group, **pre-emptive recovery and resolution planning needs to identify and encompass all material entities of groups of which an insurer may form part.** Authorities should possess effective means of action with respect to those entities to impose remedial actions that takes into account the financial soundness of the group, address impediments to resolvability in a group context and produce a consistent resolution scheme for the group as a whole, in particular in a cross-border context.

The proposed insurance recovery and resolution framework includes provision for the designation of a national resolution authority equipped with a minimum harmonised set of powers to undertake all the relevant preparatory and resolution actions

■ What about IGS?

It should be noted that **the Review does not contain proposals on the introduction of harmonised rules for IGS**. The Commission states however that it is committed to reassess the appropriateness and timing of any such alignment in the future. It has therefore published, at the same time of the review, a quantitative assessment of several policy options for a possible proposal on the introduction of harmonized rules for IGSs.

■ EP and Council readings of the two legislative proposals

The proposals are being discussed by the EP and the Council.

At EP level, the ECON committee is in charge of the two proposals. The Rapporteur and shadow Rapporteurs are the same for the two proposals: Rapporteur: German EPP MEP Markus Ferber / Shadow Rapporteurs: Finnish S&D MEP Eero Heinaluoma (and French S&D Aurore Lalucq for the Recovery proposal), French Renew Europe MEP Stephanie Yon Courtin, German Green MEP Henrike Hahn, Belgian ECR Johan Van Overtveld and Irish "left Group" MEP Chris MacManus.

ECON discussed the proposals once in April 2022. The Rapporteur Ferber published a working document on the two proposals.

On the Solvency II amended proposal, the Rapporteur considers that "there are four broad objectives of good EU insurance regulation:

- 1) further developing the internal market for insurance and reinsurance, by ensuring a level playing field within the EU, whilst allowing for fair competition with the rest of the world;
- 2) ensuring that insurance companies are safe and stable and policyholders are protected;
- 3) ensuring that policyholders that use insurance policies for investment purposes (e.g. via life insurance policies) can earn a decent return;

- 4) ensuring that insurance companies can fulfil their role as long-term investors thus supporting the recovery and potentially other EU policy objectives.

The Rapporteur Ferber explains that during the legislative deliberations, it will be up to the European legislator to determine the right balance between those objectives that sometimes can be in competition with one another.

Regarding the **proposal for a new insurance recovery and resolution Directive**, the rapporteur announces that he would like to look into the following questions: *Are the broad market coverage criteria proposed by the European Commission in the IRRD appropriate? Are the proposed instruments and triggers for interventions by NCAs in the IRRD appropriate? To what extent can we rely on the blueprints from the banking sector when setting up an insurance recovery and resolution regime? What are material differences and how should they be accounted for? What lessons can be drawn from recent non-compliance issues of national competent authorities with EIOPA recommendations? What role could national insurance guarantee schemes (IGS) play? Is the interplay between the resolution framework and national insurance guarantee schemes appropriate, particularly in the absence of common standards for those national IGS? Is there a case for a set of common minimum standards for IGS? What could suitable first steps look like?*