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Public consultation on the review of prudential rules for insurance and reinsurance companies (Solvency II)

Fields marked with * are mandatory.

Introduction

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Insurance companies[1] **play an important economic and social role**. Indeed, insurance is provided for many events of human life (sickness, car accidents, fire damage, death, etc.) but also for potential liabilities as regards third parties such as medical liability. Insurers also play an important role in non-bank intermediation, for instance by channelling household savings into the financial markets and into the real economy.

The core business model of insurance companies is very specific. Insurers collect premiums from clients (referred to as "policyholders") up-front but are only obliged to make payments if a predefined adverse event occurs at a later stage[2]. The insurance sector is also prone to information asymmetry. In general, policyholders are less aware than the insurance company about the own ability of the latter to fulfil the terms of the contract (solvency) or the risks underlying the contract (conduct of business).

Insurance companies perform a key function in the economy, **and their failure could have very detrimental consequences for its functioning. Intervention of public authorities is therefore needed, in particular to guarantee that insurance companies are able to honour insurance contracts (i.e. that they are "solvent").** For this reason, there is regulation as regards the solvency of insurance companies and for minimisation of the disruption and losses for policyholders in case of insurance failure (so-called "prudential supervision").

Since the 1970s, the European Union (EU) has adopted a series of legislative acts (so-called "Solvency I") aiming at facilitating the development of a Single Market in insurance services, whilst securing an appropriate level of policyholder protection. However, this framework was characterised by a number of structural weaknesses. In particular, it ignored key risks faced by insurers (for instance, risks of negative downturns in financial markets) and did not guarantee an equivalent level of protection for all citizens in Europe.

Solvency II which entered into application in 2016, introduces for the first time a harmonised, sound and robust prudential framework for insurance firms in the EU. It is based on the risk profile of each individual

insurance company but still ensures comparability, transparency and competitiveness. The Solvency II framework consists of three 'pillars':

- quantitative requirements, including the rules to value assets and liabilities (in particular, technical provisions – liabilities towards policy holders), to calculate capital requirements and to identify eligible own funds to cover those requirements (referred to as "Pillar 1");
- requirements for risk management, good governance, as well as the details of the supervisory process with competent authorities ("Pillar 2");
- requirements on transparency, reporting to supervisory authorities and disclosure to the public ("Pillar 3").

The same approach is being applied for insurance groups as for individual insurers, so that groups are recognised and managed as economic entities.

As confirmed by stakeholders' statements at the recent conference organised by the European Commission on the review of Solvency II[3] on 29 January 2020, the general perception is that the European framework as a whole functions well. At the same time, the experience gained from the first years of application of the Solvency II framework and the feedback received from industry stakeholders and public authorities have identified a number of areas, which could deserve a review. Furthermore, the framework also needs to take into account the political priorities of the European Union (notably the European Green Deal, the completion of the Capital Markets Union, and the strengthening of the single market) and should also be flexible enough to cope with any economic and financial developments (including the unprecedented protracted low – and even negative – interest rate environment).

Following a formal request for advice that was sent by the European Commission to the European Insurance and Occupational Pensions Authority (EIOPA) in February 2019, EIOPA conducted three technical consultations covering the 19 topics of the Solvency II review that were identified by the European Commission.

In parallel to EIOPA's work on the review, **the European Commission intends to collect feedback from a wider audience, including policyholders, consumer associations, and financial market stakeholders other than insurers, by conducting its own consultation on the review**. This more general consultation will cover four main areas:

1. long-termism and sustainability of insurers' activities and priorities of the European framework;
2. proportionality of the European framework and transparency towards the public;
3. possibilities to improve citizens' trust, to deepen the single market in insurance services and to enhance policyholder protection and financial stability;
4. new emerging risks and opportunities (e.g. sustainability, technological developments, etc.) that may need to be addressed by the European framework.

The results of the present consultation will complement the one resulting from EIOPA's technical consultations. They will all feed into the European Commission review process of the Solvency II framework.

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[1]↑ Note that throughout this consultation document, unless explicitly stated otherwise, the term "insurance" encompasses both insurance and reinsurance.

[2]↑ For instance, a house fire, a car accident causing damages to the policyholder's car or physical injuries, the death of the insured triggering the payment of accumulated capital to pre-determined beneficiaries in the case of a life insurance contract, etc.

[3]↑ The recording of the conference is available here.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-s2review-consultation@ec.europa.eu.

More information:

- on this consultation
- on the consultation document
- on Solvency II
- on the protection of personal data regime for this consultation

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English (selected)
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian

- ( ) Slovak
- ( ) Slovenian
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* I am giving my contribution as

- ( ) Academic/research institution
- ( ) Business association
- ( ) Company/business organisation
- ( ) Consumer organisation
- ( ) EU citizen
- ( ) Environmental organisation
- ( ) Non-EU citizen
- ( ) Non-governmental organisation (NGO)
- (•) Public authority
- ( ) Trade union
- ( ) Other

* First name

Elmar

* Surname

Schmidt

* Email (this won't be published)

e.s.schmidt@minfin.nl

* Scope

- (•) International
- ( ) Local
- ( ) National
- ( ) Regional

* Organisation name

255 character(s) maximum

Ministerie van Financiën

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- (selected) Large (250 or more)

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Please add your country of origin, or that of your organisation.

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Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar /Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
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Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
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British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
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Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
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- Iraq
- Ireland
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- Israel
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- Japan
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- Kenya
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- Kosovo
- Kuwait

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- Niue
- Norfolk Island
- Northern Mariana Islands
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- Norway
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- Panama
- Papua New Guinea
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- Peru
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Czechia	Lebanon	Saint Helena Ascension and Tristan da Cunha	Zambia
Democratic Republic of the Congo	Lesotho	Saint Kitts and Nevis	Zimbabwe
Denmark	Liberia	Saint Lucia	

* Field of activity or sector (if applicable)

at least 1 choice(s)

- [ ] Accounting
- [ ] Auditing
- [ ] Banking
- [ ] Credit rating agencies
- [ ] Insurance and reinsurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Social entrepreneurship
- [x] Other
- [ ] Not applicable

* Please specify your activity field(s) or sector(s):

Public sector

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

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Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
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Section 1: Long-termism and sustainability of insurers' activities, and priorities of the European framework

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The main objective of Solvency II is the protection of policyholders.

The protection of policyholders requires that insurance companies are subject to effective solvency requirements based on the actual risks they are facing. Such a framework provides incentives for insurance companies to appropriately measure and manage their risks. The framework is defined in such a way that the risk of an insurance failure, even though not null, is of very low probability, as an insurer complying with its requirements is supposed to be able to cope with an extreme adverse event whose probability of occurrence is only 1 in every 200 years.

At the same time, it is important to ensure that insurers are not hindered from providing long-term funding to the European economy in line with the European Commission's political priorities such as:

- the European Green Deal, which should make Europe the world's first climate-neutral continent by 2050. To achieve this ambition, there are significant investment needs as well as opportunities. Their magnitude requires mobilising both the public and private sectors, including insurance companies;
- the completion of the Capital Markets Union (CMU), which aims to mobilise financial resources in Europe and channel them to all companies, including small and medium-sized enterprises (SMEs), and in infrastructure projects that Europe needs to expand and create jobs.

Solvency II includes a series of provisions aiming to ensure that the framework does not unduly prevent insurers from providing financing to the economy and to offer life insurance products with guaranteed returns (or capital guarantee). However, according to some stakeholders, European legislation has incentivised insurance companies to retrench from more long-term and thus illiquid assets (e.g. infrastructure projects). This may negatively affect European economic growth, and result in lower expected returns for life insurance policyholders.

Moreover, the current heightened equity and credit spreads volatility and the significant stock market contraction stemming from the Covid-19 crisis, as well as the vulnerabilities in the real estate sector[4] must be taken into account when reviewing the existing rules. The prudential framework should provide the right incentives for robust risk management while avoiding excessive risk-taking, and limiting financial stability implications. At the same time, it should avoid procyclical behaviour and not unduly prevent insurers from contributing to the long-term financing of the economic recovery of the European Union in the aftermaths of the current crisis.

In addition, while insurers' investments are exposed to risks related to climate change and reputational risk, European legislation may not appropriately reflect those risks, hence not providing the right incentives. The European Central Bank recently showed that climate change-related risks have the potential to become systemic for the euro area through possible significant exposures to climate risk, which are currently not included in the prudential framework[5].

Finally, over the recent years, insurers have faced an unprecedented environment of low interest rates, which is progressively deteriorating their profitability. This can raise several concerns. First, despite the prudential framework, it can incentivise insurers to "search for yield" by taking more risks and investing in more complex securities, as pointed out by the European Central Bank in November 2019[6]. Second, the low interest rate environment can also materially affect the life insurance landscape, and the ability of insurers to offer insurance products with guarantees. The current trend of risk shifting to policyholders can result in new challenges, depending on customers' risk tolerance and financial literacy.

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[4]↑ See for instance, ESRB's warnings and recommendations on medium-term residential real estate sector vulnerabilities.

[5]↑ See the special feature "Climate change and financial stability" published in May 2019 as part of the European Central Bank's Financial Stability Review.

[6]↑ See the ECB's Financial Stability Review of November 2019.

Objectives of the framework and priorities of the review

According to the current European legislation, "*the main objective of insurance and reinsurance regulation and supervision is the adequate protection of policy holders and beneficiaries. (...) Financial stability and fair and stable markets are other objectives of insurance and reinsurance regulation and supervision which should also be taken into account but should not undermine the main objective*".

Question 1: What could be the renewed objectives of European legislation for insurance companies?

On a scale from 1 to 9 (1 being "not important at all" and 9 being "of utmost importance"), please rate, and if possible rank, each of the following proposals.

	1	2	3	4	5	6	7	8	9	Don't know /no opinion
Policyholder protection	○	○	○	○	○	○	○	●	○	○
Financial stability	○	○	○	○	○	●	○	○	○	○
Fostering investments in environmentally-sustainable economic activities which will be defined in the EU taxonomy[7]	○	○	○	○	○	○	○	○	●	○
Fostering long-term investments in the real economy and	○	○	○	○	○	○	○	○	●	○

providing long-term financing to European companies, including SMEs										
Ensuring a fair and stable single market								X		

[7]↑ The taxonomy is a clear and detailed EU classification system for sustainable and environmentally-sustainable activities, which is currently under development. It is aimed to become a “common language” for all actors in the financial system.

If you identify other political objectives, please specify them and give a rating of their importance from 1 to 9 for each of them:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Note: We have rated the policy goals as to how we believe they should be ranked for the review of the directive. In other words, we do not believe that financial stability is in any way unimportant, but that the topic is not the highest priority for the review as many financial stability elements are adequately captured in current legislation

As other political objectives, we identify the following:

- Harmonization of an R&R framework and the introduction of the ability to change policy holder contracts in order to foster continuity of contracts and policyholder protection: 8.
- Establishing and maintaining a level playing field between insurance groups located with their head office within the EU and those with their head office outside the EU: 8.
- Increase the role of insurers to give the policyholders the proper advice in order to reduce claims caused through climate change or other ESG risks: 7.
- In addition we would like to refer to the two added non papers that have been send to the EC in cooperation with France and France and Italy. 9

Question 2: In light of market developments over the recent years, in particular the low or even negative interest rates environment and the Covid-19 crisis, what should be the priorities of the review of the European legislation for insurance companies?

On a scale from 1 to 9 (1 being “low priority” and 9 being “very high priority”)? Please rate, and if possible rank, each of the following proposals.

	1	2	3	4	5	6	7	8	9	Don't know /no opinion
Ensuring that insurers remain solvent							X			

Ensuring that insurers' obligations to the policyholders continue to be fulfilled even in the event that they fail	○	○	○	○	○	○	●	○	○	○
Ensuring that there are no obstacles for insurance companies to contribute to the investment needs of the European Green Deal, i.e. fostering insurers' investments that help the transition to carbon neutrality by 2050	○	○	○	○	○	○	○	●	○	○
Ensuring that there are no obstacles for insurance companies to invest in accordance with the objectives of the Capital Markets Union, i. e. fostering insurers' long-term financing of the European economy, including SMEs	○	○	○	○	○	○	○	●	○	○
Facilitating insurers' ability to offer (sufficiently) high returns to policyholders, even if this implies taking more risks	○	○	○	○	○	●	○	○	○	○
Facilitating insurers' ability to offer products with long-term guarantees	○	○	○	○	○	●	○	○	○	○
Ensuring that insurers do not face liquidity issues (i.e. that they have sufficiently liquid assets) to meet at all times short-term obligations[8]	○	○	○	○	●	○	○	○	○	○
Preventing the build-up of systemic risk and ensuring financial stability	○	○	○	○	●	○	○	○	○	○

[8] i.e. cash or other highly marketable securities.

If you identify other priorities, please specify them and give a rating from 1 to 9 to each of them:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Note: We have rated the policy goals as to how we believe they should be ranked for the review of the directive.

- Another priority would be to ensure that life insurance contracts can be continued after the failure of a life insurance undertaking, e.g. through portfolio transfer to another insurer. In the interest of reducing administrative costs and making the transfer possible, it should be possible to change these insurance contracts and their terms: 8.
- Review the use of the consolidation method within Group supervision for international groups with insurance entities in third countries, (please see our paper Group supervision in Solvency II attached to this survey) 8.
- Stimulate the advisory role towards policyholders for non- life insurance companies with respect to ESG risks (see our answer for question 41) 8.
- In addition we would like to refer to the two added non papers that have been send to the EC in cooperation with France and France and Italy. 9

Capital requirements for investments in SMEs (both in equity and debt), for long-term investments and for sustainable investments

Question 3: Have the recent changes to the prudential framework regarding equity investments appropriately addressed potential obstacles to long term investments?

- ○ Yes
- ● No, the recent changes will not have a material impact on insurers' ability to invest for the long term
- ○ Don't know/no opinion

Please specify what the remaining obstacles are, and how to address them while preserving the necessary prudential safeguards to ensure policyholder protection:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Minister of Finance of the Netherlands supports the objective to improve the framework for long-term equity (LTE) in art. 171 a. One of the application criteria is hard to fulfill and reduces the applicability of this module significantly.

We are in favor of the improving criterion (e), the requirement that long-term equity investments should be held for 5 years on average. The requirement that an insurer is not allowed to trade in shares of a company if the company is visibly making the wrong choices, hampers good risk management, including acting upon ESG risks, and will not benefit equity prices in the long term. If one is of the opinion that insurers have an important role in reversing climate change, they should not be prevented from voting with their feet. In addition, it should be prevented that additional new restrictions are designed for this module. Investing in green equity is an especially forward-looking business activity for which flexibility is needed. Creating new restrictions and rules would only hamper good risk management and the forward-looking perspective.

Question 4: Does the prudential framework set the right incentives for insurers to provide long-term debt financing to private companies, including SMEs (i.e. to invest for the long-term in long-maturity debt instruments)?

Please indicate the statements with which you agree.

at least 1 choice(s)

- [ ] Yes, the framework provides the right incentives
- [ ] No, investments in long-maturity bonds (more than 15 years) should be less costly for insurers, regardless of whether they hold their investments for the long term
- [ ] No, there should be a preferential treatment for long-term investments in bonds that are held close to maturity, with appropriate safeguards[9]
- [ ] No, and in order to effectively reduce the cost of investment in bonds, Solvency II should allow all insurers to apply the dynamic modelling of the volatility adjustment
- [x] No, and I have another proposal to address this issue
- [ ] Don't know/no opinion

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[9]↑ Note that in this case, it may be justified that the capital relief cannot exceed the one stemming from matching adjustment.

Please specify your answer to question 4 (if needed):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The non-rated loans for SME's in Europe and green bonds in general should be moved from the spread risk module and incorporated into the Credit default risk module. Within the Credit default risk module, the capital charges are not related to the duration of debt financing and therefore less related to ratings of CRA's. So it would give the right incentives to invest in a forward-looking manner with a long-term perspective. Another improvement would be that partial government guarantees and/or collateral can be taken into account as risk mitigators and – consequently – as capital charge reducers. The goal of this is to reduce the capital charges on those investments that the European Commission would like to stimulate, without detracting from the risk orientation of the solvency II framework.

Applying the dynamic modelling of the volatility adjustment within the SCR would also reduce the capital charges for SME bonds and green bonds, however it would be a less-focused measure that in addition would introduce a lot of new complexity and implementation costs.

Insurers' contribution to the objective of a sustainable economic growth and policyholder protection

Solvency II is a risk-based and evidence-based framework. This implies in particular that the quantitative rules governing capital requirements for insurers' investments are supported by quantitative evidence. This entails a need for sufficient and robust data to support changes to Solvency II, which could further incentivise insurers to contribute to the long-term and sustainable financing of the European economy, while preserving the necessary level of policyholder protection embedded in the framework.

In particular, there is a need for sufficient evidence that the risk of investment in SMEs or in environmentally-sustainable economic activities and associated assets is lower than what the current prudential rules would imply.

Question 5: Do you agree or disagree with each of the following proposed change to quantitative rules in Solvency II?

	Agree	Disagree	Don't know /no opinion
We should make it less costly for insurers to invest in SMEs	◉	○	○
We should make it less costly for insurers to invest in environmentally-sustainable economic activities and associated assets (so-called "green supporting factor")	◉	○	○
We should make it more costly for insurers (and therefore provide disincentives) to invest in activities and associated assets that are detrimental to the objective of a climate-neutral continent (so-called "brown penalizing factor")	◉	○	○

Please explain your reasoning for your answer to question 5 (if needed):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The capital requirements framework should remain risk-based. Changes in the capital requirements should only reflect changes in the risk assessment. Research increasingly demonstrates that environmentally sustainable economic activities are associated with lower risks as compared to activities that are detrimental to the objectives of a climate-neutral continent. See e.g. the publication of the Dutch central bank (DNB) "Waterproof" from 2017 or "Issues Paper on Climate Change Risks to the Insurance Sector" by the IAIS from 2018. The next step should therefore be that the quantitative rules in Solvency II take better account of climate-related financial risks.

Furthermore, we do believe that it is important that insurance companies have the right incentives to invest in sustainable activities and to disinvest in activities that are detrimental to the objective of a climate-neutral continent. On balance, smaller innovative companies without a long history of data lack the possibility to achieve a proper rating of a CRA and therefore are currently, in comparison to rated bonds and government bonds, at a disadvantage and not attractive to invest in. By reducing the value of having a rating within the Solvency II framework, we believe that we give insurers a better incentive to invest in the future and for the green impact. See also our answer to question 4 for how we envision the way forward when it comes to the right incentives to provide long-term debt financing to green investing private companies.
By improving the long-term equity module (art 171a) we also give insurers the possibility to invest in innovative companies. The, on average, higher expected returns on green investments in combination with

additional disclosure requirements and consumer pressure will give the proper incentives for insurers to invest in the green factor. In question 41, we further elaborate on the role we see for insurance companies in the transition to a sustainable economy.

Short-term volatility, procyclicality, and insurance products with long-term guarantees

The current Covid-19 crisis, characterised by heightened volatility in financial markets, drops in stock markets, rises in spreads and a series of rating downgrades by credit rating agencies, has resulted in more volatility of insurers' solvency positions over the last months, according to industry stakeholders and public authorities. This requires assessing the effectiveness of the mechanisms embedded in the Solvency II framework (in particular, the so-called "long-term guarantee measures and the measures on equity risk") aiming at mitigating volatility of insurers' solvency and at avoiding procyclical behaviours. If this volatility becomes excessive, it may hinder their ability to offer products with long-term guarantees and may incentivize them to largely shift the risk to policyholders (via the distribution of unit-linked or index-linked products). This could question the sustainability of the traditional life insurance business.

Question 6: Does Solvency II appropriately mitigate the impact of short-term market volatility on the solvency position of insurance companies?

- ○ Yes
- ◉ No
- ○ Don't know/no opinion

Please indicate how the framework could mitigate the volatility of:

- **fixed-income assets**
- **stock markets**

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The total balance sheet approach and market consistent valuation is a good choice. But day-to-day volatility in financial markets, esp. for fixed-income assets that are important for the CMU & green deal, should be removed from the spread risk module and incorporated into the Credit default risk module (see Q4). Regarding investments in the stock market (useful for the CMU and green deal) the new long-term equity module (art 171a) should be improved as mentioned in our answer to Q3.
In addition, the VA - that is esp. of use for fixed-income assets should - be improved. The VA is designed to reduce day to day market volatility within the SII balance sheet. But the current design gives artificial volatility for those insurers with another portfolio than the reference portfolio even when the risk profile of that portfolio is equal or lower. Therefore the VA should be improved in such a way that the artificial volatility is reduced significantly for insurers that have chosen an investment portfolio that, on average, is not riskier than the reference portfolio of EIOPA but does have a significantly different volatility attitude as the reference portfolio. One option is to give insurers more flexibility in using the level of VA calculated by EIOPA in such a way that those insurers are allowed to use an "on 8 quarters moving average" lower VA than the ones calculated by EIOPA in the case that the VA is positive. The insurers already have the right incentive to use the VA only for smoothing the short term volatility, otherwise their Solvency II SCR position would not be

reliable. This would give insurers the possibility to use a VA that fits with their fixed-income investments without reducing the prudence of the system. Besides this, no additional complexity must be introduced. A strict rule-based approach of the VA will reduce possibilities of insurers for forward-looking investments. Insurers must be able to take their role and chose for sustainable investments.

Question 7: Does Solvency II promote procyclical behaviours by insurers (e.g. common behaviour of selling of assets whose market value is plunging or whose credit quality is decreased), which could generate financial instability?

- (x) Yes
- ( ) No
- ( ) Don't know/no opinion

Please indicate how the framework could avoid procyclical behaviour by insurers:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Effects of downgrades by CRA are procyclical. While the ratings are important for the level of capital requirements within the spread risk module, they only have limited relevance as they follow negative developments in a procyclical manner. They are backward-looking and are as such a bad predictor for future events and changes such as climate change. Ratings do not take into account the CMU or ESG factors. Rating downgrades for long-term bonds would only give insurers the incentive to intensify investments into short-term corporate bonds or government bonds in order to reduce their capital requirements within the spread risk module.

More diversity in assets held by insurers (also in the non-rated part) should therefore be welcomed. Diversification would prevent a dash for the exit and a further drop in assets prices in situations where all insurers are heavily invested in the same, well-rated asset classes that are then downgraded because of events in the past. We should reduce the reliance on external ratings in Solvency II. One way forward is to use the Credit default risk module instead of the spread risk module for more investment categories (see also our answer to question 6).

In addition, insurers should be given more flexibility in using the VA, as that would make the VA more effective and give insurers more opportunities to invest in long-term loans and bonds and in diversifying their asset mix (see our proposal in question 6).

Over the recent years, in some countries, insurers have favoured the supply of insurance products where the investment risk is shifted to policyholders (i.e. higher risk for policyholders, but also prospects of potential higher returns over the long run), instead of traditional life insurance products with guarantees.

In a recent report[10], the International Monetary Fund recommended public authorities to consider “policies serving as a disincentive to new life insurance products offering guaranteed returns”.

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[10]↑ See the Global Financial Stability Report: Lower for longer (October 2019), and in particular page 47.

Question 8: Some stakeholders claim that Solvency II has incentivised insurers to shift investment risk to policyholders. Do you agree with this statement?

- Yes
- (x) Yes, but it is not the most important driver
- No
- Don’t know/no opinion

Question 9: Do you agree with the International Monetary Fund that public authorities should aim to provide disincentives to the selling of new life insurance products offering guaranteed returns?

	Yes	No	Don’t know/no opinion
From the point of view of a policyholder		(x)	
In terms of financial stability		(x)	

Please explain your reasoning for your answer to question 9 (if needed):

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The IMF bases its opinion on current, extraordinarily low, interest rates. Providers’ freedom of contract should not be hampered by disincentives when these providers offer products that comply with all applicable standards, rules and regulations. The future is uncertain and nobody can predict future long term risk free interest rates, however as soon as interest rates are at a higher level this market will come alive again. Certainly at the moment that the guarantees to policyholders are on average matched by low risk assets with more or less the same duration, there is no reason to discourage the selling of new life insurance products that offer guaranteed returns. The Matching adjustment within Solvency II is based on this principle. Once the design of the Matching adjustment is improved in such a way that the required matching test is not designed line-by-line but portfolio-based we can welcome even in the current market new life products with a small positive return.

Prudential rules and Covid-19

The Covid-19 outbreak allows assessing the robustness of the regulatory framework under a crisis situation. As Solvency II requires insurers to set aside capital to absorb losses stemming from extreme events – including sanitary crises such as a pandemic – that occur once in two hundred years, the insurance sector proved to be in general well-prepared to cope with the current adverse financial and economic conditions[11].

[11]↑ By the end of 2019, insurers held on average an amount of capital which was more than twice as high as the one required by the legislation.

Question 10: In light of the Covid-19 crisis, have you identified any major issues in relation to prudential rules that you were unaware of or considered of lesser importance prior to the pandemic?

- (x) Yes
- ( ) No
- ( ) Don’t know/no opinion

* Please elaborate your anwser to Question 10:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The pandemic has shown that the most impactful events cannot be predicted by looking into the past. The Solvency II framework shows that maintaining buffers and having market-based valuations of assets and liabilities lead to good risk incentives. This shows that insurers have become more robust, even for risks that are not visible in statistics, that in principle are only backward looking.

When going forward from this pandemic, the lessons learned should not lead to additional capital requirements to cover yet another possible risk. This would increase the price of new insurance products while not even increasing coverage and lead to less attractive insurance policies and additional concerns of insurability. Instead we should give insurers the chance to build up their buffer capacity to a level above the SCR buffer required by Solvency II. In principle only the free buffer capacity above the SCR can be used to cover financial losses.

Other issues

Some insurance companies are subsidiaries of (and therefore belong to) wider insurance groups. The European legislation identifies such insurance groups as integrated “economic entities”, which are therefore subject to Solvency II rules on a consolidated basis. However, under current rules, public authorities focus on ensuring that both the solo entities of the group and the group as a whole have enough capital to cover their risks.

Some stakeholders are of the view that it might be sufficient for public authorities to supervise the solvency position of insurance groups only (and not of individual insurers), and to ensure that they are sufficiently well-capitalised to support all funding needs of insurance subsidiaries. This would imply that individual insurers belonging to a group could be left under-capitalised, provided that the group as a whole is well-integrated and has sufficient available capital to cover all risks to which insurance companies within the group are exposed, and therefore to meet each subsidiary’s financing needs on demand.

Question 11: From the point of view of policyholders, would it be acceptable to waive Solvency II requirements to insurance companies that belong to a group, if the group as a whole is subject to “strengthened” supervision?

- ( ) Yes, it is sufficient for the insurer to rely on the group's wealth
- (x) No, it is not sufficient for the insurer to rely on the group's wealth
- ( )

Don’t know/no opinion

Please explain your answer to question 11 (if needed):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the worst case scenario, the winding down procedure, the policyholder can only claim his rights towards the insurance entity, the legal entity who concluded the contract with the policyholder. Group supervision therefore remains secondary and should be employed for the safety of policyholders of European insurance entities. The focus of Solvency II should remain on solo supervision. With respect to the requirements for insurance groups at group or holding level we should take into account that high extra requirements within the EU will only chase away insurance groups that are currently located within the EEA. It will reduce the European level playing field for insurance groups. Once an insurance group decides to move its head office outside the EEA, the European NCA’s have lost their influence at holding level anyway.
A better way to prevent the further use of branches instead of legal entities for expanding the insurance business towards other member states is to reduce diversification effects between the various lines of business. The use of branches will increase the complexity in recovery and resolution planning and may result in financial stability issues.

Some stakeholders claim that Solvency II focuses too exclusively on the monitoring of individual insurers without taking into account their exposure to and interconnectedness with other insurers, the broader financial sector and the real economy.

Question 12: Should the European legislation be amended to better take into account insurers’ exposure to and interconnectedness with the broader financial sector and the real economy? Please indicate the statements with which you agree.

at least 1 choice(s)

- [ ] Yes, in targeted areas of the framework[12]
- [x] Yes, a number of gaps in the framework need to be addressed in areas other than those mentioned in the previous answer (for instance, insurers’ significant exposure to specific types of assets)
- [ ] No
- [ ] Don’t know/no opinion

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[12]↑ Reference can be made to the closed list of topics identified in section 3.10 of the European Commission’s Call for advice: the own risk and solvency assessment, the prudent person principle, liquidity risk management and reporting, and systemic risk management planning.

Please specify the additional instruments that you would consider, and the type of systemic/financial stability risks that those instruments would aim to address:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The insurance industry in itself does not pose many systemic risks. Therefore, we have to be very careful when developing new macro-prudential tools. However, it is important that all major insurance companies have an adequate recovery plan. And that resolution authorities are established for the larger insurance groups within the EU that are well prepared with adequate resolution tools.
An effective micro-prudential supervisory system that promotes a fair and level playing field between the smaller and larger insurance companies, combined with adequate recovery and resolution planning, are key components of macro-prudential risk management.

Once large insurers have a competitive advantage (as a result of too many diversification advantages within the SCR between insurance lines) and small insurers can be priced out of the market, not only macro-prudential risks may increase but also more insurability issues will pop op.

We should also prevent that the Solvency II framework stimulates insurance groups to start branches instead of legal entities. The reason is that this would make recovery and resolution of insurance groups more complicated and it may result in macro prudential risks.

Section 2: Proportionality of the European framework and transparency towards the public

Scope of Solvency II

Solvency II is a sophisticated while often complex prudential framework. Applying it appropriately is a costly exercise.

Therefore, certain companies that provide insurance services are not covered by the European framework due to their size, their legal status, their nature – as being closely linked to public insurance systems – or the specific services they offer. In practice, Solvency II does not apply to very small insurance companies (it is worth mentioning that the exclusion from Solvency II also prevents the insurers concerned from doing business on a cross-border basis). However, the quantitative thresholds of exclusion have not been reviewed since the entry into force of the Directive in 2009.

Increasing the quantitative thresholds of exclusion of Solvency II would result in an increase in the number of insurance companies which are not in the scope of the European framework. This increase could be justified by the objective of further alleviating undue regulatory burden for small insurers, and might result in lower premiums to be paid by policyholders of those small firms with (possibly) higher fixed costs.

On the other hand, for policyholders of those firms, which would be excluded from the scope of Solvency II, there is no guarantee that the level of protection introduced at national level would be as high as the one stemming from Solvency II rules. In addition, from a European perspective, it might be argued that new exclusions from the scope of Solvency II would go against the objectives of integration of the Single Market for insurance services and of level-playing field within the European Union.

Question 13: From the point of view of policyholders, should the scope of small insurance companies, which are not subject to Solvency II be extended?

- (•) Yes
- ( ) No
- ( ) Don’t know/no opinion

Please explain your reasoning for your answer to question 13 (if needed):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the Netherlands, we currently see a large chasm between the smaller non-life insurers that are not within the scope of Solvency II and the non-life insurers that are within the scope of Solvency II. If the scope of the small insurance companies for non-life would be extended, these companies could grow again. This would improve the competition between the smaller and larger non-life insurance companies. Solvency II is too complex especially for the simple, small non-life companies.

Proportionality in the application of Solvency II

Solvency II aims at limiting the burden for small and medium-sized insurance companies within its scope. One of the tools by which to achieve that objective is the application of the proportionality principle. In other words, the requirements should be adapted and simpler when such an approach is justified by the nature, scale and complexity of the risks. That principle should apply both to the requirements imposed on insurance companies and to the exercise of powers by public authorities.

As Solvency II is a “principle-based” framework, its implementation by public authorities heavily relies on supervisory judgement by public authorities. In particular, as regards proportionality, there are only broad principles regarding the way of assessing whether a given insurer may be allowed to implement certain requirements in a more proportionate and flexible way.

In practice, this high level of supervisory discretionary power may have limited the effective implementation of the proportionality principle, and the effective possibilities for small insurers with a low risk profile to implement the framework in a simplified way.

For this reason, some stakeholders claim that Solvency II should be more “rules-based” regarding the implementation of the proportionality principle, which would require setting clear and unambiguous criteria in the legislation - for automatic allowance for simplified rules when those criteria are met. However, it may be challenging in practice to define appropriate criteria, which would take into account the actual risks faced by each insurer.

Question 14: Should public authorities have less discretion when deciding whether insurers may apply simplified approaches and/or implement

Solvency II rules in a more proportionate and flexible way? Please explain your reasoning (if needed).

- (•) Yes
- ( ) No
- ( ) Don't know/no opinion

Please specify the criteria that should be introduced in the European legislation, in order for an insurer which meets them to be automatically granted the use of simplified approaches and/or a more proportionate and flexible application of the rules:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to advocate a threshold below which the smaller non-life insurers that have to apply Solvency II are given the possibility to use the simplified methods as the standard method. Once the NCA does have evidence that the simplified method is not prudent enough, the NCA can prohibit the use of the simplified method.

Scope of reporting obligations

The European framework requires insurance companies to regularly submit to public authorities the information which is necessary for the purpose of prudential supervision. However, it also contains some exemptions and limitations that national authorities can grant if the companies concerned do not represent more than 20% of a Member State's insurance market.

Question 15: Should the exemptions and limitations always be subject to the discretion of the public authorities? Please indicate the statements with which you agree.

at least 1 choice(s)

- [ ] The current system of exemptions and limitations is satisfactory
- [x] The framework should also include some clear criteria for automatic exemption and limitation
- [ ] The 20% limit should be increased
- [ ] The 20% limit should be reduced
- [ ]

There should be no discretion at all
- [ ] I have another answer
- [ ] Don't know/no opinion

Please specify your answer to question 15 (if needed).

In particular, if you think that there should be clear criteria for automatic exemption and limitation, please specify those criteria:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The limitations and exemptions set out in Article 35 of the Solvency II Directive give effect to the proportionality principle in a principle-based manner. We believe that it benefits the proportionality of the system if a harmonized, more concrete interpretation of this principle is developed for supervisors. The supervisor will have to retain the option of exercising its supervision as efficiently and effectively as possible. Therefore exemptions should not become fully automatic.

Specificities of not-for-profit insurers

Most Solvency II rules apply uniformly to all insurers regardless of their legal form or corporate structure. This is in particular the case for governance requirements (e.g. requirements for directors and board members to have appropriate knowledge and experience).

The European legislation has required changing and strengthening the governance of mutual companies (i.e. not-for-profit companies, which are collectively owned by their members who are at the same time their clients) and paritarian institutions (i.e. not-for-profit institutions that are jointly managed by the social partners).

Question 16: Should the European framework take into account the specific features of not-for-profit insurance companies (e.g. democratic governance, exclusive use of the surplus for the benefit of the members, no dividend paid to outside shareholders)?

- (x) Yes
- ( ) No
- ( ) Don’t know/no opinion

Please specify the areas of the framework, which should be adapted (quantitative requirements? governance requirements? etc.):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Solvency framework should continue to take into account the specific features of mutual associations that are not primarily aimed at the distribution of profits or limited companies that have a not-for-profit business model. We can agree with minimum harmonisation of governance requirements, however additional national rules should be allowed. This is of particular importance for the Dutch healthcare system, in which private insurance companies provide insurance schemes related to social protection, such as health insurance policies. This system necessitates legislation anchoring public conditions. An example is the influence that policyholders have on the strategy and policy of these health insurers. Moreover, we like to point out that in the Netherlands but probably also in other Member States civil codes already contain provisions about governance which should be taken into account.

The European framework has substantially improved transparency towards the public. Indeed, each insurer subject to Solvency II has to disclose – that is to say make it available to the public in either printed or electronic form free of charge – at least on a yearly basis, a report comprising information on its business strategy, financial and solvency situation, and risk management (so-called "Solvency and Financial Conditions Report" – SFCR).

Some insurers claim that this report is burdensome to produce and is not fit for purpose, as it may appear too complex and too detailed for current or prospective customers. On the other hand, other stakeholders in the financial industry (e. g. investors) are requesting further transparency on solvency data.

Please note that the European Commission is also reviewing the rules concerning non-financial reporting for public interest entities, including insurance companies[13]. One of the aims of this review is to improve publicly available information about how non-financial issues, and sustainability issues in particular, impact companies, and about how companies themselves impact society and the environment. As part of this review, the European Commission launched a public separate consultation between 20 February and 11 June 2020.

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[13]↑ More information on the review of the rules concerning non-financial reporting for public interest entities, including insurance companies.

Transparency towards the general public

Question 17: How can the framework facilitate policyholders' and other stakeholders' access to the SFCRs?

	Agree	Disagree	Don't know / no opinion
The current framework is sufficient, as it already requires insurers to publish their SFCR on their website if they own one	●	○	○
The framework should clearly require that insurers' publication on their website is easily accessible for the public	●	○	○
Insurers should be required to send (electronically or by mail) on a regular basis a summary of the SFCR to each policyholder	○	●	○

Insurers should be required to send (electronically or by mail) the SFCR to each policyholder who explicitly requests for it	(selected)		
Other options		(selected)	

Please specify your answer to question 17 (if needed).

In particular, if you identified other options, please elaborate:

2000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18: If you have already consulted a SFCR, did you find the reading insightful and helpful, in particular for your decision making on purchasing (or renewing) insurance, or investing in/rating an insurance company? Please indicate the statement(s) with which you agree.

at least 1 choice(s)

- [x] The reading was insightful
- [ ] The information provided was in the right level of details
- [ ] The information provided was too detailed
- [ ] The information provided was redundant with what can be found in other public reports by insurers
- [ ] No, the reading was not insightful
- [ ] I have never consulted a SFCR
- [ ] Don’t know/no opinion.

Please specify your answer to question 18.

If you are of the view that some information is missing, or on the contrary that information is too detailed or redundant, please elaborate and give examples:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The currently published quantitative data are particularly useful. If the choice will be made to reduce the level of requirements for public disclosures, our preference is to reduce the level of qualitative requirements. In the Netherlands the tax authorities use the Solvency II market-consistent balance sheet and detailed available own funds data. Under the EU Anti Tax Avoidance Directive of 17 June 2016 (ATAD 1), EU Member States are required to introduce a general interest deduction limitation in the form of an earnings stripping rule. This rule that discourages the use of debt for funding is extended to insurers and banks by using these supervisory disclosures.

Question 19: Which information should be provided to policyholders on insurers' financial strength, business strategies and risk management activities? What should be the ideal format and length of the SFCR?

3000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the SFCR particular interest should be given to quantitative information on insurers' financial strength such as the Solvency II balance sheet, the SCR, MCR with additional details in order to be able to understand those figures. Ideally, the extended qualitative requirements with regard to business strategies and risk management should be reduced to an executive summary whereby more information should be provided on their responsibility to reverse the climate change and ESG requirements in a broad sense. The goal should be to reduce the length of the average SFCR.

Question 20: Some insurers belong to wider insurance groups, which also have to publish a Solvency and Financial Conditions Report at group level (so-called "group SFCR"). Do policyholders (current or prospective) need to have access to information from group SFCRs?

- [x] Yes
- [ ] No
- [ ] Don't know/no opinion

Please specify the format and content of the information that should be disclosed to policyholders in group SFCRs, and what would be the appropriate frequency of publication of such reports:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the group SFCR the focus should also be on the quantitative information (balance sheet, own funds, SCR, MCR, etc). This information is also used by Dutch tax authorities (see answer to question 18). It gives a clear understanding of the financial position of the group and thereby is also relevant for policyholders next to this information on solo level. The frequency should be each year.

Question 21: Should all insurers publish a SFCR on a yearly basis? Please indicate if you agree or disagree with the following statements.

- (x) Yes, all insurers should publish a SFCR on a yearly basis
- ( ) Yes, but some insurers should only be required to publish a summary of their SFCR on a yearly basis
- ( ) No, a yearly publication of the SFCR should not be required for some insurers
- ( ) No, a yearly publication of the SFCR should not be required for any insurer
- ( ) Don't know/no opinion

Question 22: Some insurers use their own internal models to calculate their solvency requirements, after approval and ongoing supervision by public authorities, and not the prescribed standard approach defined by the legislation. For those insurers that use an internal model, should European legislation require them to also calculate their solvency position using standard methods for information purposes, and to disclose it to the public?

- ( ) Yes
- (x) No, insurers that use their own internal models should not be required to publicly disclose their solvency position using standard methods, although they should be required to calculate it and to report it to public authorities
- ( )

No, insurers that use their own internal model should not be required to calculate their solvency position using standard methods

Don't know/no opinion

Please explain the issues stemming from such a disclosure:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The issues stemming from such a disclosure are that it could negatively influence the share prices of insurance undertakings using an internal model. From a perspective of clear communication it may give confusion if there are two levels of SCR.
If the NCA deems the internal model appropriate and sufficient, there should be no reason to require undertakings to disclose their methods. In addition, the current rules for internal models in Solvency II are sufficiently rigorous. However from a supervisory perspective it remains important to be aware of the SCR levels based on the standard approach. These levels are for example important at the moment that our National Resolution authority becomes responsible for the insurance company because of a structural breach of the SCR and or MCR.

Section 3: Improving trust and deepening the single market in insurance services

Supervision of cross-border business

The rationale for the EU insurance legislation is to facilitate the development of a Single Market in insurance services, whilst securing an adequate level of policyholder protection.

Insurers that have obtained a licence to operate in a Member State under Solvency II rules are allowed to operate in any other Member State of the Union (so-called "EU passporting" system).

The harmonised requirements under Solvency II aim to ensure uniform levels of policyholder protection throughout the Union.

The supervision of insurance activities (including cross-border) is the responsibility of the national public authority that granted the licence to the insurer (the "Home" authority), and not the public authorities of the other Member States where the insurer operates (the "Host" authorities). However, a European Supervisory Authority (the European Insurance and Occupational Pensions Authority) is in charge of ensuring supervisory convergence, and contributes to the coordination of the supervision of cross-border activities.

Some insurers operating cross-border have failed over the recent years, with negative impacts on policyholders. Such cases may have unduly affected public trust in the Single Market for insurance services.

Question 23: When the Home authority does not take the necessary measures to prevent excessive risk taking or non-compliance with the

European rules by an insurer for its cross-border activities, should the Host authority be provided with additional powers of intervention, in order to protect policyholders?

- Yes
- No (selected)
- Don’t know/no opinion

Question 24: Should the supervision of cross-border activities by insurers be exercised by national authorities or by a European authority?

- By national authorities only
- By a European authority only
- By national authorities, with European coordination where needed. (selected)
- Other answer
- Don’t know/no opinion

Preventing and addressing insurance failures

Policyholders across the EU have different levels of protection in the event of their insurer’s failure. National public authorities have different sets of powers to deal with an insurer whose financial position is deteriorating or that is failing.

Solvency II already provides authorities with a general power to take any measures, which they deem necessary to safeguard the interests of policyholders. It further requires firms to set up a recovery plan (“ex-post”) when they do not comply with their quantitative solvency requirements. However, some Member States require insurers to also draft and maintain pre-emptive recovery plans setting out possible measures to deal with crisis scenarios. Resolution regimes, which aim to address the fall-out of an insurance failure in an orderly manner and to prepare authorities for such events with resolution plans and resolvability assessments, are mostly incomplete and uncoordinated. The lack of availability for national authorities of the right tools to deal with failures, leads to different levels of policyholder protection and affects public authorities’ ability to safeguard financial stability.

In addition, a majority of Member States have introduced national Insurance Guarantee Schemes (IGS) that provide last-resort protection to policyholders. When insurers are unable to fulfil their contractual commitments, IGS offer protection against the consequences of a failure of an insurance company. These IGS are generally funded by the insurance industry. An IGS can offer protection by paying compensation to policyholders or by ensuring the continuation of insurance contracts.

However, not all Member States have created such a safety net for the protection of policyholders and the geographical scope, the coverage and powers of the current IGS differ. This implies that policyholders of insurers located within some Member States would not benefit from the same IGS protection in the event of an insurance failure as in other Member States. This situation leads to gaps and overlaps in IGS protection.

Note that the protection of victims of motor accidents in the case of the insolvency of an insurer is already covered by the proposal amending the Motor Insurance Directive, which is currently negotiated by the European Parliament and the Council of the European Union.[14]

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[14]↑ More information on the Motor Insurance Directive.

Question 25: Do you consider that insurers and public authorities are sufficiently prepared for a significant deterioration of the financial position or the failure of an insurer and that they have the necessary tools and powers to address such situations, in particular in a cross-border context?

- Yes
- **(x) No**
- Don't know/no opinion

Please specify the instruments or harmonised powers that are needed at each stage of preparation (i.e. recovery planning, resolution planning, resolvability assessment) and at various stages of intervention (i.e. during early intervention, recovery or resolution):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regarding cross-border situations specifically (Q23), we do not believe that additional powers should be introduced. Rather, 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.
Early intervention measures should not be harmonized due to the heterogeneity of the EU insurance market. The current harmonised procedure surrounding the ladder of intervention in SII is adeqate and additional early intervention measures ought to be left to Member States due to the difference in insurance markets. Some specific early intervention powers, such as the possibility to freeze or seize assets in the context of early intervention should be accompanied by a removal of the current prohibition of the localisation of assets, i.e. assets should be required to be located in the EU. Dutch supervisory practice has shown that the transfer of assets to a third country can be a critical obstacle to their accessibility in the execution of recovery and resolution (R&R) measures.
In extreme situations, a R&R system harmonized at EU-level is required. The 'simple' winding down in insolvency is not always in the best interest of policyholders, esp. for long-term insurance like life insurance. In many cases R&R, including portfolio transfer, is preferable for policyholders because of the costs of finding new insurance (incl. possibly higher premiums due to higher risk profile).
Winding up of a failing insurer under normal insolvency proceedings may result in social unrest and damage the real economy. These effects are especially harmful in the case of life insurance claims. Prior to initiating the resolution measures, the SII ladder of intervention should be exhausted, unless it is clear in advance that the recovery measures will be inadequate.

Question 26: Should it become compulsory for all Member States to set up an IGS, in order to ensure that a minimum level of policyholder protection is provided across the EU?

- Yes
- (x)

No

Don’t know/no opinion

Please explain your reasoning for your answer to question 26 (if needed):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Netherlands recognises that the current, fragmented, situation where some Member States have IGS and/or Recovery and Resolution (R&R) systems in place and others do not, does not optimally protect policyholders, especially where it concerns cross-border insurance activity. The Netherlands supports a level of minimum harmonisation to ensure that rights of policyholders in the EU are sufficiently protected. However, different levels of IGS protection across the EU as such are not necessarily indicative of the level of policyholder protection across the EU. This is also influenced by other factors, such as the presence and the design of an R&R framework including preferential rights of policyholders in case of a failure of an insurance company and the question whether the payments to policyholders can be provided for throughout insolvency proceedings. Therefore, the focus should be on the level of policyholder protection across the EU, starting with a harmonized recovery and resolution framework with options for MS to buttress the policyholder protection through additional national legislation such as improvements in insolvency proceedings and IGS funding.

Question 27: Which of the following life insurance products should be protected by IGS?

- All life insurance products
- Some life insurance products
- ● No life insurance products
- Don’t know/no opinion

Question 28: Which of the following non-life insurance products should be protected by IGS?

	Should be covered	Should not be covered	Don't know/no opinion
Health		●	
Workers’ compensation		●	
Insurance against Fire and other damage to property		●	
General liability		●	
Accident (such as damage to the driver)		●	
Suretyship for home building projects		●	

Other	○	○	◉

Please elaborate your answer to question 28.

In particular, if you consider that other non-life insurance products should be protected please specify which products:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Generally, the choice of arranging an IGS should remain a MS option and the utility of such a system depends on local market situations. NL features an IGS for those health insurance products that are part of our national social security system. The scope of this IGS system is consistent with the Coordination Regulation (883/2004/EG). However this does not mean that all MS should have an IGS for health insurance products.
We should rather work on convergence in the application of the current supervisory rules for consumer protection. 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.
In general, longer-term non-life insurance policyholders that receive periodic disability insurance payments benefit more from portfolio transfer than compensation of premiums paid and/or value of the contract. We question the necessity of an IGS in that context. In those cases, R&R could be more beneficial to those policyholders and provides sufficient protection already. In cases of short term non-life insurance, many policyholders will choose for another insurer after their insurers' failure so that they can continue their coverage. Therefore, in those cases, winding-down proceedings would be a more obvious solution, especially if the winding-down proceedings foresee that policy holders that experience a claim within three months after the failure receive also privileged claims during the winding down proceedings. IGS is not unnecessary here either, since claims made within 3 months are priviliged during winding down.

Question 29: Should all mandatory insurance be covered by IGS?

- ○ Yes
- ◉ No
- ○ Don’t know/no opinion

Please specify your answer for your answer to question (if needed):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The insurance market is still mostly a national market of insurance products with very specific characteristics, caused by differences in cultures and civil code provision. Simply deciding that all mandatory insurance is covered by IGS would not harmonize anything, however by adding this requirement it would interfere in National Government financial budget responsibilities.

Question 30: If your insurer fails, what would you prefer?

- ○ Receiving compensation from the IGS
- ○ That the IGS ensures that your insurance policy continues, for example by transferring it to another insurer
- ● It depends on the type of insurance policy
- ○ Don’t know/no opinion

Please explain your answer to question 30:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In general the role of a safety net for policyholders of life insurance companies should be to ensure the continuation of payments during resolution or insolvency proceedings. Compensating losses incurred through policy transfer (continuation) could create an unlevel playing field with, for example, pension funds. This is one of the reasons why the Netherlands has not opted for an IGS in such circumstances, but has instead opted for bail-in (including the no creditor worse off principle) in combination with a provision within the winding-up proceedings in order to provide for continuation of payments to policyholders of life insurance products with savings elements throughout resolution and insolvency proceedings. Life insurance policies without savings elements and non-life policies will be terminated. However, coverage will continue for 3 months in order to give the possibility to conclude a new contract. (see also our anwer to question 28 and 29).

Question 31: The coverage level of IGS determines the level of protection provided to policyholders. Should the European legislation set a minimum coverage level at EU level?

- ○ Yes
- ● No
- ○ Don’t know/no opinion

Preventing financial stability risks and ensuring policyholder protection

Question 32: In order to limit the risk of insurance failures and protect financial stability, should public authorities have the power to temporarily prohibit redemptions of life insurance policies? Please indicate the statement (s) with which you agree.

at least 1 choice(s)

- [ ] Yes, at sectoral level, to the extent that such a measure is absolutely necessary to address major threats to the insurance sector
- [ ] Yes, in cases where a specific insurer is in a weak financial position
- [x] Yes, in cases where a specific insurer is in financial distress, and as long as policyholders would be better off than in the event of the insurer's failure
- [ ] No
- [ ] Don't know/no opinion

Question 33: In order to limit the risk of insurance failures and protect financial stability, should public authorities have the power to reduce entitlements of a life insurer's clients (e.g. reducing the right for bonuses that policyholders were initially entitled to receive)? Please indicate the statement (s) with which you agree.

at least 1 choice(s)

- [ ] Yes, if the insurer is in deteriorated financial position
- [x] Yes, as a last resort measure, and as long as policyholders would be better off than in the event of a failure
- [ ] No
- [ ] Don't know/no opinion

Flexibility of the framework under crisis situations

Solvency II provides that when exceptional adverse situations are identified by the European Insurance and Occupational Pensions Authority, national authorities may give more time for insurers to restore compliance with quantitative requirements (from six months to up to seven years). Still, there is a need to evaluate whether the Solvency II framework is sufficiently flexible and reactive to crisis situations (such as the current Covid-19 pandemic), in order to preserve insurers' solvency and financial stability, but also to restrict the regulatory burden stemming from reporting and disclosure requirements.

Question 34: Please specify whether other exceptional measures than those mentioned in Question 32 and Question 33 should be introduced in order for public authorities aiming to preserve insurers' solvency and financial stability to intervene timely and in an efficient manner during exceptional adverse situations.

Please also clarify if those measures should apply at the level of individual insurers or widely to the whole sector:

3000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No other exceptional measures should be introduced.

Regarding Q33, the power to reduce entitlements of a life insurer's clients should not be applied before an insurance undertaking finds itself in severe financial problems. The Dutch R&R framework for insurers allows the NCA to apply a bail-in mechanism, in the context of which it may also reduce the entitlements of a life insurer's clients. This mechanism is a resolution mechanism, and should therefore be seen as a last-resort power. A no-creditor-worse-off-than-in-liquidation safeguard governs the limits of this power.

Question 35: In your view, should the framework provide for flexibility to alleviate certain regulatory requirements during exceptional adverse situations?

- (x) Yes
- ( ) No
- ( ) Don't know/no opinion

Please specify which additional provisions/measures would provide for sufficient flexibility of the framework, and which regulatory requirements would need to be alleviated during exceptional adverse situations:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Solvency II regime has become rather complex. To a certain extent this is caused by the complexity of the insurance business as such. However, it is worth considering whether the current complexity in the capital calculation contributes to good risk management gives the proper incentives in times of exceptionally adverse situations. Solvency II suffers from too much complexity which also creates unintended effects.
One unintended effect is, that because of the importance of diversification effects within the calculation of the SCR, an insurer undergoing difficulties could be encouraged to acquire new insurance activities which provide for diversification, rather than to adapt its risk profile by reducing its size. In other words, the framework could paradoxically incentivize an insurer to jeopardize more policyholders when trying to recover, rather than mastering its risk. This phenomenon could be corrected through reducing the largest diversification effects within the underwriting risks (between the various branches, the new business etc), while lowering capital charges for long term green and CMU investments (see also our answer at question 6) so as to maintain the same level of prudence.

In addition within Solvency II the level of SCR should not increase automatically (e.g. because of a lack of diversification effects) at the moment that an insurer decides to go in run off because of the reductions of diversification effects within the SCR.

Section 4: New emerging risks and opportunities

A. European Green Deal and sustainability risks[15]

The European Commission recently unveiled its European Green Deal for the EU and its citizens, with the aim for Europe to become the world's first climate-neutral continent by 2050. The European Green Deal is a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. To achieve the ambition set by the European Green Deal, there are significant investment needs. These also represent opportunities for sustainable investment.

Insurance companies can contribute to these investment needs and can benefit from new opportunities arising from the green transition. Their underwriting activities can also help increase the Union's resilience to sustainability risks, in particular when it comes to damage arising from natural catastrophes. However, insurers are exposed to climate change, both through their investment and underwriting activities. The European Insurance and Occupational Pensions Authority (EIOPA) indicated in a recent opinion[16] that the European legislation may currently not appropriately reflect those risks, hence not provide the right incentives. Insurance companies are also exposed to the transition risks.

While this consultation serves to prepare the review of Solvency II, it has to be noted that the European Commission is also preparing a renewed sustainable finance strategy for the 3rd quarter of this year and an upgraded EU Adaptation Strategy for the 4th quarter of this year, with dedicated public consultations.

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[15]↑ The questions in this section address similar issues as the questions in section 3.5. (Improving resilience to adverse climate and environmental impacts) of the consultation on the renewed EU Sustainable Finance strategy which was launched on 8 April 2020. Stakeholders that submit responses to both consultations do not need to reiterate the comments already made in responses to the questions of the consultation on the renewed EU Sustainable Finance strategy.

[16]↑ Opinion on Sustainability within Solvency II, Reference EIOPA-BoS-19/241.

Perils of the natural catastrophe module

The Solvency II standard approach for the calculation of capital requirements for natural catastrophes covers the most common types of natural catastrophes, namely windstorm, flood, hail, earthquake and subsidence. Where an insurance company uses an approved internal model for the calculation of the capital requirements, either on own initiative or on request by the national authority, additional types of natural catastrophes can be covered in the calculation of capital requirements. However, a large number of insurance companies, in particular most small and medium-sized ones, are currently not using an internal model for the calculation of natural catastrophe risk.

Question 36: Are there additional types of natural catastrophes that might become relevant to the broader insurance sector in the next years and therefore warrant an inclusion in the standard approach for the calculation of capital requirements (e.g. drought or wildfire)?

Yes, and sufficient data is available for the calibration of capital requirements for the additional types of natural catastrophes

- [x] Yes, but the calibration of capital requirements is not possible at this stage, as the data will only become available over the next years
- [ ] No, additional types of natural catastrophes will continue to have lesser relevance for insurers, and they can be addressed by internal models and qualitative requirements ("Pillar 2").
- [ ] Don't know/no opinion

Please elaborate your answer to question 36:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do think it is important to include additional natural catastrophes in the standard approach when possible. We recognize the analysis of the European Commission that large insurance companies are able to include these additional natural catastrophes in their internal models, but that small and medium-sized insurance companies often rely on the standard model. They simply do not have the capacity to work with internal models. It is therefore important to update the standard model as well.
However, what we find it even more important is that insurance companies are incentivized to not only include these catastrophes into their risk models, but also take action to prevent their occurrence. Insurance companies can play an important role in stimulating companies and individuals to prevent claims caused by natural catastrophes and reduce the further negative effects of the climate change or even reduce the climate change, for example by advising clients on what types of roofs can withstand heavy rains better or how an agricultural company can prevent droughts. The scenario-based catastrophes should stimulate insurers to take action in reducing these risks in such a way that we do not create further insurability issues.

Use of historical data

Solvency II sets out several requirements on the use of data in the valuation of liabilities to policyholders. Notably, the data should contain "sufficient historical information" and "appropriately reflect the risks" to which the insurance company is exposed[17]. In business lines materially affected by climate change, historical data may not capture sufficiently the trends caused by accelerated climate change. EIOPA therefore recommends that insurers combine historical data with knowledge gained from recent scientific research and, where appropriate, the output of forward-looking models when valuing their liabilities towards policyholders.

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[17]↑ See Article 19 of Commission Delegated Regulation (EU) 2015/35.

Question 37: Beyond the general rules on the use of data, should Solvency II rules explicitly require insurers to assess whether the data used in the valuation of liabilities to policyholders captures sufficiently trends caused by climate change?

- [ ] Yes, and requiring this assessment is of high importance

- ◉ Yes, and requiring this assessment is of medium importance
- ○ Yes, but requiring this assessment is of low importance
- ○ No
- ○ Don’t know/no opinion

Solvency II allows insurance companies to use internal models for the calculation of capital requirements after approval by the supervisory authority. For that purpose, the insurer has to forecast the probability distributions for the relevant risks. Similar rules apply to the data used in the probability distribution forecast in the context of internal models as for the valuation of liabilities towards policyholders[18].

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[18]↑ See Article 231 of Commission Delegated Regulation (EU) 2015/35.

Question 38: Beyond the general rules on the use of data, should Solvency II rules explicitly require insurers to assess whether the data used in an internal model captures sufficiently trends caused by climate change?

- ◉ Yes, and requiring this assessment is of high importance
- ○ Yes, and requiring this assessment is of medium importance
- ○ Yes, but requiring this assessment is of low importance
- ○ No
- ○ Don’t know/no opinion

Scenario analysis

Scenario analyses are common practice for insurers’ risk management to challenge the plausibility of balance sheet valuation and the level of capital requirements. EIOPA also recently recommended that insurers should conduct analyses of climate scenarios as part of their risk management.

Question 39: Should Solvency II rules for insurers explicitly require climate scenario analyses as part of the qualitative rules ("Pillar 2")?

- ◉ Yes, and climate scenario analyses are of high importance
- ○ Yes, and climate scenarios analyses are of medium importance
- ○ Yes, but climate change scenario analyses is of low important
- ○ No
- ○ Don’t know/no opinion

Please explain what opportunities and challenges you foresee for the insurance industry when it comes to climate scenario analyses including, for example, whether standardisation of these scenarios would be useful:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Implicitly, Solvency II already offers the opportunity to include climate risks in the qualitative rules of pillar 2 under 262 of Regulation 2015/35 and Guideline 5 of EIOPA's ORSA Guidelines. However, it is important to explicitly include climate scenario analyses. Namely, this would oblige insurance companies to better take climate-related risks into account and would contribute to their capacity-building in this area. We know that the climate will change significantly and might do so on the short to medium term, so the earlier insurance companies gain expertise in this area, the better. An explicit mention of climate scenarios would also give supervisors a firmer basis for enforcement. It might be difficult, however, to standardize the use of climate scenario’s, since the effects of climate change can vary a lot between regions. A standardized approach might overlook these differences and ask insurance companies to work with scenarios that do not fit their situation. It would therefore be best to work with a framework for climate scenario analyses. This framework should give certain guidelines, but also leave room for varying local circumstances. Supervisors are already working on the basis for such a framework. For example, the Dutch national supervisor (DNB) has published good practices for the integration of climate-related risks in the ORSA. These good practices are still quite general, but could be filled in with more details.
It is important that this framework does not become unnecessarily complex. The benefits of additional insights into climate scenarios should outweigh their required administrative burden, especially for small and medium-sized insurance companies. Additionally, it should be made clear that this framework is there to aid the risk assessment process, not to completely substitute it. Scenario analyses can never predict everything but it is important that they become a part of a qualitative and quantitative risk assessment process.

Impact underwriting

EIOPA recently suggested that insurers engage in ‘impact underwriting’, whereby insurers develop new insurance products, design and price products with the aim to contribute to adaptation to and mitigation of climate change without disregard for actuarial risk-based principles of risk selection and pricing.

Question 40: In your view, does Solvency II contain rules that prevent the practice of impact underwriting by insurers?

- (x) Yes
- ( ) No
- ( ) Don't know/no opinion

Please specify which rules (ideally with legal references) and rate their importance (high, medium, low):

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Insurers currently already give policyholders advice on how to reduce claims. It is part of the job of an insurer next to risk-based pricing. Reducing the risk of claims and the level of claims is a way to reduce the impact of the climate change. However, this incentive is not explicitly incorporated within the Solvency II legislation. That is why we advocate that insurance companies are given a more explicit advisory role in stimulating new and existing policyholders (companies as well as individuals) to prevent claims caused by natural catastrophes and in order to further reduce the negative effects of the climate change or even reduce the climate change, for example by advising clients on what types of roofs can better withstand heavy rains or how an agricultural company can prevent droughts or how a customer can help to reduce climate change within their specific situation. The insurer can give the proper incentives to policy holders through risk based pricing.

Question 41: Do you have proposals for changes others than those provided in your answers to Question 5 and Questions 36 to 40 that would make Solvency II a more conducive framework for sustainable activities by insurance and reinsurance companies?

3000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to stress that insurance companies play an important role in the prevention of climate-change related damages. Insurance companies can for example advise a homeowner on how to prevent a flooding of his premises or an agricultural company on how to prevent drought. We believe that insurance companies should take more responsibility and more action in this area, which is why we advocate that insurance companies are given a more explicit advisory role in stimulating new and existing policyholders (companies as well as individuals) to prevent claims caused by natural catastrophes and in order to further reduce the negative effects of the climate change or even slow or stop climate change. This would benefit the transition to a sustainable economy, but would also result in lower claims from clients. It could be investigated how this new responsibility can be given effect, for instance by anchoring it in legislation or through alternative measures. In any case, it should explicitly state that insurers should facilitate or stimulate preventive measures undertaken by their clients.

B. Challenges arising from digitalisation and other issues

While this consultation serves to prepare the review of Solvency II, the European Commission organised between 19 December 2019 and 19 March 2020 a consultation on the need for legislative improvements to make the financial sector more secure and resilient against cyberattacks[19].

In addition, the European Commission is also preparing a new Digital Finance Strategy for Europe that sets out strategic objectives that should guide public policy in the coming five years. This new strategy planned for the third quarter of 2020 will build on the work carried out previously, in particular in the context of the FinTech Action Plan. It will take into consideration all the recent market and technological developments that are likely to impact the financial sector in the near future. A separate public consultation[20] took place between 3 April 2020 and 26 June 2020.

Insurance companies increasingly rely on Big Data analysis in order to set prices and customise insurance product offering for policyholders. While such innovations could provide some potential benefits to policyholders, they also raise questions about privacy, discrimination, fairness and exclusion.

In the context of the digitalisation of the economy, cyber risk has gained increasing relevance as one of the main – if not the top – operational risks faced by organisations. The increasing frequency and sophistication of cyber-attacks and the continued digital transformation and use of new technologies also make insurers increasingly exposed to cyber threats. In addition, there is a rising demand by businesses and individuals for insurance protection against internet-based risks, for instance to cover losses from data or network security breaches, and theft of intellectual property (so-called “cyber-insurance"). While insurers have to be granted authorisation for conducting business in various “classes” of insurance, there is no specific authorisation process (or dedicated reporting requirements) for cyber-insurance products.

[19] More information on the public consultation on the need for legislative improvements to make the financial sector more secure and resilient against cyberattacks.

[20] More information on the public consultation on a new digital finance strategy for Europe.

Question 42: Should the European legislation introduce enhanced requirements for insurers to monitor and manage information and communication technology (ICT) risks, including cyber-risks as part of their risk management practices ("Pillar 2")?

- (x) Yes
- ( ) No
- ( ) Don't know/no opinion

Please specify your answer to Question 42:

2000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Although insurance undertakings should already take such risks into account under the existing framework, Solvency II could specify that risks stemming from digitalisation must be taken into account in risk management. This could serve to further underscore the increasing threat from such risks. Preference for qualitative rules.

Question 43: Should the European legislation consider that cyber-insurance is a distinct class of insurance, which would need to be subject to its own authorisation process by public authorities?

- ( ) Yes
- (x) No
- ( ) Don't know/no opinion

Insurance companies may decide to conclude an agreement with another entity (for instance a FinTech company), by which the latter performs certain activities, which would otherwise be performed by the insurance company itself (for instance, in relation to IT services).

Insurance companies can also outsource these activities to another entity belonging to the same insurance group. Solvency II does not differentiate intra-group and extra-group outsourcing, in terms of requirements. Some stakeholders claim that intra-group outsourcing, in particular in the area of digital services, should be "lighter", as insurance groups are treated and managed as integrated economic entities and are subject to all Solvency II requirements on a consolidated basis.

Question 44: Should the legislation differentiate intragroup and extra-group outsourcing, and introduce “lighter” requirement in the former case?

- ○ Yes, but the lighter requirements should be conditioned to the satisfaction of some criteria at the level of the group, for instance appropriate centralised risk management processes and internal control mechanisms of the group
- ○ Yes, and those lighter requirements should not be conditioned to any additional criterion
- ● No
- ○ Don’t know/no opinion

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

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Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-solvency-2-review_en)

Consultation document (https://ec.europa.eu/info/files/2020-solvency-2-review-consultation-document_en)

More on Solvency II (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/insurance-and-pensions/risk-management-and-supervision-insurance-companies-solvency-2_en)

Specific privacy statement (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Inception impact assessment (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12461-Review-of-measures-on-taking-up-and-pursuit-of-the-insurance-and-reinsurance-business-Solvency-II-#publication-details)

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