

Insurance & Pension Denmark's comments to item 12. Recovery and Resolution in EIOPAs consultation document on the Solvency II 2020 review

General comments:

Even if in the consultation, EIOPA only calls for stakeholders' comments to four tangible questions in the consultation material, Insurance & Pension Denmark takes the liberty of presenting some more general views in relation to EIOPA's draft advice to the European Commission on harmonization of the rules on Recovery and Resolution. Insurance & Pension Denmark's main views can be summed up in the following items:

1. Re the requirement on Pre-emptive recovery plans for insurers and Early intervention powers for NSAs (p. 676-689).
Insurance & Pension Denmark is of the opinion that the broad provisions in i.a. articles 34, 35 and 138 of the Solvency II Directive provide adequate legal basis for the national supervisory authorities to require insurance companies to change their business plans, to strengthen the financial contingency to fulfil SCR (solvency capital requirements), to make more frequent and de-tailed reporting etc. If e.g. a supervisory authority learns that a company's gap for not being able to fulfil SCR is diminished alarmingly fast, the supervisory authority will be able to make the necessary requirements according to the provisions of article 34 of the Solvency II Directive.
Insurance & Pension Denmark notes that the only fact-based argumentation of EIOPA's proposal to extend the possibility of early intervention is a reference to the fact that certain EU member states have found a need to implement national regulation in the area. Insurance & Pension Denmark's experiences from the Danish insurance market do not indicate that in the opinion of the Danish supervisory authority a legal basis is missing in the EU regulation for early intervention vis-a-vis companies that are undergoing a development threatening the protection of the policy holders. It is Insurance & Pension Denmark's view that i.a. article 37(1) point c) of the Solvency II Directive, which provides the supervisory authority with the possibility of imposing an extra capital add-on on companies that do not control their risks to the ex-tem necessary, ensures this legal basis.
In Insurance & Pension Denmark's view, the main issue is thus not the lack of legal basis for the supervisory authorities to intervene and make demands on companies that are in particularly risk to fail. The issue is rather the supervisory authorities' lack of or insufficient efforts in the day-to-day supervision/supervision cooperation. Therefore, Insurance & Pension Denmark still supports EIOPA's "Supervisory Convergence Plan 2018-2019" and the proposals in section 10 of the consultation paper on increased cooperation etc. in relation to the supervision of the FOS companies, which is otherwise a natural extension of the main features in the political compromise of the ESA's review obtained in the spring of 2019. Good examples of lack of cooperation can be seen in i.a. the recent case of the insurance company CBL from Ire-land.
A requirement to the insurance companies on preparation and maintenance of contingency plans will be a very extensive task for the companies, and in Insurance & Pension Denmark's assessment it will only to a very limited ex-tem minimize the risk that a company can no longer comply with SCR. It is also difficult to see which added value such a requirement will have in relation to the security implied in the ORSA (own risk and solvency assessment) obligations, see article 45 of the Solvency II Directive. Thus, it is an integral part of the ORSA procedure that a company must constantly assess its solvency capital requirement and the compliance therewith for the coming 3-5 years.
As a consequence of the above, Insurance & Pension Denmark does not think that there is a need to extend the possibilities of the supervisory authorities to intervene in relation to companies that may undergo a negative development threatening the rights of the policy holders.
However, Insurance & Pension Denmark acknowledges the need for more uniform practice in the area, and therefore supports that EIOPA prepares guidelines in the area, within the framework of the Solvency II Directive.
Notwithstanding the above principal comments, Insurance & Pension Denmark finds that the List of Harmonized Criteria in Table 12.4 contains a number of relevant assessment criteria to the supervisory authorities' day-to-day priorities and performance of their supervision duties within the applicable framework of Solvency II.
Besides, reference is made to Insurance & Pension Denmark's comments to Q 12.1.

2. Re Resolution measures (p. 689-702)
Insurance & Pension Denmark has no comments to the proposal that a Resolution Authority should be appointed in all EU member states. Insurance & Pension Denmark finds it natural that a Resolution

Authority is identical to the national supervisory authority and has noted that EIOPA's proposal can also accommodate this solution.

Insurance & Pension Denmark also thinks that it should be considered to give the Resolution Authority a possibility of using funds from a guarantee fund to prevent a bankruptcy if that is the generally best solution for all the parties involved.

Insurance & Pension Denmark cannot see the need for the proposal that the Resolution Authority of each member state is under an obligation to prepare resolution plans for certain insurance undertakings in the said market. Insurance & Pension Denmark does not think that there is any need for such rules or for treating customers differently in the various companies.

Insurance & Pension Denmark has no comments to the list in item 12.155 (p. 700-701) of the possible actions which in the circumstances may be relevant in connection with dissolution of insurance companies.

In item 12.136 (p. 695), EIOPA proposes as follows: "In accordance with the proportionality principle, EIOPA advises to introduce simplified obligations for eligible undertakings." Insurance & Pension Denmark fails to see that this proposal is substantiated, or what is the purpose of or the possible extent of such obligations.

Besides, reference is made to Insurance & Pension Denmark's comments to Q 12.2.

3. Re Trigger for early intervention (p. 703-705)

As mentioned under item 1, Insurance & Pension Denmark fails to see the need for new supplementary regulation in relation to the applicable Solvency II Directive for the purpose of rendering early intervention possible to the supervisory authorities.

However, Insurance & Pension Denmark does not disagree with EIOPA with the listing of indicators (early intervention triggers) as stated in item 12.171. Nor does Insurance & Pension Denmark disagree that there may be a need, e.g. in guidelines based on the considerations listed in item 12.177 (p. 704-705) to provide detailed guidelines on instances that indicate a need for intervention on the part of the supervisory authorities according to the broad authorization provisions in articles 34 and 138 of the Solvency II Directive. Reference is also made to Insurance & Pension Denmark's comments to Q 12.3.

4. Re Trigger for entry into recovery (p. 705-706)

Insurance & Pension Denmark can agree non-compliance with SCR – as de-scribed particularly in article 138 of the Solvency II Directive – being the relevant trigger for "entry into recovery". It does appear clearly from article 138(2) that the consequence of a breach of SCR is a requirement for preparation of a recovery plan.

Consequently, Insurance & Pension Denmark cannot agree to the proposal that there is a need for creating further legal basis for early intervention than those already comprised by the Solvency II Directive, including in particular article 138 and also articles 34 and 35.

5. Re Triggers for entry into resolution (p. 706-709)

Insurance & Pension Denmark can consent to EIOPA's proposal (p. 709) that appropriate triggers are implemented for entry into resolution supplemented by guidelines for the national supervisory authorities' stance in the individual events.

Comments to the four questions:

Re Q 12.1 (p. 685)

As mentioned under the general comments, Insurance & Pension Denmark is not of the opinion that it is necessary to extend Solvency II with further powers for the supervisory authorities in order to make demands on preventive recovery plans and impose preventive measures. Reference is made to item 1 in the general comment.

If any proposals are made based on EIOPA's advice, Insurance & Pension Denmark believes that the decisive consideration should be the policy holders, in that – if a bankruptcy should occur despite the fact that the Solvency II regulation to a great extent limits the risk of such bankruptcy – there is a considerable risk that the policy holders will suffer harm in case of an insurance company's bankruptcy.

Re Q 12.2 (p. 695)

Here, Insurance & Pension Denmark also thinks that the decisive point of any delimitation is the consideration for the policy holders who are at a substantial risk of suffering harm in case an insurance company goes bankrupt, despite the Solvency II regulation.

Re Q 12.3 (p.705)

In the penultimate section, Insurance & Pension Denmark refers to item 1 of the general comments of Insurance & Pension Denmark.

Re Q 12.4 (p.709)

Reference is made to item 5 of Insurance & Pension Denmark's general comments.