Council of the European Union

Brussels, 23 September 2021
(OR. en)

Interinstitutional File:
2021/0296 (COD)

11764/21
ADD 2

EF 269
ECOFIN 839
SURE 33
CODEC 1211

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 260 final, 2/4
Subject:	COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Accompanying the documents Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision and Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012

Delegations will find attached document SWD(2021) 260 final, 2/4.

Encl.: SWD(2021) 260 final, 2/4

EUROPEAN
COMMISSION

Brussels, 22.9.2021
SWD(2021) 260 final

PART 2/4

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Accompanying the documents

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision

and Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012

{COM(2021) 581 final} - {SEC(2021) 620 final} - {SWD(2021) 261 final}

ANNEX 10: EVALUATION OF THE SOLVENCY II FRAMEWORK

Table of contents

1. INTRODUCTION 215

Purpose and scope 215

2. BACKGROUND TO THE INTERVENTION 216

Description of the intervention and its objectives 216

Baseline and points of comparison 220

3. IMPLEMENTATION / STATE OF PLAY 221

Description of the current situation 221

4. METHOD 223

Short description of methodology 223

Limitations and robustness of findings 225

5. EVALUATION QUESTIONS 226

6. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS **ERROR! BOOKMARK NOT DEFIN**

6.1. EFFECTIVENESS ..... **ERROR! BOOKMARK NOT DEFINED.**

6.1.1. To what extent has the Framework improved the risk management of EU insurers? ..... **Error! Bookmark not defined.**

6.1.2. To what extent has the framework increased transparency? **Error! Bookmark not defined.**

6.1.3. To what extent has Solvency II advanced supervisory convergence and cooperation? ..... **Error! Bookmark not defined.**

6.1.4. To what extent has the Solvency II framework promoted better allocation of capital resources? ..... **Error! Bookmark not defined.**

6.2. EFFICIENCY ..... **ERROR! BOOKMARK NOT DEFINED.**

6.2.1. Has the Solvency II Framework proven to be cost-efficient in delivering on the objectives? To what extent are the associated costs justified by the benefits it has brought? ..... **Error! Bookmark not defined.**

6.2.2. Is there scope for increasing efficiency and making the rules more proportionate? ..... **Error! Bookmark not defined.**

6.3. RELEVANCE: ..... **ERROR! BOOKMARK NOT DEFINED.**

6.3.1. Have the objectives proven to be appropriate? ..... **Error! Bookmark not defined.**

6.3.2. To what extent is the framework still relevant/appropriate given changing market conditions? ..... **Error! Bookmark not defined.**3

6.3.3. To what extent is Solvency II suited to deal with new challenges? **Error! Bookmark not defined.**

6.4. COHERENCE ..... **ERROR! BOOKMARK NOT DEFINED.**

6.4.1. How does the Directive interact with other (possibly new) EU instruments/ legal frameworks? Are there newly created overlaps, gaps or contradictions? **Error! Bookmark not defi**

6.4.2. Is it coherent with international developments/ international initiatives? **Error! Bookmark not defined.**

6.5. EU ADDED VALUE ..... **ERROR! BOOKMARK NOT DEFINED.**

7. CONCLUSIONS ..... **ERROR! BOOKMARK NOT DEFINED.**5

7.1. CONCLUSIONS ON THE SOLVENCY II FRAMEWORK **ERROR! BOOKMARK NOT DEFINED.**5

7.2. LESSONS LEARNED ..... **ERROR! BOOKMARK NOT DEFINED.**8

LIST OF REFERENCES ..... **ERROR! BOOKMARK NOT DEFINED.**3

Table of figures

Figure 2-1: 2007 – The objectives of the Directive 2178
Figure 4-1: Scheme of the assessed dimensions 2244
Figure 6.1-1: Effectiveness - General and Specific objectives - Summary .. **Error! Bookmark not defined.**7
Figure 6.1-2 Average solvency ratio for EEA insurers ..... **Error! Bookmark not defined.**0
Figure 6.1-3: Average solvency ratio per country ..... **Error! Bookmark not defined.**1
Figure 6.1-4: Volatility adjustment: number of users per EEA country – 2019 . **Error! Bookmark not defined.**3
Figure 6.1-5: Use of volatility adjustment – National market shares – 2019 **Error! Bookmark not defined.**3
Figure 6.1-6: Home bias - Q2 2020 ..... **Error! Bookmark not defined.**4
Figure 6.1-7: Levels of the 10-year yield on Italian sovereign debt and fluctuation of the Italian VA in 2018 ..... **Error! Bookmark not defined.**5
Figure 6.1-8: Trends of unit-linked investments across the EU for the period 2005-2020Q3 **Error! Bookmark not defined.**7
Figure 6.1-9: GWP - Unit-linked share trend ..... **Error! Bookmark not defined.**7
Figure 6.1-10: Unit-linked as share of GWP-Life business across countries **Error! Bookmark not defined.**38
Figure 6.1-11: Extrapolation of risk-free interest rates for the Euro (31/12/2020) ..... **Error! Bookmark not defined.**39
Figure 6.1-12: Comparison of extrapolated interest rates and market rates derived from interest rate swaps (Euro, 31/12/2018) ..... **Error! Bookmark not defined.**39
Figure 6.1-13: Development of written premiums in cross-border activities in Europe ..... **Error! Bookmark not defined.**3
Figure 6.1-14: Importance of cross-border business - 2019 ..... **Error! Bookmark not defined.**4
Figure 6.1-15: Total investments of the EU insurance market (incl. unit-linked investments) ..... **Error! Bookmark not defined.**0
Figure 6.1-16: Listed equity investments of the EU insurance market ..... **Error! Bookmark not defined.**1
Figure 6.1-17: Total portfolio composition of the EEA insurance sector – Q1 2020 ..... **Error! Bookmark not defined.**1
Figure 6.1-18: Investment split in the EEA insurance market - 2016-2019 . **Error! Bookmark not defined.**2
Figure 6.1-19: Public Consultation – treatment of equity investments ..... **Error! Bookmark not defined.**3
Figure 6.2-1: Public consultation: SFCR ..... **Error! Bookmark not defined.**6
Figure 6.2-2: Scope - Percentage of companies within and outside the scope of Solvency II, by Member State, 2019 ..... **Error! Bookmark not defined.**58
Figure 6.2-3: Proportionality in Reporting - Exempted companies by EEA Member State .. **Error! Bookmark not defined.**1

Figure 6.2-4: Number of templates to be reported - 2019 ..... **Error! Bookmark not defined.**1
Figure 6.3-1: Low interest rate - Composition of portfolios - 2020 ..... **Error! Bookmark not defined.**4
Figure 6.3-2: Life insurance balance sheet: Impact of a decrease in interest rates ..... **Error! Bookmark not defined.**5
Figure 6.3-3: Risk-free rate curve ..... **Error! Bookmark not defined.**5
Figure 6.3-4: Investment Portfolio - 2020 ..... **Error! Bookmark not defined.**69
Figure 6.3-5: Evolution of failure and near miss events ..... **Error! Bookmark not defined.**2
Figure 6.3-6: "Taxonomy" - Potentially eligible Investments - 2019 ..... **Error! Bookmark not defined.**4
Figure 6.3-7: EIOPA's severe scenario ..... **Error! Bookmark not defined.**5
Figure 6.3-8: Assets over liabilities: stress test for natural catastrophes ..... **Error! Bookmark not defined.**6

1. INTRODUCTION

Purpose and scope

The Directive on the taking-up and pursuit of the business of Insurance and Reinsurance[1] is also known as the Solvency II Directive. The Solvency II Directive, as amended by the Omnibus II Directive[2], has entered into application in 2016. The supplementing Delegated Regulation[3] was then intended to further specify a range of aspects of the Solvency II Directive, with the aim to facilitate a consistent implementation throughout the European Union. Those two levels of legislation form the "Solvency II Framework", or "regime".

Two major grounds led to a necessary review of the framework:

First, there is a legal mandate set out in the Directive to review certain areas of the framework, namely:

i. Long term guarantee measures and measures on equity risk (Art.77f(3));
ii. Standard formula for solvency capital requirements (Art.111; in particular for market risks);
iii. Minimum capital requirements (Art.129);[4]
iv. Group supervision (Art.242), including crisis management and adequacy of the existing insurance guarantee schemes.

Second, there is a need to assess whether the implementation and/or harmonisation have been sufficient[5], whether the original objectives have been sufficiently addressed, as well as whether newly emerged objectives are sufficiently reflected. The evaluation is therefore targeted at the identified weaknesses, in order to prepare for a focused review of the Directive and of the accompanying Delegated Regulation.

[1] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1.; consolidated version of 13 January 2019.

[2] Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), OJ L 153, 22.5.2014, p. 1.

[3] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

[4] A dedicated EIOPA survey launched to NSA's showed that the vast majority of them do not face any issue with regard to the calculation of the MCR (see Section 6.4 of the general Consultation paper).

[5] Throughout this evaluation annex any reference to harmonisation of rules is meant as harmonisation of prudential rules for insurers. Other sets of rules, e.g. insurance contract law, are not within the scope of this note.

2. BACKGROUND TO THE INTERVENTION

Description of the intervention and its objectives

The third generation Insurance Directives[6] adopted in the 1990's established an "EU passport" (single licence) for insurers[7], based on the concept of minimum harmonisation and mutual recognition. These Directives acknowledged the need to review EU insurance solvency rules and Solvency I was agreed by the European Parliament and the Council in 2002.[8] Although already providing increased powers to supervisors and setting out rules for establishing prudent technical provisions and a required solvency margin, the Solvency I regime still proved too simplistic. It was static and not risk sensitive[9], with consequences on the assessment of each insurer's risks, on the supervisory process and on the allocation of capital, not reaching an allocation which is efficient in terms of risk and return for shareholders.

That initiated the process towards Solvency II. The Solvency II Directive sets out the key principles underpinning a new solvency system, supplemented by the Delegated Regulation[10] as mentioned above. The

[6] Directives 92/49/EEC and 92/96/EEC.

[7] Please note that in the rest of the document, the terms "insurance" (resp. "insurers") has to be understood as covering both "insurance and reinsurance" (resp. "insurers and reinsurers").

[8] Directives 2002/12/EC and 2002/13/EC.

[9] Static refers to the fact that in brief, the solvency margin was calculated formalistically taking into account only the liabilities for a life insurance company, only the annual amount of premiums or the average burden of claims for a non-life insurance company. Two insurers A and B with the same contracts and the same liability or premium structure would have the same solvency margin. Insurer A could keep all his assets in cash, and insurer B could invest all his assets into equity. This would not have had any impact on the solvency margin, i.e. the solvency capital requirement under Solvency I.

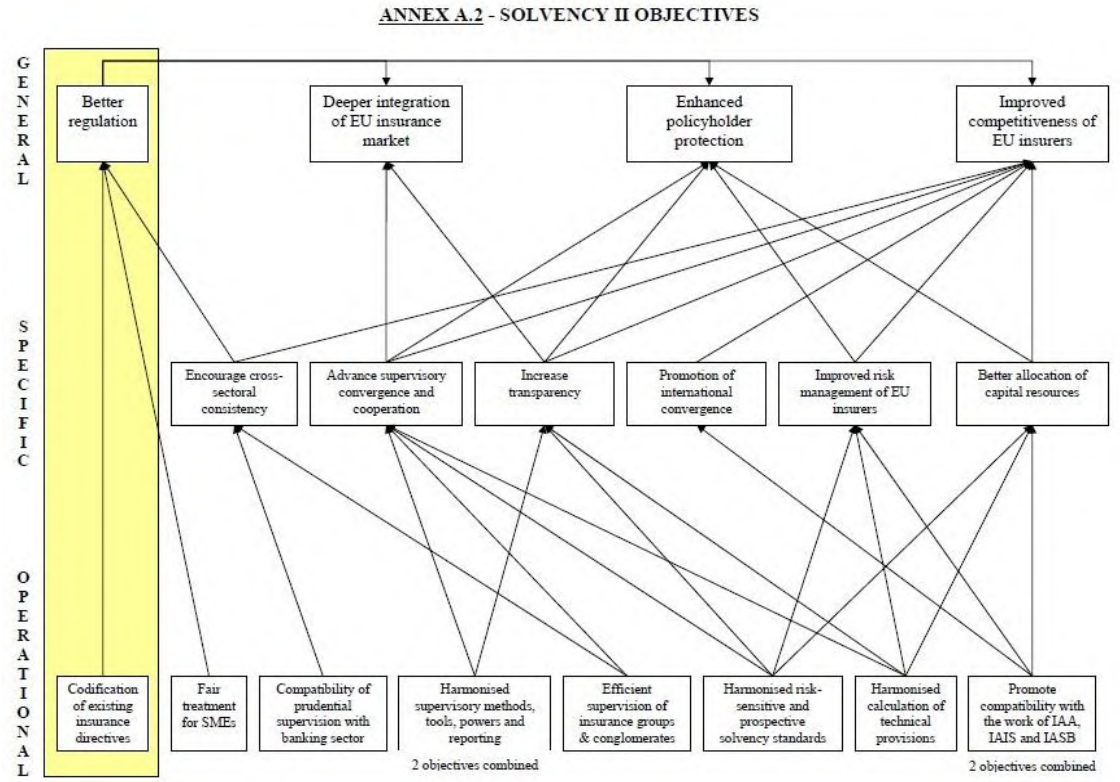
[10] The Delegated Regulation covers numerous and very technical aspects of the operationalisation of the Solvency II Directive. They concern in particular capital requirements and other measures relating to long term investments, the requirements on the composition of insurers' own funds, remuneration issues, requirements for valuation of assets and liabilities, and reporting and disclosure.

Figure 2-1 below shows the whole set of objectives set for the Directives, with the expected impact of each operational objective on the specific ones. In turn, these are designed to reach the general objectives set which, for the Directive, were the following[11]:

1) Deepen the integration of the EU insurance market;
2) Enhance the protection of the policyholders;
3) Improve the international competitiveness of EU insurers and reinsurers.

[11] It has to be noted that the impact assessment supporting the legislative proposal for the Directive also had as a general objective to "promote better regulation". While this is of course an implicit objective of all legislative proposals, it has been considered specifically relevant to mention for the Solvency II Directive because the setting up the Solvency II framework meant to codify and recast the existing (14) Insurance Directives. It has not been identified as raising any specific issue and will therefore not be subject to specific evaluation.

Figure 2-1: 2007 - The objectives of the Directive



Source: Commission (2007) Staff Working Document – Impact Assessment Report.

The Delegated Regulation set an additional objective, namely:

4) Foster growth and recovery in Europe. The specific objective defined in order to reach this general objective was to promote long-term investment.

The Solvency II framework – structure

Aiming at these general objectives, the Solvency II Directive sets out the key principles underpinning the new solvency system, including the overall architecture which aims to translate the operational objectives. **Solvency II constitutes a three-pillar framework** (capital requirements, governance, transparency), **which is risk-based and market-based**. Further, the new regime allows insurers to invest according to the "prudent person principle"[12] and capital requirements will also depend on the actual risk of investments. How does it work in brief?

The "Pillar 1" sets out quantitative requirements, including the market-based rules to value assets and liabilities[13] (in particular, provisions for the future payments to policyholders in

[12] Article 132 of the Solvency II Directive: "[…] insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs […]".

[13] Assets and liabilities are valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction. The insurance company's assets consist mainly of the investments made with the insurance premiums insurers receive. They generally comprise bonds, equities

relation to their insurance obligations, so-called "technical provisions"), the general design of the standard formula for solvency capital requirements. The capital requirements are risk-based, forward-looking and economic, i.e. tailored to the specific risks borne by each insurer and taking into account risk diversification benefits, allowing an optimal allocation of capital across the EU. They are defined along a two-step ladder, including the solvency capital requirements and the minimum capital requirements, in order to trigger proportionate and timely supervisory intervention.

To start with, insurers have to set up the above-mentioned technical provisions. Solvency II requires those technical provisions to be a "best estimate"[14] of the current liabilities relating to insurance contracts (i.e. claims provision plus premium provision), plus a risk margin[15]. Technical provisions are then discounted to take into account the time value of money. Discounting has a significant impact on the size of technical provisions, the higher the discount rate the lower the technical provisions. Under Solvency II technical provisions are discounted with risk-free interest rates.[16]

As Solvency II prescribes a market-consistent valuation of assets and liabilities, a decrease in interest rates results in an increase in the values of both assets and liabilities. Whether the global impact is positive or negative will then depend on the relative sensitivity of assets and liabilities to changes in interest rates. The sensitivity depends on the duration of both the asset and liability side. In general, the duration on the liability side is higher and therefore this side is more sensitive to interest risk change.

The framework is designed in such a way that 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. In other words, the insurer is then supposed to be able to meet its obligations to policyholders and beneficiaries over the 12 following months, with a 99.5% probability. Hence where the insurer complies with these risk management rules, the risk of an insurance failure over the following year should reach a very low probability (even though not null).

The level of capital resources available to an insurer to do so is measured by the ratio of own funds – difference between assets and liabilities – over the solvency capital requirements (SCR): it is the so-called "solvency ratio". In turn, the Solvency Capital Requirement (SCR) is the total amount of own funds that insurance companies are required to preserve. The standard SCR is a formula-based figure calibrated to ensure that all quantifiable risks are considered (including non-life underwriting, life and health underwriting, market, credit,

---

and real estate (held directly or through investment funds). The liabilities consist mainly of technical provisions set up for the obligations of the insurer.

[14] The "best estimate" is the expected present value of future cash flows, using the relevant risk free yield curve, based upon current information and realistic assumptions.

[15] The risk margin represents the potential costs of transferring insurance obligations to a third party should an insurer fail. It is calculated as the product of a cost-of-capital rate (currently set at 6%) and of the present value of expected future capital requirements stemming from holding insurance contracts.

[16] The technical provisions reflect the future cash-flows taking account of the time value of money (expected present value of future cash-flows), i.e. the opportunity cost. In other words, an insurer could invest the current present value risk-free with the risk-free interest rates. Article 77 (2) imposes the use of the relevant risk-free interest rate term structure.

operational, and counterparty risks).[17] It represents the level of financial resources (excess of assets over liabilities and the subordinated liabilities) that enables insurers to absorb significant losses and that gives reasonable assurance to policy holders and beneficiaries that payments will be made as they become due. The Minimum Capital Requirement (MCR) is a lower, minimum level of security below which the amount of insurers' own funds should not fall, otherwise supervisory authorities may withdraw authorisation (automatic supervisory intervention).

The rules embedded in this pillar address the operational objectives (see

[17] If the supervisory authorities determine that the requirement does not adequately reflect the risk associated with a particular type of insurance, it can adjust the capital requirement. Beside the standard formula, Solvency II also introduced the possibility to use (full or partial) internal models to estimate solvency capital requirements, subject to approval by the NSA on the basis of several requirements also laid down in the Directive (Articles 112 to 127).

Figure 2-1 above) to: i) harmonise the calculation of technical provisions; ii) introduce risk-sensitive harmonised solvency standards. They aim to facilitate different specific objectives, in particular to improve risk management of the EU insurers, and provide for a better allocation of capital resources.

"Pillar 2" consists of requirements for the governance and risk management of insurers, as well as the details of the effective supervisory process with competent authorities; it ensures that the regulatory framework is combined with each company's own risk-management system and informs business decisions. The provisions embedded in this pillar mainly translate the operational objectives of harmonised supervisory methods, tools and powers and of efficient supervision of insurance groups and conglomerates, which should support advancing the supervisory convergence and cooperation as well as increasing transparency and encouraging cross-sectoral consistency (see

Figure 2-1 above). It also fosters the enhancement of the risk management practices.

A key Pillar 2 requirement is the "own risk and solvency assessment" (ORSA), which also forms an important part of the supervisory review process. It aims at supporting insurers to get a holistic view of its risk profile and understand how risks affect the future solvency situation (through identification, assessment, measurement, management and reporting). It requires that the insurer undertakes its own "stress testing", integrating all foreseeable risks such as a volatile and uncertain economic outlook. It also implies that insurers, when defining their own "risk appetite", may (shall) look beyond the "purely quantitative" solvency requirements, and set level of "reserve"/available capital that are also forward-looking, as an additional cushion beyond the minimum regulatory quantitative requirements.

Finally, "Pillar 3" focuses on reporting to supervisory authorities (another harmonisation objective) and disclosure to the public, thereby enhancing market discipline and increasing comparability. Solvency II introduced quarterly reporting and increased qualitative disclosure. Pillar 3 requirements directly address the specific objectives of increased transparency and improved risk management, as well as supervisory convergence and cooperation (see

Figure 2-1 above).

In addition, in order to avoid that small insurance companies are subject to excessive regulation costs, the principle of proportionality is an integral part of the Solvency II regime. It takes two forms/layers. First, as regards the scope, Solvency II provides (Art.4) that very small insurers are excluded from the application of the Directive if they meet a series of cumulative criteria, including limited revenues (lower than EUR 5 million) and business volume (insurers' liabilities towards policyholders of less than EUR 25 million). The second layer of proportionality embedded in Solvency II aims at a proportionate application of the regime to small and less complex companies, where the intensity of the supervisory review process is commensurate to the "nature, scale and complexity" of each company which is subject to Solvency II. The framework as a whole is formulated in a modular manner, such that insurance and reinsurance companies must only apply those requirements, which are relevant to the risks they incur.

On the other hand, only insurers that have obtained a licence/authorisation to operate in one EU Member State under Solvency II rules are allowed to operate in another Member State, based on the freedom of establishment (FoE) or the freedom to provide services (FoS). This is the so-called "EU passporting" system. It implies that insurance companies which are excluded from the scope of Solvency II have no permission to do so. The passporting system for cross-border insurance business further highlights the key importance of good supervision convergence and coordination, in order to enable a consistent EU supervision that protects the interests of policyholders and beneficiaries.

Baseline and points of comparison

Acknowledging the economic and social importance of the insurance sector, intervention by public authorities in the form of prudential supervision is necessary. Insurers are expected to provide to the customers an adequate protection against potential future losses and, as "institutional investors", they are also an essential participant in the financing of the "real economy" as they channel households' savings into the financial markets and the real economy.

Intervention by national public authorities has typically targeted the insolvency risk of insurers, or aimed to minimise the disruption and loss caused by insolvency. This is due to the characteristics of the insurance sector, where: i) premiums are collected upfront; ii) obvious information asymmetries exist between the insurer and the policyholder. The latter understands much less what are the risks faced by the insurance company as well as the near future of the former's solvency position; as to the insurer, he can only assess the risk profile of the policyholder if the latter discloses all relevant information honestly[18]; and iii) the interests of the two contracting parties are also different (the insurer wants to maximise profit, while the policyholder cares for an affordable premium and wants to get a quick, full and fair settlement of their claim).

[18] In addition, once insured, policyholders may also change their behaviour (moral hazard).

Although Solvency I updated the EU regime in 2002[19], before Solvency II the lack of risk sensitivity of the existing EU regime did not provide regulatory incentives for insurers to manage their risks properly, or improve and invest further in risk management, and did not facilitate accurate and timely intervention by supervisors, nor optimal allocation of capital. The Impact Assessment[20] accompanying the Solvency II Directive reported that "*given the importance of insurers as institutional investors in European capital markets, the lack of risk sensitivity of the required solvency margin [under the Solvency I regime] not only results [resulted] in a sub-optimal allocation of capital between lines of business and across the industry, but also throughout the economy as a whole*".

In an attempt to address the weaknesses, Member States had introduced national rules in addition to Union-level solvency requirements (usually strongly linked to the country-specific insurance culture and practice), resulting in widely diverging regulatory requirements and supervisory practices throughout the EU. The key underlying difference between the national approaches was the importance attached to technical provisions and capital requirements. Other differences were related to the eligibility and valuation of assets as well as the quantitative limits applied to investments. The persistent lack of harmonisation increased costs for EU insurers, undermined the proper functioning of the Single Market as well as their international competitiveness. Likewise, weaknesses in risk management combined with lack of harmonisation also resulted in uncertainty and higher or uneven risk for the policyholders.

The supervision of groups was also a growing issue. The lack of real supervisory convergence and coordination, as well as the differing national rules imposed significant administrative burden and costs on insurance groups operating in more than one Member State. The gap was widening between the way groups are managed and supervised in different Member States, which increased costs for insurance groups but also increased the danger that some key group-wide risks might be overlooked.

Finally, the International Association of Insurance Supervisors (IAIS), developing new solvency standards and valuation rules of technical provisions, was moving towards a risk-based and market-consistent approach. Likewise, Basel II had introduced a more risk sensitive capital regime in the banking sector. This lack of international and cross-sectoral convergence was a risk to the competitiveness of insurers, while also increasing the opportunities of regulatory arbitrage. The problems clearly requested further EU intervention. Indeed, while preserving the "principle-based" nature of the framework, an integrated EU insurance market and a level-playing field for EU insurers require harmonisation, technical (e.g. calculation of technical provisions, risk-sensitive solvency standards) and operational (e.g. supervisory methods and tools).

Consequently, the present evaluation assesses the framework against the baseline of the 2002 framework, the last update of Solvency I before Solvency II. Its major weakness was a lack of risk sensitivity (see footnote 9 about the static approach to capital requirements) and the national attempts to address this weakness resulted in diverging regulatory requirements and supervisory practices.

[19] See section 0.
[20] COM (2007), Staff Working Document - Solvency II Impact Assessment Report.

3. IMPLEMENTATION / STATE OF PLAY

Description of the current situation

As mentioned above, the Solvency II Directive supplemented by the Delegated Regulation form the "Solvency II Framework".

As to the transposition of the Directive, the Commission services started the completeness check and conformity check of the transposition in 2015 and in October 2017 respectively. The conformity check lasted until June 2018. Its focus was to analyse and verify the conformity of the 27 (then 28) Member States national transposing measures for the most essential provisions of Solvency II. These are in particular provisions referring to general supervisory powers, information to be provided for supervisory purposes, cooperation and exchange of information between supervisory authorities, provisions regarding the transitional period, non-compliance with the solvency capital requirement, non-compliance with the minimum capital requirement, equivalence with third countries and the relevant risk-free interest rate term structure which is used to value the technical provisions[21].

From July 2018 until July 2019, an informal dialogue with the national authorities was initiated by the Commission services, trying to clarify and/or rectify those national provisions which seemed, *prima facie*, not to be conform to certain provisions of Solvency II. However, in July 2019, 5 infringement cases were opened against and 8 political letters were sent to these Member States which still did not conform their transposition of the assessed provisions of Solvency II. To date (March 2021), the largest majority of the issues have been solved at national level and only two infringement cases are still pending[22].

In the context of implementation, the European Insurance and Occupational Pensions Authority (EIOPA) promotes a common supervision culture and consistent supervisory practices across the EU member states. It has therefore a key role in bringing a more harmonised and consistent application of the rules across the EU insurance market. In particular, the Questions and Answers (Q&As) process, allowing insurers, national supervisory authorities (NSAs) and other stakeholders to clarify the implementation of the framework with EIOPA, shows some issues or questions regarding the interpretation (e.g. application of technical rules in specific situations). However, due to their non-binding nature, there is no assurance that the answers to the Q&As are actually followed by all Member States. There may also remain tensions with other existing national legislation. The peer reviews conducted in recent years by EIOPA and the NSAs also show some differences in implementation, confirming that rules can be interpreted differently. The peer review on EIOPA's Decision on the collaboration of the insurance supervisory authorities actually identified divergent practices among NSAs in a number of areas.[23] These are in particular: the authorisation of a new insurance company - in case of previous authorisations sought in other Member States or where the applicant intends to operate exclusively in another Member State

[21] Technical provisions (insurance liabilities towards policyholders) represent the biggest part of the liabilities of an insurance company.
[22] Both cases relate to Article 260 (parent undertakings outside the union).
[23] See EIOPA (2020d).

- or the notification process for freedom of establishment (FoE)/ freedom to provide services (FoS) activities.

Hence, since 2016 when it entered into application, the Solvency II prudential framework has been implemented with some variability by the NSAs. Where part of this flexibility can be attributed to the principle of "supervisory discretionary judgement", there continues to be some ambiguities or discrepancies that lead to inconsistencies and legal uncertainties, and prevent a full clarity in the implementation of the framework. It is the case, for instance, for aspects in the calculation of the best estimate of technical provisions, the definition of expected profit in future premiums, decisions related to internal models, the interpretation of recital 127 of the Delegated Regulation at group level[24], the so-called "intervention ladder"[25] in case of financial deterioration or measures related to recovery and resolution[26].

4. METHOD

Short description of methodology

In order to gain a broad view on the functioning of the Solvency II framework, various perspectives and angles are considered. In addition to EIOPA's reports and data, other stakeholders were consulted via a public hearing and an open consultation. In addition, Member States could contribute in "expert group" meetings. All findings and views were analysed together in order to extract a coherent analysis and better identify the common trends ad well as meaningful discrepancies.

- Involvement of EIOPA

To support its work on the review, DG FISMA sent a comprehensive "Call for Advice" to the European Insurance and Occupational Pensions Authority (EIOPA)[27]. The final report from EIOPA has been published on 17 December 2020. In the meantime, EIOPA has continued a number of Solvency II working groups, consisting of experts from the national supervisory authorities to prepare its technical advice. It has published a consultation paper[28] in October 2019, and undertaken several data collections since autumn 2019.

- Other public consultation

In parallel, DG FISMA has also engaged in a dialogue with stakeholders. It organised a public hearing[29] on the review on 29 January 2020 which drew around 350 participants. It published its inception impact assessment, and launched an open public consultation on "Have your Say", which ran from 1 July to 21 October 2020 and received 73 contributions.[30] DG FISMA also organised several debates with Member States in the context of dedicated "expert group" meetings on insurance issues. The Commission Services have maintained

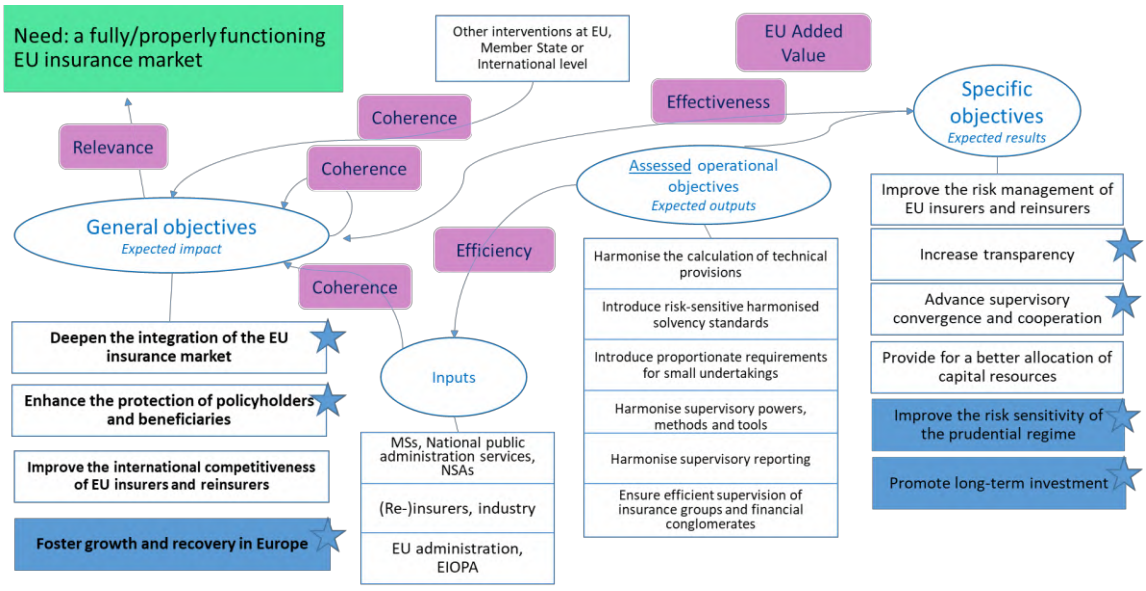
[24] See EIOPA's Advice (2020), paragraph 1.34 and 9.58.
[25] See Solvency II Directive (EUR-Lex link), chapter VII.
[26] See EIOPA (2017): "*Opinion on the harmonisation of recovery and resolution framework*".
[27] Formal request, 11 February 2019 (available at this link).
[28] EIOPA's Consultation Paper.
[29] Conference - website.
[30] Solvency II on the « Have your Say » page.

close contact with key stakeholders and have also followed international developments, including the work of the International Association of Insurance Supervisors (IAIS) and the International Accounting Standards Board (IASB).[31]

- Back-to-back evaluation – main dimensions

The Solvency II framework is comprehensive and there are lots of interactions between the different dimensions/provisions. Further, each specific objective (as defined in the 2007 impact assessment[32]) normally serves more than one general objective, and inversely, each general objective is expected to be achieved through different specific objectives. The evaluation therefore needed to be drafted around a meaningful structure. In other words, while including all dimensions of the framework, the present "targeted" evaluation works as follows: it builds upon the findings of the consultation activities listed above, as well as on other specific reports and studies.[33] Those sources and consultation activities allowed to identify weaknesses and/or opportunities for improvement. The present evaluation can therefore be built around the main (cross-cutting) dimensions where such weaknesses and/or opportunities have been identified. To do so, it assesses the degree of achievement of the specific objectives related to those dimensions. These assessed objectives are presented in Figure 4-1 below. The figure is based on the objectives as identified in the impact assessment for the Directive (see Fig. 2.1 above), but also includes the additional objectives introduced with the Delegated Regulation (boxes filled in blue).

Figure 4-1: Scheme of the assessed dimensions: Directive + Delegated Act



Source: Commission services.

***Note 1**: The blue stars mark all the general and specific objectives of the Delegated Regulation. Filled in blue are the "additional" objectives, i.e. those that were newly identified for the Delegated Regulation.*

***Note 2**: Two additional operational objectives identified in the 2007 impact assessment - compatibility of prudential supervision with the banking sector, as well as promote compatibility of the Framework with the work on the international*

[31] http://www.iaisweb.org, http://www.iasb.co.uk,
[32] See COM (2007), Staff Working Document – Solvency II Impact Assessment Report.
[33] See list of references in the end of the annex.

scene – have been addressed by the setting of the Directive's risk-based and market-consistent rules, in line with the cross-sectoral and international rules/works. The third additional one, "Codify and recast the existing (14) Insurance Directives" consists in setting up the Solvency II framework and directly concerns a general objective of better regulation. They have not been identified as raising any specific issue and will therefore not be subject to specific evaluation.

***Note 3**: Although not identified as such in the 2007 SWD – impact assessment, financial stability can be seen as a general additional dimension; it has been added at last in the Directive. Therefore, in parallel with the work building up the Solvency II framework, the present evaluation also considers (and mentions) the financial stability dimension while assessing the different specific objectives.*

Limitations and robustness of findings

The present evaluation builds upon the findings of consultation activities, as well as on other specific reports and studies. The caveats to apply for the surveys are mainly the self-selection bias and a limited number of respondents.

The analysis targets the main dimensions where weaknesses and/or opportunities have been identified. It assesses the degree of achievement of the specific objectives related to those dimensions. In particular, due to the difficulties in obtaining reliable cost estimates and the lack of means to quantify the general benefits of the Solvency II framework, it has not been possible to carry out a full quantitative assessment of its efficiency at EU level.

In particular, when analysing cost estimates reports, it has not been possible to identify the impact of measures that were formally imposed by the Solvency II framework but had already been applied before as industry's good practice. In such cases, certain costs could be attributed to the application of Solvency II while they had already occurred before. Furthermore, Solvency II allows to apply for the use of an internal model. This is a voluntary decision of the insurance undertaking. It does imply costs for the development of such an internal model, although these costs are "voluntary". In addition, the application of the internal model provides the undertaking and the supervisory authorities with a more accurate picture of the insurance undertaking and a potential relief in capital requirements.

In general, as the objectives of the framework are closely linked, and often correlated, it has been difficult, sometimes impossible to quantify the specific impact of each measure on the different objectives. It is thus necessary to rely on more qualitative findings, stakeholders' reports and supervisory assessment.

5. EVALUATION QUESTIONS

5.1. Effectiveness

Has the Directive been overall effective in reaching its general objectives, i.e. to increase the EU insurance market integration, to enhance the protection of policyholders and beneficiaries and improve competitiveness of EU insurers?
Specific objectives assessed[34]:

- To what extent has it improved the risk management of EU insurers?
- To what extent has it increased transparency?
- To what extent has it advanced supervisory convergence and cooperation?

Has the framework been effective in achieving its additional objective to foster growth and recovery? More specifically:

- To what extent has the framework promoted better allocation of capital resources?

5.2. Efficiency

- Has the Solvency II Directive proven to be cost-efficient in delivering on the objectives? To what extent are the associated costs justified by the benefits it has brought?
- Is there scope for increasing efficiency and making the rules more proportionate?

5.3. Relevance

- Have the objectives proven to be appropriate?
- To what extent is the framework still relevant/appropriate given changing market conditions?
- To what extent is Solvency II suited to deal with new challenges?

5.4. Coherence

- How does the Directive interact with other EU instruments/ legal frameworks? Are there newly created overlaps, gaps or contradictions?
- Is it coherent with international developments/ international initiatives?

5.5. EU added value

- Compared to the previous national approaches, has Solvency II resulted in a more consistently applied regime across all Member States?
    1. Has it facilitated the integration of the EU insurance market and supported the competitiveness of EU insurers compared to a scenario without the Solvency II framework?
    2. Has it better enhanced policyholders' protection?

[34] Three specific objectives had been set in order to facilitate these general ones: (i) to improve risk management, (ii) to increase transparency and (iii) to advance supervisory convergence and cooperation. When the framework is effective with regard to these objectives, it will logically also contribute to the general objectives. The degree of achievement of the general objectives is therefore assessed through the following specific objectives.

3. Has it fostered growth and recovery better than a “no-Solvency II” scenario?