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Brussel, 7 november 2019.

Geachte Heer Gouverneur,

Het Instituut van Actuarissen in België ("IA|BE") heeft uw brief van 8 oktober 2019 betreffende de circulaire Loss-absorbing capacity of deferred taxes (LAC DT) goed ontvangen. Wij danken de NBB voor deze mogelijkheid om op het ontwerp van circulaire te reageren.

Onze belangrijkste opmerkingen kunnen als volgt samengevat worden:

- Wij verwelkomen de mogelijkheid om vanaf 2019Q4 een eigen recoverability test te implementeren zonder de toepassing van de circulaire NBB_2017_14. De circulaire 2017_14 hield minder verband met de interne recoverability test van verzekeringsondernemingen en had procyclische effecten door de verwijzing naar de coverage ratio in de formule van notional DTA. Wij stellen daarom voor om de nieuwe circulaire LAC DT vanaf 2019Q4 van toepassing te maken.

- Het level playing field dient gevrijwaard te worden. Het ontwerp van circulaire legt bijkomende beperkingen op voor de risk margin en de horizon van een fiscaal business plan. Deze beperkingen lijken een minder duidelijke basis te hebben en vormen geen deel van de Delegated Regulation 2019/981.

- Het proportionaliteitsprincipe dient in acht genomen te worden, in het bijzonder op gebied van rapportering. De bijkomende rapportering over recoverability tests lijkt slechts een beperkte toegevoegde waarde te bieden. We wijzen er hierbij op dat de interne recoverability tests, die meer gedetailleerde informatie bevatten, op verzoek van de NBB beschikbaar zijn.

U vindt in bijlage onze gedetailleerde opmerkingen.

Hoogachtend,

Erik Van Camp
Voorzitter IA|BE

Mathias Wambeke
Voor de IA|BE Task Force LAC DT

Risk Margin

The consultation reads : *« La Banque entend souligner qu'en conséquence du point e), il est difficile d'admettre a priori l'hypothèse de la réversibilité (automatique) de la marge de risque (Risk margin). La réversion de la marge de risque comme source de profit futur devrait donc être exceptionnelle et conditionnée à la démonstration que la meilleure estimation (best estimate) est toujours suffisante pour remplir les engagements d'assurance. »*

We agree that all components of the recoverability test, including the risk margin, should be sufficiently documented and justified. No item of the recoverability test should be automatic. However, we do note the following comments on the topic of the risk margin recoverability:

- Insurance contracts are estimated to run off according to best estimate assumptions – or stressed best estimate assumptions under an SCR scenario. The risk margin does not result in any cash outflow, nor any tax loss. As no tax losses result from the risk margin, the risk margin is expected to reverse over time i.e. the risk margin is expected to recover itself.
- These considerations are aligned with paragraphs 409-411 of EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation (EIOPA-BoS-17/280): "*Some NSAs consider the risk margin and its associated DTA as an accrual that does not require any additional demonstration, both on the balance sheet and after the shock loss… Another argument made by some NSAs is that there would be no DTA at all for the risk margin. This is the case if one assumes a risk-free/best-estimate projection/valuation of the taxable profits and losses. If that is the case the risk margin is a prudential adjustment which has no fiscal effect...*"
- The consultation does not provide clear justification why the risk margin recoverability would be an exceptional item. Reference to point e) in guideline 9 of EIOPA-BoS-15/113 does not exclude the risk margin recoverability. Point e) relates to the projection of cash flows and does not relate to reversals. Explicitly including the risk margin in future projections does not change the point that the risk margin reverses over time. The Delegated Regulation 2019/981 does not restrict the risk margin recoverability.
- We also note that under IFRS17, the risk adjustment is always released in P&L over time. Given the similarities between the risk margin and the risk adjustment, it would be difficult to imagine that the Solvency II risk margin cannot be released (or only exceptionally), whereas the contrary would hold under IFRS17.
- Not recognizing the risk margin recoverability implies that a shock of SCR + risk margin is assumed. A shock of SCR + risk margin goes beyond the 99,5% VaR defined in Solvency II.
- The risk margin recoverability only seems impaired if the insurer intends to transfer a part of its insurance liabilities.

On the question whether the best estimate is always sufficient, we note the following comments:

- The 1st line, 2nd and 3rd line controls, in particular the role of the actuarial function, should provide appropriate assurance that the best estimate is sufficient.

- However, by definition, the best estimate cannot *always* be sufficient. Indeed, shocks can occur (e.g. mortality shocks, expense shocks…) that may increase (or decrease) technical provisions beyond the current level of best estimate. After all, if this were not the case, there would not be a need for a capital requirement. However, it is exactly the point of the recoverability test to demonstrate that the insurer will generate sufficient taxable profits to recover from the tax deductible shocks.

Time Horizon

The consultation reads : *« l'entreprise devra faire un lien entre les bénéfices économiques et les bénéfices fiscaux, étant donné que seuls ces derniers peuvent justifier des récupérations d'impôts. Dans le cas où l'entreprise a réalisé son business plan en valeur fiscale, la projection des bénéfices des contrats est limitée à cinq ans. »*

The time horizon chosen in the recoverability test should be sufficiently justified and prudent. However, on the distinction between fiscal vs. economic profits, we note the following comments:

- Both approaches, either fiscal or economic profits, may lead to P&L in run-off after 5 years. In both cases, it is possible to distinguish P&L from new business (started the first 5 years of the business plan) vs. the existing business (already present on the base case Solvency II balance sheet).
- It is not clear why a fiscal vs. economic P&L would lead to a different projection horizon. Such a distinction does not appear neither from the Delegated Regulation 2019/981, nor from the existing EIOPA guidelines. This would result in a lack of level playing field between insurers applying fiscal vs. economic business plans.

Reporting

The consultation proposes a new reporting on the recoverability test. We agree that the recoverability test should be sufficiently documented. However, we deem that the proposed reporting is of limited added value. The internal recoverability tests, currently developed at insurance undertakings, provide much more detail information and justification. NBB has the possibility to ask for the full recoverability tests for additional information purposes, in which case the standard reporting presented in the current consultation would be superfluous. We therefore propose to make the proposed standard reporting mandatory only when companies have no extended documentation of the internal recoverability test available.

The proposed reporting also includes a table on the duration of DTA and DTL. Companies are likely to have more complex and accurate explanations in place, compared to an analysis solely based on duration, to demonstrate timing of DTA & DTL. Timing is not only demonstrated by duration, but also through cash flow matching, business outside of contract boundaries etc. An additional reporting solely based on duration could lead to misinterpretation and incomplete justification.