Position Paper

RAB response to the DNB consultation on Q&A for consent regarding Asset Intensive Reinsurance

Our reference:	RAB-24-022	Date:	31 October 2024
Referring to:	DNB Q&A consultation regarding asset intensive insurance (*Consultatie Q&A Beoordeling activa-intensieve herverzekeringscontracten DNB*)		
Contact person:	RAB secretariat	E-mail:	international@insuranceeurope.eu
Pages:	4	Transparency Register ID no.:	341051518380-63

General comments

Insurance Europe's Reinsurance Advisory Board (RAB) welcomes the opportunity to provide comments to the DNB consultation on its Q&A for consent regarding asset intensive reinsurance.

As highlighted in its submission to the Dutch Ministry of Finance's consultation on the Financial Markets Amendment Act 2024 (September 2022), the RAB would like to reiterate the need to ensure that the **new consent requirement is proportionate and does not have unintended consequences** for reinsurance in general, potentially disincentivising its use, or become disproportionately onerous from an operational perspective. Reinsurance is an essential tool for (re)insurers to manage their capital and risks[1]. The new regulation must **avoid creating barriers to the use of reinsurance which could ultimately weaken the financial strength of (re)insurers and their ability to pay policyholder claims.**

In addition, while the RAB acknowledges that the geographical scope of application regards the non-EEA space, it highlights the need for due consideration to be given to Solvency II equivalence decisions, bilateral (re)insurance international agreements, and their respective jurisdictions. The pre-approval requirement does not specifically address reinsurance to countries with full equivalence (Bermuda and Switzerland) and may conflict with the provisions of the EU-US Covered Agreement. In principle, there should be **no need for DNB consent if the reinsurance risk and asset transfer is made to an equivalent jurisdiction**.

Detailed comments

The RAB would like to make the following specific points on the proposed identification of asset intensive reinsurance transactions:

- The Q&A guidance does not explain why the current regime would be inadequate and why a consent requirement should be introduced for precisely this specific type of transactions. Such a requirement may lead to undesirable consequences for insurers in the Netherlands compared to their competitors in other EU countries.

[1] See *The Power of Reinsurance*, Reinsurance Advisory Board (November 2023)

Insurance Europe's Reinsurance Advisory Board
Secretariat • rue du Champ de Mars 23, B-1050 Brussels
Tel: +32 2 894 30 00
E-mail: international@insuranceeurope.eu
Transparency register ID number: 341051518380-63

- The RAB understands that the purpose of the consent requirement is to ensure that insurers comply with the prudent person principle (PPP) with respect to assets recognised on the balance sheet. However, the RAB questions the need for this requirement since insurers already need to comply with the PPP (which is a general requirement under Solvency II) and DNB can also enforce compliance with this principle, if necessary.
- Based on the PPP[2], (re)insurers should only invest in assets whose risks they can properly manage and in such a manner as to ensure the security, quality, liquidity of the portfolio and the localisation of those assets shall ensure their availability. It should be noted that Solvency II does not require an authorisation for asset intensive reinsurance transactions. It would therefore be useful for the Q&A to explain the risks to PPP compliance associated with such transactions, if the reinsurer can hold assets outside the EEA.
- The RAB also notes that, in addition to the PPP, there are already extensive requirements in place to ensure that risk-mitigating techniques such as reinsurance transactions have the intended risk-mitigating effect (see in particular Article 81 of the Solvency II Directive and Article 41 of the Solvency II Delegated Regulation).

- The RAB understands that the DNB's intention is that reinsurance transactions that are not asset-intensive reinsurance contracts and that do not involve asset transfer would not be considered to fall under the definition based on Article 3:267e Financial Supervision Act (*Wet op het financieel toezicht, 'Wft'*) and as such would not be in scope of this consultation. The RAB is supportive of this.
- It should also be made clear that Article 3:267e Wft does not intend to require prior consent for a reinsurer with its registered office in the Netherlands. In the Act, an "insurer" can refer to either an insurer or a reinsurer: "*verzekeraar: herverzekeraar, levensverzekeraar, natura-uitvaartverzekeraar of schadeverzekeraar".*

- Asset-intensive reinsurance is described as arising where the assuming reinsurer earns part of its profit margin from the investment return on assets. This description is open to a wide interpretation, potentially including a wide range of reinsurance contracts (life and non-life) in scope.
    - For example, a 1-year treaty covering protection risks could be included in this definition on the basis that the premium received at the outset of the contract will be invested by the reinsurer and the investment return will contribute to the total return of the reinsurer from writing the contract.

  If this wording is maintained it should be amended to state that the "*profit expected to be earned on the contract arises primarily from the investment returns on the assets held*".

- Further explanation should be provided on the **type of contracts in scope**, particularly those which **do not pay out reinsurance losses immediately**. The RAB is concerned that the definition of asset-intensive reinsurance may unintendedly be extended to other types of reinsurance products, as the description of 'asset-intensive reinsurance contracts' includes contracts where the reinsurer does not make the payment of reinsured losses immediately, but at a later date ("*Activa-intensieve herverzekeringscontracten zijn contracten waarbij niet alleen risico-overdracht plaatsvindt, maar ook activa-overdracht, of waarbij de (her)verzekeraar de uitkering van de herverzekerde verliezen niet direct, maar op een later moment verricht…*").
- Reinsurance accounts are normally settled periodically based on the treaty experience over a given treaty accounting period, rather than immediately on the occurrence of a reinsured loss. The

[2] Solvency II Directive (Chap. VI, Section 6 of Title I) requires to undertakings to invest "all their assets" in accordance with the prudent person principle.

management of complex claims, which involves potential litigations, can run over an extended period of time. As a result, many reinsurance treaties do not pay out immediately.

- The application of the requirements to cases where a reinsurer from another member state transfers the reinsured risk to a reinsurer outside the EEA will be challenging to interpret in practice. Reinsurance does not generally work on the basis of a segregation of assets in respect of each individual reinsurance treaty. Assets are invested and managed on a pooled basis and reinsurers may enter contracts with third country counterparts which involve a transfer from that pool of assets through the payment of a retrocession premium. The Q&A should make clear that this requirement would only apply where a specific pot of assets associated with the asset intensive reinsurance treaty is transferred to a non-equivalent third country.

- In the case of **cessions from a member state (re)insurer to a third country reinsurer**, the requirement for DNB consent opens the possibility that the DNB may decline the transaction based on the investment or retrocession strategy of the reinsurer, ie on the basis that the reinsurance counterparty does not meet the requirements of the prudent person principle. If the DNB does not supervise the reinsurance counterparty, it will only be able to make this judgement based on public information or discussions with the other member state supervisor. Considering the above, the DNB should make clear that consent would be provided as a matter of principle for reinsurance with strong globally diversified reinsurers.

- The DNB should also make clear that it is not the intention to restrict the reinsurance counterparty from investing assets outside the EEA. Such a statement would directly contradict Article 134 of the Solvency II Directive, including for assuming undertakings which have their head office in a third country whose solvency regime is deemed to be equivalent.

- In relation to **proportional reinsurance of insurance policies with capital accumulation** ("*Proportionele herverzekeringen van verzekeringen met kapitaalopbouw")*, it is important to note that such policies can entail relevant biometric risks that a cedant might seek to reinsure. An example is compulsory or optional variable life and health riders attaching to products with an investment component, such as "Guaranteed Minimum Death Benefits" (GMDB). In these cases, no assets are transferred to the reinsurer in respect of the investment component of the products and claims are paid out imminently, not "after a longer period (several years)" ("*na een lange periode (verscheidene jaren)"*). Such riders are also regularly reinsured on a proportional basis in other EU markets. As such, the RAB would disagree that such contracts are classified as asset-intensive reinsurance.
- The concept of insurance policies with capital accumulation is also open to interpretation. While it does not appear to be the intention of the regulation and Q&A to include pure protection business, life insurance policies such as level term insurance, where the claims incidence pattern differs from the premium payment pattern, could be interpreted as being in scope.

- In the section on **non-proportional reinsurance of insurance policies with capital accumulation** ("*niet-proportionele herverzekeringen van verzekeringen met kapitaalopbouw*"), specific reference is made to longevity swaps. The DNB proposal seems to classify longevity swaps as asset-intensive reinsurance ("*activa-intensieve herverzekeringscontracten*"). The RAB considers that a longevity swap should not be classified as asset-intensive reinsurance. Longevity swaps transfer biometric risk (the risk of living longer than actuarial best estimate assumptions) on indemnity basis. No policyholder assets are transferred and profit margins for reinsurers do not arise from the investment return on assets. Cashflows between the fixed and the floating leg are netted on an intra-annual basis and not only at the end of the term of the reinsurance treaty.

- The **request for consent data to be supplied** may lead to an increase in the regulatory burden and, because of its complexity, may result in insurers using this type of reinsurance constructions less as a means for sensible risk diversification. Processing times at DNB could also cause time problems for insurers concluding reinsurance contracts.

Lastly, when it comes to data requirements (*"gegevens")*, the RAB would like to highlight the usual iterative and cooperative consultation process between regulatory authorities, insurance and reinsurance companies. As such, reinsurance contracts, including appendices (*"herverzekeringscontract inclusief bijlagen")* put before the DNB, are not executed (signed) versions but solid drafts under negotiation between all involved stakeholders.