

Comments Template on EIOPA-CP-14-054 Draft proposal for Level 3 Guidance on the draft proposal for Implementing Technical Standards on the procedures for assessing external credit assessments		Deadline 02.Mar.2015 23:59 CET
Company name:	Insurance Europe	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Reference". ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> ○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. <p>Please send the completed template to Consultation_Set2@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-054.</p>		
Reference	Comment	
General Comment	Insurance Europe welcomes the opportunity to provide comments on the draft ITS with regard to procedures for assessing external credit assessments. Over the past years Insurance Europe has had a keen interest and engaged in the policy debate on credit rating agencies (CRAs), notably because of the impact that such a debate could have on the ability of insurers to play their role in the financial markets as the largest institutional investors.	

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Insurance Europe believes that it should be recognised that in practice it would neither be feasible nor desirable to refrain from any reference to external ratings.

Our issues of primary concern related to this paper are the following:

We believe that this ITS is open to misinterpretation. Article 44(4a) paragraph two of the Directive, requires EIOPA to “develop draft implementing technical standards on the procedures assessing external credit assessments.” Referring to Recital 3, the ITS can be read as requiring the undertaking to perform its own credit assessment, which is inconsistent with the Directive. However, the ITS is only required by the Directive for setting out a procedure for assessing external credit assessments. The ITS as written requires a policy to be established for this assessment, however, there is no requirement in the Directive for such a policy, but only a requirement for a procedure should be sufficient.

The business model of CRAs is a very complex one, requiring special expertise, access to a wealth of internal information and ability to make use of economies of scale and scope. It is therefore very difficult to imagine how it could be replicated within every insurance company.

A few, large insurance companies have over the past years developed internal risk assessment expertise, mainly following desire to invest in and need to assess unrated investment opportunities. However, most insurance companies have limited interest and ability to develop exhaustive credit risk assessment models.

These ITSs should require “additional assessment...wherever this is practicably possible”. However, we believe that more emphasis should be put in the recitals on the fact that, in practice, only a few companies will be able to engage the necessary resources and expertise to perform additional credit risk assessments. In addition, the proportionality argument should also be referred to in the articles of the ITSs, and not only in the recitals.

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Recital 1		
Recital 2	<p>We welcome recognition that credit risk assessment obligations should take into account the nature, scale and complexity of a business. In particular, undertakings should not be required to perform a further additional assessment when internal ratings are the same as the external ratings because this requirement does not add value. However, we believe there should be a clear distinction between 1) the requirement to have additional credit assessment, wherever possible, for risk management purposes and 2) the actual use of internal credit assessments in the standard formula calculation. For the latter, specific rules are defined as part of the Delegated Acts – Section 2 on external credit risk assessments.</p> <p>Furthermore, Article 44(4a) in the Directive requires insurance and reinsurance undertakings to use additional assessments wherever practicably possible. It does not require them to make additional adjustments. The word “make” should therefore be replaced by “use” in the first line of this recital.</p>	
Recital 3	The recital should be amended, removing the reference “to perform own credit assessments”. Instead, the recital should refer to using additional assessments, in order to make consistent with the Directive to review the external assessments.	
Recital 4		
Recital 5		
Recital 6		
Article 1	<p>We believe that the article should include the proportionality caveat “wherever this is practicably possible”.</p> <p>For paragraph 1, we suggest to add the words “related documents” : <i>In view of assessing the appropriateness of external credit assessments, in their risk management policy or related documents insurance and reinsurance undertakings [...].</i> In addition, the article should be amended, removing the reference to a policy and replaced with a reference to a procedure in line with the Directive. It should be clarified in the article that the requirement is to review the external credit assessment and not re-perform it.</p>	

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Article 2	<p>The results of additional assessments should be taken into account in the calculation of technical provisions and the SCR only to the extent that such calculation uses external credit rating assessment. We therefore suggest that (b) is amended to read:</p> <p>“the results of the additional assessments are taken into account, if appropriate, in the calculation of the technical provisions and the Solvency Capital Requirement.”</p>	
Article 3		
Article 4(1)		
Article 4(2)		
Article 5	<p>The documentation requirement goes beyond Article 44 (2) of the Directive, as well as Guideline 18 of CP-14/017 Governance, and should therefore be deleted.</p>	
Article 6	<p>The classification of additional assessments as a critical or an important operational activity contradicts the individual undertaking-specific assessment, which are subject to the proportionality assessment.</p> <p>According to Recital 33 of the Directive only key functions are critical and important functions. Furthermore, Guideline 65 of CP-14/017 Governance clarifies “The undertaking should determine and document whether the outsourced function or activity is a critical or important function or activity...”. If for example an undertaking has only a few externally rated assets (of low value), the outsourcing of the additional assessment for these assets should not be considered mandatory, critical, or important. The assessment of whether the activity is critical or not should be left to undertakings and not EIOPA in accordance with guidelines 65 of CP-14/017.</p> <p>We therefore suggest that this Article be redrafted to read:</p> <p>“When outsourcing the performance of additional assessments, insurance and reinsurance undertakings shall determine and document whether the activity is a critical or important activity. If the undertaking concludes that the activity is critical or important, it shall comply with the requirements applicable to the outsourcing of critical or important operational activities.</p>	
Article 7		

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Annex I Section 1		
Annex I Section 2		
Annex I Section 3		
Annex I Section 4		
Annex I Section 5	<p>On policy issues 1 and 2, we agree with EIOPA’s conclusions: that a principles-based approach and a flexible solution are the preferred options. These conclusions have implications for policy issue 3: whether outsourcing of additional assessments should be designated as critical or important. Such designation is not compatible with a principles-based or flexible approach. Nor is it compatible with other elements of the Solvency II legislative package, as we point out in our comments on Article 6.</p> <p>The first paragraph on Policy issue 3 includes the statement that: “...the process of assessing the appropriateness of ECAs...is of sufficient substance to justify it as a critical or important activity in safeguarding policy holder interests.” This is open to challenge on two grounds:</p> <ol style="list-style-type: none"> 1. It is not the process of assessing the appropriateness of ECAs which is outsourced, it is the performance of additional assessments. Even if the wider process of ECA assessment is critical or important, this does not mean that the performance of each additional assessment will be. In line with EIOPA’s Guidelines on System of Governance, the latter should be determined by the undertaking. 2. It is not a question of whether a function is a critical or important activity in safeguarding policy holder interests, but whether it is essential to the operation of the undertaking, as it would be unable to deliver its services to policyholders without the function or activity. 	
Annex I Section 6		