



EIOPA-14-594  
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# **Summary feedback on the Consultation on the first set of Implementing Technical Standards for Solvency II**

## **1. Introduction**

- 1.1. On 2 April 2014, EIOPA published for consultation its first set of Implementing Technical Standards (ITS) for Solvency II. With the consultation on this first set, EIOPA entered into the final stage of regulatory developments before the entry into force of Solvency II on 1 January 2016.
- 1.2. EIOPA would like to thank the stakeholders and in particular the Insurance and Reinsurance Stakeholder Group for providing their comments.
- 1.3. The present summary feedback reflects on key elements that have been addressed during the consultation, which are in common to the six ITS, covering the approval processes for Ancillary Own funds, Matching Adjustment, Undertaking-Specific Parameters, Internal Models, Special Purpose Vehicles and the Joint Decision Process for Group Internal Models.
- 1.4. The draft ITS have been aligned with the published version of the implementing measures of 10 October 2014.

## **2. Summary feedback**

- 2.1. The ITS provide the procedures and processes that shall be applied by supervisors among Member States, creating a common approach to the processes and contributing to achieving a greater efficiency for undertakings, including for cross-border activities. The common approach to the elements at hand should contribute to the soundness of the undertaking's financial position which would in turn help ensure the protection of policyholders.
- 2.2. The Insurance and Reinsurance Stakeholder Group stressed the importance, from a consumer perspective, to find an optimal balance between "*security and competitiveness of insurers and insurance products*" in the finalisation of the approval processes covered by the ITS. EIOPA has aimed to put this at the core of its resolutions to the comments received from stakeholders.
- 2.3. For this purpose, EIOPA has given further consideration to the meaning of the application of proportionality in the frame of approval processes.
- 2.4. Upfront, it should be stressed that even in the absence of specific provisions in the ITS, the proportionality principles apply throughout the regulatory framework. Cases for the "natural" application of proportionality are linked to the nature, scale and complexity of the elements that are submitted for approval and hence would guide the approval process carried out by the supervisor.
- 2.5. Nevertheless, EIOPA has considered in particular the issue of proportionality where stakeholders stated that some timeframes for decision-taking would be disproportionate to the complexity of the element under approval. EIOPA acknowledges that the time frames will need to be applied reasonably and proportionately to the complexity of the elements and the particular circumstances. This means that supervisors should not defer their decision until the ultimate deadline for approval; in particular, for less complex applications and considering the number of applications, supervisors are under the duty to exercise their power in a proportionate manner. This is being made more explicit in the approval process for USP, and remains valid for the other elements.
- 2.6. Stakeholders have argued for the introduction of fast-track approval processes in particular areas. However, to be consistent with the Directive and Implementing Measures as well as with the scope of the empowerment of the ITS, no additional approval processes can be introduced in the ITS. Also for reasons of proportionality, EIOPA has chosen not to introduce additional new pre-application processes, but supports informal early dialogues between the supervisor and the undertaking in order to ensure a proper application and launching of the approval process. This has been clarified in the recitals.
- 2.7. Two particular areas have been further reviewed following comments from stakeholders: the suspension of the time period for approval in the areas of

Ancillary Own funds, Matching Adjustment and Undertaking-Specific Parameters; and the consequences of an absence of decision at the expiry of the deadline for approval.

- 2.8. As to the suspension of the time period for approval (also known as the “stop-the-clock mechanism”), stakeholders have commented that this would create the potential for a never-ending process and adds additional uncertainty as to the ultimate date for approval of the items under approval application, in particular in combination with the uncertainty of treatment in the case of absence of a decision.
- 2.9. EIOPA has decided that where the supervisory authority has considered an application to be complete, this shall not prevent the supervisory authority from requesting subsequent additional information necessary for its assessment. The time taken by the undertaking to collect the additional information shall not be calculated in the time that is available for the decision on the application. Following the consultation, EIOPA has however further stipulated that supervisors shall demonstrate that the request for additional information and the ensuring application of the stop-the-clock mechanism is necessary, specific and justified.
- 2.10. As to the consequences of the absence of decision, stakeholders have commented that the assessment period could be lengthened and undertakings would be facing a situation of uncertainty but also that, based on administrative law in some countries, or regulatory requirements in particular areas, they would expect that if no decision is taken within the required timeframe, the item should be considered to be approved.
- 2.11. The Directive, in the areas covered by the ITS on Ancillary Own funds, Matching Adjustment, Undertaking-Specific Parameters, Internal Models and Special Purpose Vehicles is clear: a prior approval is needed for the elements at hand to be used. In other words, the application shall not be considered as approved (or rejected) without a prior decision by the supervisor. The compatibility of national law with the provisions of the Directive is however left to the transposition by Member States. The usual remedies available against the absence of decision from the supervisory authority are further subject to national law. In addition, in the frame of approval processes involving more than one competent authority, in particular for decisions affecting insurance groups, mediation by EIOPA is possible by virtue of its establishing Regulation.
- 2.12. Therefore, EIOPA has decided that with regard to the situation of an absence of decision at the expiry of the approval period, no regulatory provisions are being introduced in the ITS.

### **3. Next steps**

- 3.1. EIOPA is submitting the final ITS for endorsement by the Commission at the end of October, the final endorsement can be expected three to four months after submission.
- 3.2. EIOPA will be issuing final guidelines supporting the approval processes in December 2014, following the consultation held from 1 June till 29 August 2014.