

**EIOPA Final Report  
on Public Consultation No.  
14/006  
on the Implementing  
Technical Standard (ITS) on  
the joint decision process for  
group internal model**

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# 1. Executive Summary

## Reasons for publication

According to Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation) EIOPA may develop implementing technical standards by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2) of the EIOPA Regulation.

Before submitting the draft implementing technical standards to the European Commission, EIOPA shall conduct open public consultations and analyse the potential costs and benefits. In addition, EIOPA shall request the opinion of the Insurance and Reinsurance Stakeholder Group (IRSG) referred to in Article 37 of the EIOPA Regulation.

According to Article 231 of Directive 2009/138/EC<sup>1</sup> (Solvency II Directive), EIOPA shall develop implementing technical standards on the process to reach a joint decision regarding the group internal model.

As a result of the above, on 2 April 2014 EIOPA launched a public consultation on the draft ITS on the process to reach a joint decision regarding the group internal model.

The Consultation Paper is also published on EIOPA's website<sup>2</sup>.

## Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/006 and the full package of the Public Consultation, including:

Annex I: Impact Assessment and cost and benefit analysis.

Annex II: Resolution of comments.

Annex III: Draft Implementing Technical Standard.

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<sup>1</sup> OJ L 335, 17.12.2009, p. 1–155

<sup>2</sup> <https://eiopa.europa.eu/consultations/consultation-papers/2014-closed-consultations/april-2014/public-consultation-on-the-set-1-of-the-solvency-ii-implementing-technical-standards-its/index.html>

## **Next steps**

In accordance with Article 15 of EIOPA Regulation, the draft ITS in Annex III will be submitted to the European Commission for endorsement by October 31, 2014, as requested by Article 86(3) of the Solvency II Directive.

According to Article 15 of the EIOPA Regulation, the European Commission shall forward it to the European Parliament and the Council.

Within 3 months of receipt of the draft ITS, the European Commission shall decide whether to endorse it in part or with amendments, where the Union's interests so require. The European Commission may extend that period by 1 month.

If the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall send it back to EIOPA explaining why it does not intend to endorse it, or, explaining the reasons for its amendments, as the case may be.

Within a period of 6 weeks, EIOPA may amend the ITS on the basis of the European Commission's proposed amendments and resubmit it in the form of a formal opinion to the European Commission. In this case EIOPA must send a copy of its formal opinion to the European Parliament and to the Council.

If on the expiry of the 6 weeks period, EIOPA has not submitted an amended draft ITS, or if it has submitted a draft ITS that is not amended in a way consistent with the European Commission's proposed amendments, the European Commission may adopt the implementing technical standard with the amendments it considers relevant or it may reject it.

Where the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall follow the process as set out in Article 15 of EIOPA Regulation.

## **2. Feedback Statement**

### **Introduction**

EIOPA would like to thank the Insurance and Reinsurance Stakeholder Group (IRSG) and all the participants to the Public Consultation for their comments on the draft ITS. The responses received have provided important guidance to EIOPA in preparing a final version of the ITS for submission to the European Commission. All of the comments made were given careful consideration by EIOPA. A summary of the main comments received and EIOPA's response to them can be found below, and a full list of all the comments provided and EIOPA's responses to them can be found in Annex II.

### **General comments**

Overall stakeholders supported the provisions set out in the consultation paper.

However, a number of responses received raised important questions. In particular the link between the procedure described in the ITS and the coordination arrangement established in the college for the purpose of the joint decision required further thought. EIOPA has clarified in the resolution of comments that due to the need for flexibility the timeline for the main steps and deliverables to reach the joint decision as included in the ITS, should not be included in the coordination arrangement. The coordination arrangement is a formal document resulting from a sustained process of agreement and signature by all members and participants of the college. For this reason EIOPA decided to include the timeframe for the steps and deliverables of a given process in a more practical document that leaves flexibility to each college to define the appropriate timeframe: the Internal Model Work Plan as set out in the Internal Models Guidelines. The coordination arrangement set out by the College will further need to take into account the provisions established the ITS.

### **General nature of the participants to the Public Consultation**

EIOPA received comments from the Insurance and Reinsurance Stakeholder Group (IRSG) and five responses from other stakeholders to the public consultation. All the comments received have been published on EIOPA's website.

Respondents can be classified into three main categories: European trade, insurance, or actuarial associations; national insurance or actuarial associations; and other parties such as consultants and lawyers.

### **IRSG opinion**

The IRSG opinion on the draft Implementing Technical Standard (ITS) for approval processes, as well as the particular comments on the draft ITS at hand, can be consulted under the following link:

<https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/sgs-opinion-feedback/index.html>

## **Comments on the Impact Assessment**

No comments were received regarding the expected costs and benefits of introducing the ITS.

## **Annex I: Impact Assessment and cost benefit analysis**

### **Procedural Issues**

According to Article 15 of the EIOPA regulation, EIOPA conducts analysis of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

Consultation with stakeholders

The feedback from the consultation with stakeholders conducted in 2014 is summarised in the respective section of the final report.

### **Issues Assessed**

This analysis below presents the EIOPA's considerations on the expected costs and benefits with respect to the **key issues** of this ITS:

1. Agreement on the process;
2. Proposal for the decision;
3. Final decision and communication of the decision.

### **Baseline**

When analysing the impact from proposed policies, the Impact Assessment methodology foresees that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered. The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

The baseline is based on the current situation of the market, taking into account the progress towards the implementation of the Solvency II framework achieved at this stage by insurance and reinsurance undertakings and supervisory authorities.

In particular the baseline for this implementing technical standard includes:

- The content of Directive 2009/138/EC, as amended by Directive 2014/51/EC;
- The relevant Implementing Measures.

### **Policy Objective**

The objective of developing this ITS is to ensure a consistent application of the process for the reaching of a joint decision.

### **Analysis of Policy Issues**

With regard to **key issue 1: Agreement on the process**, the ITS specifies the minimum elements (main steps, timeline and deliverables) that the supervisory authorities concerned need to consider when setting the process of reaching a joint decision. Although the introduction of these elements could require some

effort for supervisory authorities, such elements can be valued as all important and necessary. Therefore, it should be noted that EIOPA, in its proposal, is not imposing obligations that can fall beyond the goals of the Solvency II Directive, which in Article 231(2) states that the supervisory authorities concerned shall do everything within their power to reach a joint decision within six months from the date of receipt of the complete application.

With regard to **key issue 2: Proposal for the decision**, the ITS in fact only clarifies the process to be followed by the supervisory authorities concerned to prepare the proposal of the decision, and for further discussions on this proposal. This proposed text further specifies the elements that have to be taken into account according to key issue 1, and therefore it only makes operational the requirement set out in Article 231(2) of the Solvency II Directive by clarifying how the Directive provisions have to be fulfilled.

With regard to **key issue 3: Final decision and communication of the decision**, the ITS specifies the documentation process of the final decision and the communication of this decision, in both cases: when a consensus is reached among the supervisory authorities concerned for the joint decision (Article 231(5) of the Solvency II Directive), or where there is no consensus and the group supervisor decides on the application (Article 231(6) of the Solvency II Directive). The provisions proposed are needed to ensure that the group supervisor considers all the necessary elements for the decision, in order to make operational the requirements set out in the referred Articles of the Solvency II Directive, not adding new material costs.

As a conclusion, EIOPA is of the opinion that this implementing technical standard is intended to contribute to an enhanced convergence of supervisory practices in this field and also to ensure the effectiveness of the process to reach a joint decision. In this sense the ITS is beneficial both for supervisory authorities and the undertakings that submit an application to use a group internal model, as it facilitates a decision on the application in the six month period and allow for a more effective allocation of resources and cooperation.

The technical standard does not introduce any incremental material costs on top of previous levels of legislation. The technical standard develops and further specifies the requirements already set out in previous levels of legislations, both in the Solvency II Directive and Implementing Measures.



**Monitoring Indicators**

The following indicators may be relevant in assessing whether the ITS has been effective and efficient in respect of the objective specified above:

<p>To ensure consistent application of the process for the reaching of a joint decision.</p>	<p>Possible indicators of progress towards meeting the objective may be:</p> <ul style="list-style-type: none"><li>• Number of cases in which NCAs concerned have raised a matter regarding the joint decision to the group supervisor and number of cases where EIOPA was called to mediate.</li><li>• Number of sessions the NCAs concerned needed to agree on the proposed decision.</li><li>• Number of cases the NCAs concerned stated reservations regarding the decisions taken.</li></ul>
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## Annex II: Resolution of comments

<p style="text-align: center;"><b>Summary of Comments on Consultation Paper</b>  <b>CP-14-006-ITS on the joint decision process for group internal models</b></p>				
<p>EIOPA would like to thank the Insurance and Reinsurance Stakeholder Group, CFO Forum and CRO Forum, Deloitte Touche Tohmatsu, Insurance Europe, International Underwriting Association of London, and The Actuarial Association of Europe.</p> <p>The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14-006.</p>				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comments	<ul style="list-style-type: none"> <li>• The CP provides a balanced framework for the process to be implemented by supervisory authorities to reach a sound and joint decision for group internal models.</li> <li>• The link between the procedure described in the ITS and the coordination arrangement established in the college is missing.</li> <li>• It's not clear whether the commitment reached by the supervisory authorities in the whole process should be officially ensured through the coordination arrangement or by other legal documents.</li> <li>• It is not clear if the process to reach the joint decision should be settled in the coordination arrangement with a well-defined timeline, main steps and deliverables.</li> </ul>	<p>Noted. EIOPA appreciates these comments.</p> <p>Noted. EIOPA considered that the timeline for the main steps and deliverables to reach the joint decision included in the ITS, due to the need for flexibility, should not be included in the coordination arrangement since the coordination arrangement is a formal document that involves all members and participants of the college.</p> <p>That is why EIOPA concluded to include the timeframe for the steps and deliverables of a given process in a more practical document that leaves flexibility to each college to define the appropriate timeframe: the Internal Model work plan as set out in Guideline</p>

			<ul style="list-style-type: none"> <li>• Requirements with respect to positions, decisions and communications are clear and should be welcomed by all stakeholders.</li> <li>• The referral to EIOPA (e.g. in such cases a decision is not likely to be reached between the supervisors involved) may prove to be a strong driver of harmonization and consistency within and among MS.</li> <li>• Perhaps not within the scope of this CP, but a relevant subject nonetheless, is whether or not other stakeholders (such as undertakings) are enabled to challenge supervisors' positions and decisions. If yes, how does EIOPA envisage such a process would take place? This is especially relevant as it is quite likely stakeholders would challenge the positions and decisions of the specific supervisory authority in their respective MS.</li> </ul>	<p>59 of the Internal Models Guidelines.</p> <p>Further the coordination arrangement needs to take into account the provisions of the ITS. That is why in the Annex related to the coordination arrangement of the Guidelines on the Functioning of Colleges, a reference to the ITS has been included.</p> <p>Noted. EIOPA appreciates these comments.</p> <p>The decisions taken in relation to the implementation of the Solvency II Directive are subject to the right to apply to the courts.</p>
2.	CFO Forum and CRO Forum	General Comments	<p>Thank you for opportunity to comment on CP-14-06. The CFO Forum and CRO Forum welcome the publication of this consultation paper. We appreciate the clear process set out in the paper, as well as the requirements for positions and decisions to be substantiated and clearly communicated to the insurer. We have set out our comments on the individual articles of the paper below, and we would also note in general that the references to the draft Delegated Acts in the ITS will need to be updated as the Delegated Acts are finalised and adopted.</p>	<p>Noted. EIOPA appreciates these comments.</p> <p>Agreed the need to update references to Implementing Measures where needed.</p>

3.	Deloitte Touche Tohmatsu	General Comments	<p>Comment: Overall, the roles of the supervisors within the college and the role of the group supervisor are not well defined in relation to the process to reach a joint decision for group internal models. This has the potential to be confusing for supervisors, confusing for firms and result in the process not running efficiently.</p> <p>Proposed update(s): We propose that two additional recitals are added and additional roles and responsibilities are explicitly identified within the articles. We set out here our proposed additional recitals, and set out below our proposed updates to the articles aligned to these recitals. We propose the following wordings:</p> <p>'(8) In order to manage the process efficiently and effectively, the group supervisor should take a leading role in managing the review of the application for internal model approval. This includes leading the planning of the review and tracking of delivery against the milestones agreed with the supervisory authorities within the college.</p> <p>(9) In order to deliver a joint decision for group internal model applications, the supervisory authorities should agree a plan and inform the insurance and reinsurance undertakings of this plan. This will enable the undertakings to identify delivery issues and enable escalation of issues to EIOPA.'</p>	<p>Noted. Please bear in mind that the Chapter on colleges of the Internal Models Guidelines include the need to set up a work plan by the group supervisor, in consultation with the other supervisory authorities concerned, to cover the timeline for all the steps and deliverables for reaching a joint decision.</p> <p>Therefore EIOPA considers that these Recitals are not needed.</p>
4.	Insurance Europe	General Comments	<p>Insurance Europe welcomes the opportunity to comment on this consultation Paper on the Implementing Technical Standards with regard to the process to reach a Joint Decision for Group Internal Models.</p> <p>The issues related to this paper and which are of great concern for us are the following:</p>	<p>See answer to comment 1.</p>

			<p>Coordination arrangement connection</p> <p>This ITS is an important paper which clarifies the formal procedure on how to reach a joint decision as described on the Art. 231. The text describes the role and the responsibilities of the supervisors taking part in the joint decision in the case of a group internal model, to enhance convergence of supervisory practices and to ensure effectiveness of the process. In particular, how to achieve an agreement on the process, a proposal for a decision and in what way the communication should be communicated.</p> <p>Nevertheless there is a missing link between the procedure described in the ITS and the coordination arrangement established in the college that aims to clarify the responsibilities of the group supervisor and the other supervisory authorities concerned when making the joint decision to the group internal model.</p> <p>It is not clear whether or not the process to reach the joint decision should be settled in the coordination arrangement with a well defined timeline, main steps and deliverables.</p> <p>We find also no hint as to whether or not the commitment reached by the supervisory authorities in the whole process should be officially ensured through the coordination arrangement or by other legal documents.</p>	
5.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	General Comments	<p>We welcome the clarity brought by the draft implementing technical standards in setting out how joint decisions should be made for group internal models. However, it appears to us that these standards should be cross-referenced to the guidelines on the operational functioning of colleges, so as to avoid any confusion or inconsistency.</p>	<p>Noted. EIOPA appreciates these comments.</p> <p>This is not possible as ITS cannot include references to Guidelines.</p>
6.	CFO Forum and	Article 1	<p>The regulation as drafted does not provide for an insurer to challenge the joint decision reached by supervisors on the</p>	<p>The decisions taken in relation to the implementation of the Solvency II</p>

	CRO Forum		group internal model. We would recommend that provision is made in the regulations for insurers to challenge the decision reached.	Directive are subject to the right to apply to the courts.
7.	CFO Forum and CRO Forum	Article 3 (1)	No authorisation is given to the group supervisor to enforce common timelines or processes. We would suggest adding stronger language requesting proactive cooperation within the legal space available to supervisors before the matter is transferred to EIOPA.	Noted. Please bear in mind that the Chapter on colleges of the Internal Models Guidelines include the need to set up a work plan by the group supervisor, in consultation with the other supervisory authorities concerned, to cover the timeline for all the steps and deliverables for reaching a joint decision.
8.	Deloitte Touche Tohmatsu	Article 3 (1)	<p>Comment: We would suggest that the process will run more smoothly if the main steps and deliverables are standard across all applications. This will enable better planning for both the supervisory authorities and the insurance and reinsurance undertakings. We also suggest that the plan is shared with the insurance and reinsurance undertakings so that they can plan their resource availability around the supervisory activities that are likely to take place.</p> <p>Proposed update(s): We propose that the common steps and deliverables are included in this article once defined. We also propose that the following wording is added to the end of the paragraph: 'The group supervisor should provide the insurance and reinsurance undertakings with a timeline of the main steps to enable resource planning.'</p>	<p>Noted. The main steps and deliverables set out in the ITS are the same for all processes. Nevertheless differences may occur on the timeline for these steps and deliverables depending for example on the specificities of the group internal model and the number of NSAs concerned.</p> <p>See also answer to comment 7.</p> <p>This Article is for the purposes of the internal planning of the decision process within NSAs concerned.</p>

9.	Insurance Europe	Article 3 (1)	<p>“The supervisory authorities concerned shall agree on the process to reach and the way to formalise...” The ITS should clarify the process and the time period to get this agreement and what happens if an agreement is not reached within the period set out in the ITS.</p>	<p>Disagreed. The process is clarified in the ITS. Regarding the time period and what happens if an agreement is not reached within the period, this is already set out in Article 231 of the Solvency II Directive. According to this Article NSAs concerned have 6 months to reach the joint decision.</p> <p>See also answer to comment 7.</p>
10.	INTERNATIONAL UNDERWRITING ASSOCIATION OF LONDON	Article 3 (1)	<p>We welcome the emphasis placed on each authority committing to « ensure that the main steps and deliverables set out for the agreed process are followed in a timely way”. In our view, the effectiveness of Solvency II group supervision will depend on the imposition of good practice in this area.</p>	<p>Noted. EIOPA appreciates these comments.</p>
11.	IRSG	Article 3 (2)	<p>“The supervisory authorities concerned shall take into account [...] any legal impediments or internal processes that may restrict the supervisory authorities to give their formal view on the application within the specified timeframe.”. “[...] when consensus on a decision is not likely to be reached, [the supervisory authority] shall explain the reasons for this to the other supervisory authorities concerned and indicate whether it intends to refer the matter to EIOPA[...]. The group supervisor shall organize a discussion with all supervisory authorities concerned with the aim to find a solution to the matter. [...]” – While no authorization is given to group supervisors to enforce common timelines or process for the approval it would help the process of finding a common position to include stronger language requesting supervisors</p>	<p>See answer to comment 7.</p>

			to proactively cooperate in finding an agreement fully exploring the space within any legal constraints before the matter is referred to EIOPA.	
12.	Deloitte Touche Tohmatsu	Article 3 (2)	<p>Comment: We suggest that the outcomes of these discussions should be shared with the insurance and reinsurance undertakings to keep them informed.</p> <p>Proposed update(s): We propose that the following wording is added to the end of the paragraph: 'The group supervisor should inform the insurance and reinsurance undertakings of any legal impediments or internal/external processes that potentially restrict the ability of the college to deliver on the plan for reviewing the application for internal model approval.'</p>	Disagreed. This Article is for the purposes of the internal planning of the decision process within NSAs concerned.
13.	Insurance Europe	Article 3 (2)	"(...) supervisory authorities shall inform the other ones about any legal impediments..." This information should be given when the process is being agreed or as soon as possible, otherwise the joint decision can be compromised.	Agreed. This is the intention.
14.	Insurance Europe	Article 3 (3)	Clarification is needed concerning the meaning of "as soon as practical". Any information that may be relevant for the decision should be provided at least before the 6 months period.	Noted. The intention of the Article is to highlight the importance of considering these aspects in due time and in any case within the 6 months period for taking a decision.
15.	IRSG	Article 3 (4)	"The supervisory authorities concerned shall take into account [...] any legal impediments or internal processes that may restrict the supervisory authorities to give their formal view on the application within the specified timeframe.". "[...] when consensus on a decision is not likely to be reached, [the supervisory authority] shall explain the reasons for this to the	See answer to comment 7.



			<p>other supervisory authorities concerned and indicate whether it intends to refer the matter to EIOPA[...]. The group supervisor shall organize a discussion with all supervisory authorities concerned with the aim to find a solution to the matter. [...]” – While no authorization is given to group supervisors to enforce common timelines or process for the approval it would help the process of finding a common position to include stronger language requesting supervisors to proactively cooperate in finding an agreement fully exploring the space within any legal constraints before the matter is referred to EIOPA.</p>	
16.	CFO Forum and CRO Forum	Article 3 (4)	<p>We welcome the requirement set out in this subparagraph for supervisory authorities to clearly explain the reason(s) for any matters they have raised, and their intention(s) (if any) to raise the matter(s) for consideration by EIOPA.</p>	<p>Noted. EIOPA appreciates these comments.</p>
17.	Insurance Europe	Article 3 (4)	<p>Two notions are being mixed.</p> <p>The aim of this paragraph is to clarify what should be done “in the case a supervisory authority concerned raises a matter concerning the process”. In this case, an explanation should be provided to the others supervisory authorities and the group supervisor should organize a discussion with all supervisory authorities to find a solution.</p> <p>On other hand, if the supervisory authority raises a matter concerning the process and intends to refer the matter to EIOPA according to Art. 231 (3), the group supervisor should await the EIOPA’s decision and in the meantime there is no solution to be found among the supervisory authorities.</p> <p>The meeting organized by the group supervisor only makes sense if done before the supervisory authority ask for EIOPA’s</p>	<p>Noted. This is the intention of this Article. The meeting is to be held always within the 6 months and before the supervisory authority ask for EIOPA’s mediation.</p> <p>In any case all Articles of the ITS shall be read taking into account all the provisions already set out in the Article 231 of the Solvency II Directive as amended by the Omnibus II Directive.</p>

			<p>opinion.</p> <p>The paragraph needs to be redrafted for a better understanding.</p> <p>We suggest a redraft in the following way: “[...] consensus on a decision is not likely to be reached on the timeframe agreed” .</p>	
18.	Deloitte Touche Tohmatsu	Article 3 (5)	<p>Comment: This article does not provide any indication to the insurance and reinsurance undertakings that the application may not be approved. We would suggest that a period of time is set before the 6 months completes at which the firm is notified that they should commence execution of their contingency plans.</p> <p>Proposed update(s): We propose that the paragraph is reworded as follows: ‘If it is likely that no satisfactory solution will be reached, the group supervisory should notify the insurance and reinsurance undertakings at least 6 weeks prior to the end of the 6 month review period in order that contingency plans can be executed. If a formal decision is reached amongst the college that a decision cannot be reached, the group supervisor should refer the matter to EIOPA and notify the firm of this outcome.’</p>	<p>Disagreed. The intention of the Article is that NSAs do everything within their powers to reach a joint decision within 6 months.</p> <p>In any case all Articles of the ITS shall be read taking into account all the provisions already set out in the Article 231 of the Solvency II Directive as amended by the Omnibus II Directive.</p>
19.	Insurance Europe	Article 4 (2)	<p>It should be clarified what the content of the outcome assessment is and in particular whether it may be defined in the joint decision process (as a template or something similar) and if include the terms and conditions which the proposed decision is subject to.</p>	<p>Noted. The content of the outcome assessment is included in the Annex of the Functioning of Colleges Guidelines related to the coordination arrangement.</p> <p>Terms and conditions proposed are expected to be included in the input by the other supervisory authorities concerned.</p>

20.	IRSG	Article 4 (3)	“The group supervisor, [...] shall draft a written proposal for a decision, including, if applicable, the terms and conditions which the proposed decision is subject to. [...]” – We see the introduction of terms and conditions mainly positive as it softens the previous digital decision on model approval – however the flipside is that this might result effectively in a multi-year recurring approval process (as each of the conditions would supposedly require a subsequent model change which would trigger a new approval process in the following years).	Noted. The possibility of having terms and conditions is already foreseen in the Article 231 of the Solvency II Directive.  EIOPA will work to build an appropriate framework for these terms and conditions and ensure convergence of supervisory practices in this respect.
21.	CFO Forum and CRO Forum	Article 4 (3)	The inclusion of ‘terms and conditions’ relating to the approval is possible. We consider this to be positive. However, the scope and handling of such terms and conditions should be clarified to avoid inconsistencies and inefficient processes.	See answer to comment 20.
22.	Insurance Europe	Article 4 (3)	More details are needed about the meaning and the content of terms and conditions that can be included in the proposal for a decision.	See answer to comment 20.
23.	Insurance Europe	Article 4 (4)	We agree with this paragraph. However if the group supervisor considers the views expressed during the assessment that deviates from the outcome given as described in (2), it should explain the reasons.	Please note that this Article refers to the views regarding the appropriateness of the group internal model for the calculation of the consolidated group SCR, which is under the responsibility of the group supervisor.  The inputs referred to in Article 4(2) refer to the appropriateness of the group internal model for the calculation of the local SCR of related undertakings supervised by the corresponding NSA

				concerned.
24.	Deloitte Touche Tohmatsu	Article 4 (7)	<p>Comment: We suggest that communication is provided to the undertakings at this point in time.</p> <p>Proposed update(s): We propose that the following wording is added to the end of the paragraph: 'The group supervisor should provide the insurance and reinsurance undertakings with communication on the outcomes of the discussion of the proposed decision.'</p>	Disagreed. According to Article 231 the communication to the applicant takes place at the moment where a final decision is taken.
25.	Insurance Europe	Article 4 (7)	<p>Clarification is needed concerning the expressions "views" and "reservations".</p> <p>According to Art. 231 the group supervisor shall take into account any views and reservations made by the other supervisory authorities in the absence of a joint decision within the 6 months. And this may not be the case.</p> <p>Up to this point the paper refers to the "outcome of the assessment" and the "opinion" expressed by the supervisory authorities. It is not clear if these "views" and "reservations" are the final decision and if it should include the terms and conditions.</p>	<p>In the context of this Article "views" and "reservations" are needed to prepare for the specific potential case where the group supervisor takes the decision in the absence of a joint decision within the 6 months, to be able to comply with the provision set out in Article 231(6).</p> <p>These final "views" and "reservations" are to be based in the inputs and opinions given by NSAs concerned according to previous paragraphs of the Article.</p>
26.	Deloitte Touche Tohmatsu	Article 5 (1)	<p>Comment: We suggest that communication is provided to all impacted undertakings at this point in time.</p> <p>Proposed update(s): We propose that the following wording is added to the end of the paragraph: '(c) the group supervisor should provide instruction for communication of the outcome to confirm that all impacted undertakings receive appropriate communication of the outcome.'</p>	The communication to the applicant is set out in Article 6(1) and it is expected that the group supervisor will communicate the decision as soon as it has all the documentation needed to provide the reasons for the decision.

27.	Insurance Europe	Article 5 (3)	<p>(c) Clarification is needed regarding the meaning of “relevant” in the related following sentence:</p> <p>“state the views and reservations from the relevant supervisory authorities concerned [...]</p>	<p>“Relevant supervisory authorities” means those supervisory authorities who have raised views and reservations according to Article 4(7) in the specific case where a joint decision has not been taken and the group supervisor is the one deciding.</p>
28.	Deloitte Touche Tohmatsu	Article 6 (1)	<p>Comment: We suggest that communication is provided to all impacted undertakings at this point in time.</p> <p>Proposed update(s): We propose that the following wording is added to the end of the paragraph: ‘The group supervisor should provide instruction for communication of the outcome to confirm that all impacted undertakings receive appropriate communication of the outcome.’</p>	<p>See answer to comment 26.</p>
29.	Insurance Europe	Article 6 (1)	<p>More details are needed on the timeline that the group supervisor will use to communicate the final decision. “As soon as possible” is too vague and a time window should be specified to allow undertakings to anticipate any remedial action in an efficient way.</p>	<p>It is expected that the group supervisor will communicate the decision as soon as it has all the documentation needed to provide the reasons for the decision.</p>
30.	Insurance Europe	Article 6 (2)	<p>(a) Should also be included if the decision was made at EIOPA level (according to Article 231 (3) of the Directive).</p> <p>(f) In case of permission, the starting date included in the communication to the undertaking should be align with the date specified in the cover note required on EIOPA ITS on internal model approval process, Art. 2 (3) (a) i.</p>	<p>Disagreed. EIOPA does not see the added value of including this, as in this case, it is the group supervisor who, in the terms of Article 231(3) of the Solvency II Directive, as amended by the Omnibus II Directive, takes the decision.</p> <p>It is expected that these dates are aligned.</p>

31.	The Actuarial Association of Europe (AAE)	Article 6 (3)	<p>The ITS states "In case of rejection to use the group internal model, the group supervisor shall include in the decision a brief description of the parts or aspects of the internal model that do not comply with the requirements to use a group internal model, as well as the precise reference to the requirements that are not complied with. The communication shall also state that the rejection does not imply that other requirements have been assessed as complied with."</p> <p>It is our understanding that all parts of the application should have been assessed within the timeframe of six months, which implies that all areas leading to a rejection of the model should be communicated, which in turn implies that all other areas comply (leaving aside the possibility that corrections of the areas leading to the rejection may create new problems in other areas of the model which were previously fine). The last sentence should therefore be removed. It would be unhelpful and a waste of both (re)insurers and supervisors time if incomplete feedback was given leading to a series of iterations of submissions and rejections as issues are fed back one by one.</p> <p>If, on the other hand, the intention of this statement is to enable the supervisory authority to issue a rejection as soon as possible following the finding of significant shortcoming then that would, of course, mean that the full review had not been completed and therefore complete feedback could not be given. Additional clarity on this could be helpful.</p> <p>The communication of the rejection described in this paragraph does not seem to bring additional clarity to the group-process, and it would be sufficient to apply article 4(c) "when the supervisory authorities reject the application, the reason on which the rejection is based." Of the paper EIOPA-CP-14-005 ITS Approval Processes IM.</p>	Disagree. If the application is assessed as not compliant, it will be rejected and there is no requirement for supervisory authorities to assess all parts of the application. In such cases no conclusion on the compliance of the other parts of the application could be drawn.
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## **Annex III: Draft Implementing Technical Standard**



EUROPEAN COMMISSION

Brussels, XXX  
[...] (2011) XXX draft

**COMMISSION IMPLEMENTING REGULATION (EU) No .../..**

**of [ ]**

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model according to Directive 2009/138/EC of the European Parliament and of the Council**

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of 19 December 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and in particular Article 231(4) thereof,

Whereas:

- (1) An efficient exchange of appropriate information between the national supervisory authorities concerned is essential for the provision of an effective process for the reaching of a joint decision on group internal models.
- (2) In order to ensure a consistent application of the process for reaching of a joint decision, it is important that each step is well defined. A clear process also facilitates exchange of information, promotes mutual understanding, develops relationships between supervisory authorities concerned and promotes effective supervision.
- (3) Timely and realistic planning for the joint decision process is essential. Every supervisory authority concerned should provide the group supervisor with relevant information on a timely basis.
- (4) Establishing and documenting clear processes for the content and articulation of the joint decision should ensure that it is fully reasoned.
- (5) The provisions set out in this Regulation should apply on a consistent manner to the joint decision on major changes and changes to the policy for changing the model for group internal models.
- (6) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (7) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

*Article 1*

***Subject matter and Scope***

- (1) This Regulation specifies what the supervisory authorities concerned shall do to reach a joint decision, referred to in Article 231(2) of Directive 2009/138/EC, on the application for permission to use a group internal model to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group.



## *Article 2*

### ***Definitions***

- (1) For the purpose of this Regulation, “supervisory authorities concerned” are the supervisory authorities of all the Member States in which the head offices of each related insurance and reinsurance undertakings applying for the use of a group internal model to calculate their Solvency Capital Requirement are situated.

## *Article 3*

### ***Agreement on the process***

- (1) The supervisory authorities concerned shall agree on the process to reach and the way to formalise a joint decision including timeline, main steps and deliverables, taking into account the requirements set out in Directive 2009/138/EC as further specified in the [Implementing Measures] and the present Regulation. In order to do everything within their power to reach a joint decision according to Article 231(2) of Directive 2009/138/EC, every supervisory authority concerned shall ensure that the main steps and deliverables set out for the agreed process are followed in a timely way.
- (2) The supervisory authorities concerned shall take into account when agreeing on the process, any legal impediments or internal processes that may restrict them to give their formal view on the application within the specified timeframe. To this end, all supervisory authorities concerned shall inform the other ones about any legal impediments or internal processes that may exist in their respective supervisory authority.
- (3) The supervisory authorities concerned shall provide the other authorities concerned with any information that may be relevant for the decision on the application as soon as practical.
- (4) In the case a supervisory authority concerned raises a matter regarding the process, in particular when consensus on a decision is not likely to be reached, it shall explain the reasons for this to the other supervisory authorities concerned and indicate whether it intends to refer the matter to EIOPA according to Article 231(3) of Directive 2009/138/EC. The group supervisor shall discuss with all supervisory authorities concerned with the aim to find a solution to the matter. The supervisory authorities shall agree on a timeframe to reach a solution.
- (5) If no satisfactory solution is reached in the agreed timeframe and the relevant supervisory authority decides to refer the matter to EIOPA, it shall do it without delay.

## *Article 4*

### ***Proposal for a decision***

- (1) Before making a proposal for a decision, the supervisory authorities concerned shall confirm that the assessment of the application has been finalized and that the outcome of this assessment constitutes the basis for making a decision on the application.
- (2) The other supervisory authorities concerned shall give their input on the proposal for a decision to the group supervisor in writing by summarising the outcome of the assessment made.
- (3) The group supervisor, with the input of the other supervisory authorities concerned referred to in paragraph 2, shall draft a written proposal for a decision, including, if applicable, the terms and conditions the proposed decision is subject to. This proposal shall include the reasons for the decision and, if applicable, for the terms and conditions.
- (4) When drafting a proposal for a decision, the group supervisor shall consider, if appropriate, the views expressed during the assessment of the application by the other supervisory

authorities concerned regarding the appropriateness of the group internal model for the calculation of the consolidated group Solvency Capital Requirement. If relevant, the group supervisor shall also take into consideration the views from the other supervisory authorities within the college of supervisors regarding the group internal model.

- (5) The group supervisor shall send the proposal for a decision to the supervisory authorities concerned and, where appropriate, to the other members and participants of the college.
- (6) The other supervisory authorities concerned shall provide in writing to the group supervisor their opinion on the proposal for a decision, including, if applicable, their opinion on the terms and conditions to which the proposed decision is subject. The group supervisor shall aggregate the opinions received and provide a synthesis of them to the other supervisory authorities concerned.
- (7) The group supervisor shall organise at least a session with the other supervisory authorities concerned to discuss the proposal for a decision and the opinions provided. These sessions may take place as a physical meeting or, when agreed by all the supervisory authorities concerned, through other means. The discussion shall aim at reaching consensus on a joint decision. Every supervisory authority concerned shall then confirm its views or send in writing its final views and reservations to the group supervisor.

*Article 5*  
***Final decision***

- (1) In the case set out in Article 231(5) of Directive 2009/138/EC when a joint decision has been reached, the group supervisor shall:
  - (a) document the final decision on the application and, if applicable, on the terms and conditions to which the decision is subject;
  - (b) send the final decision to all college members and, where appropriate, to participants, together with the views of the supervisory authorities concerned.
- (2) In the case set out in paragraph 1, the agreement on the final decision shall be evidenced in writing by representatives of the supervisory authorities concerned with appropriate authority to commit their respective authorities.
- (3) In the case set out in Article 231(6) of Directive 2009/138/EC when a joint decision has not been reached, the group supervisor shall:
  - (a) document its final decision;
  - (b) document the views and reservations referred to in Article 4(7) of the relevant supervisory authorities concerned;
  - (c) state the views and reservations from the relevant supervisory authorities concerned and, if applicable, why the group supervisor has deviated from these views when providing the supervisory authorities concerned with a document setting out its decision according to Article 231(6) of Directive 2009/138/EC;
  - (d) send the decision to the rest of college members and where appropriate to participants, together with the views and reservations of the supervisory authorities concerned.

*Article 6*  
***Communication of the decision***

- (1) When a final decision is made, the group supervisor shall communicate the decision to the applicant as soon as possible.
- (2) In case of permission to use the group internal model the group supervisor shall include in the decision:

- (a) if the decision was a joint decision according to Article 231(5) of Directive 2009/138/EC or made by the group supervisor according to Article 231(6) of Directive 2009/138/EC;
  - (b) the reasons for the decision;
  - (c) the names of the related undertakings included in the scope of the internal model for the calculation of the group Solvency Capital Requirement;
  - (d) the names of the related undertakings allowed to use the group internal model to calculate their Solvency Capital Requirement;
  - (e) if relevant, the risks and major business units within the scope of a partial internal model;
  - (f) the starting date from which the solvency capital requirements listed in (c) and (d) shall be calculated using the group internal model;
  - (g) if relevant, the terms and conditions to which the permission to use the group internal model is subject, and the reasons for these terms and conditions;
  - (h) if relevant, a requirement for the undertaking to develop and provide a plan to extend the scope of the internal model, including the description and timeframe of the plan;
  - (i) if relevant the integration technique approved to be used to integrate the partial internal model into the solvency capital requirement standard formula;
- (3) In case of rejection to use the group internal model, the group supervisor shall include in the decision a brief description of the parts or aspects of the internal model that do not comply with the requirements to use a group internal model, as well as the precise reference to the requirements that are not complied with. The communication shall also state that the rejection does not imply that other requirements have been assessed as complied with.

*Article 7*  
***Entry into force***

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

*[For the Commission  
The President]*

*[On behalf of the President]*

*[Position]*