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Consultation Paper on the proposal for Guidelines on the methodology for Equivalence Assessments by National Supervisory Authorities under Solvency II

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Responding to this paper

EIOPA welcomes comments on the Guidelines on the methodology for equivalence assessment of National Supervisory Authorities under Solvency II.

Comments are most helpful if they:

- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the single Template for Comments provided for the Set 1 of the Solvency II Guidelines to the address Consultation_GLset1_SII@eiopa.europa.eu by 29 August 2014.

Contributions not provided in the template for comments or sent to a different email address, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that a request to access confidential responses may be submitted in accordance with EIOPA's rules on public access to documents[1]. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by EIOPA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.eiopa.europa.eu under the heading 'Legal notice'.

[1] https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-(EIOPA-MB-11-051).pdf

Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance to Article 16(2) of the EIOPA Regulation.

This Consultation Paper is being issued to consult on the 'Guidelines on the methodology for Equivalence Assessments by National Supervisory Authorities under Solvency II'. The Guidelines aim to ensure that group supervisors follow a consistent approach based on the Equivalence criteria set in the draft implementing measures of Solvency II. This process will help to mitigate any residual risk that different group supervisors come to different decisions on the same third country regime through divergent assessment approaches.

This Consultation Paper presents the draft Guidelines, two Technical Annexes and an explanatory text.

The analysis of the expected impact from the proposed policy is covered under the Impact Assessment which is available in EIOPA's website.

Next steps

EIOPA will consider the feedback received and expects to publish a final report on the consultation. The final Guidelines are subject to adoption by the Board of Supervisors of EIOPA.

1. Guidelines on the methodology for Equivalence Assessments by National Supervisory Authorities under Solvency II

Introduction

1.1. According to Article 16 of Regulation (EU) No 1904/2010 of 24 November 2010 (hereafter, EIOPA Regulation)[2] EIOPA is drafting Guidelines developing articles 227 and 260 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II Directive)[3] on the assessment of the equivalence of third country supervisory regimes.

1.2. [Articles 366GTCE1 and 368GSTCE1 of the draft Implementing Measures of Solvency II] contain the criteria to be used for the purpose of undertaking equivalence assessment of third country supervisory regimes.

1.3. These Guidelines are addressed to supervisory authorities under Solvency II.

1.4. Solvency II Directive anticipates that in circumstances where the European Commission has not taken a decision on the equivalence of a particular third country, then under Article 227 the group supervisor shall carry out any verification of the equivalence of the third country regime for the purpose of the group solvency calculation, on its own initiative or at the request of the participating undertaking.

1.5. Similarly, under Article 260, where there is no European Commission decision on equivalence, the verification of whether a particular third country exercises equivalent group supervision to that provided for under Solvency II shall be carried out by the EU supervisory authority which would be the group supervisor if the criteria set out in Article 247(2) were to apply. The verification shall be undertaken at the request of the third country parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Community or on the (EU) group supervisors' own initiative.

1.6. These Guidelines aim to ensure that group supervisors follow a consistent approach based on the Equivalence criteria set in the draft implementing measures of Solvency II. This process will help to mitigate any residual risk that different group supervisors come to different decisions on the same third country regime through divergent assessment approaches.

1.7. For the purpose of these Guidelines the "national supervisory authorities concerned" are all national supervisory authorities competent for supervision of (re)insurance undertakings under the Solvency II framework.

[2] OJ L 331, 15.12.2010, p. 48–83
[3] OJ L 335, 17.12.2009, p. 1155

1.8. If not defined in these Guidelines the terms have the meaning defined in the legal acts referred to in the introduction.

1.9. The Guidelines shall apply from 1 April 2015.

Guideline 1- General principles

1.10. National supervisory authorities should apply the following overarching principles underpinning equivalence assessments:

a) Equivalence assessments aim to determine whether the third country supervisory system provides a similar level of policyholder/beneficiary protection.
b) Equivalence assessments are a flexible process based on the criteria set in [articles 366GTCE1 and 368GSTCE1 of the draft implementing measures] which develop the relevant supervisory principles embedded in Directive 2009/138/EC (Solvency II Directive).
c) With the exception of the professional secrecy criterion, equivalence assessments take into account the proportionality principle.
d) Equivalence of professional secrecy regime in the third country is a precondition for a positive equivalence finding on the third country group supervisory regime.
e) An equivalence judgement can only be made in respect of the regime in existence and applied by a third country supervisory authority at the time of the assessment.
f) It is necessary for the assessment to cover all elements of the third country supervisory regime not only those elements directly relevant to the group that has requested the assessment.
g) Positive equivalence assessments need regular review.

Guideline 2- Equivalence assessment request

1.10. National supervisory authorities should notify EIOPA, upon receipt of a request to undertake an equivalence assessment according to articles 227 and/or 260 Solvency II Directive, within 20 working days from receipt of the request whether:

a) It wishes to undertake the assessment at national level, assisted by EIOPA and consulting the other national supervisory authorities concerned; or
b) It wishes to request an assessment to EIOPA. The requesting national supervisory authority should participate in the technical assessment.

Guideline 3- Assessment by EIOPA

1.11. National supervisory authorities should, where they decide to request an assessment to EIOPA, provide the following information via email together with their request:

a) Date of the request from the undertaking;

b) Name of the requesting undertaking;
c) Name of the group to which the requesting undertaking belongs;
d) Country or countries for which the assessment has been requested;
e) Name and email of the contact person(s) in the national supervisory authority for the purpose of providing details on the assessment request.

Guideline 4- Assessment by EIOPA

1.13. The national supervisory authority acting as group supervisor should, where the assessment is undertaken by EIOPA, take into account the conclusion of the assessment provided by EIOPA in the equivalence decision.

Guideline 5- Communication of the group supervisor's decision

1.14. The national supervisory authority acting as group supervisor should communicate to EIOPA the outcome and rationale for its proposed decision which will be made available to all national supervisory authorities.

Guideline 6- Objections to the group supervisor's decision

1.15. National supervisory authorities should send via email to EIOPA any objections to the proposed decision within a maximum of 10 working days from the day EIOPA circulates the equivalence decision and rationale under Guideline 5.

Guideline 7- Final decision of the group supervisor

1.16. The national supervisory authority acting as group supervisor should wait until the stipulated period in Guideline 6 has elapsed and consider any objection before confirming its decision to EIOPA and communicating the result to the undertaking.

Guideline 8– Assessment at national level

1.17. When they decide to undertake an equivalence assessment under Article 227 of Solvency II Directive, national supervisory authorities should organise their work in such a manner that it complies with the actions and deadlines outlined in Technical Annex I.

Guideline 9- Assessment at national level

1.18. When they decide to undertake an equivalence assessment under Article 260 of Solvency II Directive, national supervisory authorities should organise their work in such a manner that it complies with the actions and deadlines outlined in Technical Annex II.

Compliance and Reporting Rules

1.19. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent national supervisory authorities and financial institutions shall make every effort to comply with guidelines and recommendations.

1.20. Competent national supervisory authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.

1.21. Competent national supervisory authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.

1.22. In the absence of a response by this deadline, competent national supervisory authorities will be considered as non-compliant to the reporting and reported as such.

Final Provision on Reviews

1.23. The present Guidelines shall be subject to a review by the Authority.

Technical Annex I – Equivalence assessment under Article 227 of the Solvency II Directive

Part I: To perform an assessment under Guideline 8, national supervisory authorities should follow the steps described below.

<u>A. Start of the assessment:</u>

1) Within 20 working days from receipt of request under Article 227(2) of Solvency II Directive, the national supervisory authority should notify EIOPA as to the request received and provide the following details:

   a) Date of the request from the undertaking;

   b) Name of the requesting undertaking;

   c) Name of group to which the requesting undertaking belongs;

   d) Country or countries for which the assessment has been requested;

   e) Name and email of the contact person(s) in the national supervisory authority for the purpose of the assessment.

   The notification should also be copied to the EU members of the group college.

   The requested national supervisory authority should, together with EIOPA, check if a decision on equivalence regarding that third country has already been taken by another national supervisory authority. If so, the following detailed steps are only necessary to take into account significant changes to the supervisory regime laid down in Title I, Chapter VI of the Solvency II Directive and to the supervisory regime in that third country.

2) If no decision has been previously taken, the national supervisory authority should request EIOPA to circulate the information to its Board of Supervisors within 5 working days from the receipt of the notification, asking for details on any material interest from national supervisory authorities in the equivalence assessment relating to the undertakings that they supervise.

3) National supervisory authorities should provide such details within 15 working days to the person responsible for the assessment at the corresponding national supervisory authority and to EIOPA.

4) Within 20 working days from the receipt of the request under Article 227(2) of Solvency II Directive, the national supervisory authority should contact the third country supervisor to notify them of the request and to ask them if they want to participate or cooperate in the assessment, indicating the proposed timeline for the assessment to the third country supervisor. The notification should be communicated to EIOPA.

5) The national supervisory authority should ask the third country supervisor to provide a reply within 20 working days since the date it receives the request.

<u>B. Undertaking the assessment:</u>

6) Within 10 working days from the receipt of a reply from the third country supervisor confirming participation or cooperation in the assessment, the national supervisory authority should start the collection of information process by sending the questionnaire included in Part II of this Technical Annex. National supervisory authorities should allow the third country supervisor at least 40 working days to provide the information. The national supervisory authority should communicate the request for information to EIOPA.

7) Within 10 working days from the receipt of a reply from a third country supervisor refusing cooperation, and after having informed EIOPA, the national supervisory authority should notify the participating undertaking which requested the assessment and confirm whether the undertaking wishes still to proceed with an assessment. Where the requesting participating undertaking wishes to proceed, the national supervisory authority should initiate information collection from the requesting undertaking. The deadline for the requesting undertaking's reply should not be shorter than 40 working days.

8) The national supervisory authority should ask the undertaking to provide information in relation to all elements of the questionnaire in Part II of this Technical Annex.

9) The national supervisory authority should ask the undertaking to provide all relevant third country legislation, both in original version and translated in the national language of the national supervisory authority undertaking the assessment and/or English.

10) By the deadline for receipt of responses to the questionnaire from the third country authority/undertaking, the national supervisory authority should have in place the assessment team with appropriate expertise, knowledge and experience which should comprise experts coming from other national supervisory authorities where agreed and EIOPA.

11) Where, despite requests, the information required to conduct an assessment is not available the national supervisory authority should issue a decision ending the assessment process stating that it does not find the third country equivalent due to absence of supporting evidence. The national supervisory authority should decommission the assessment team and inform EIOPA of the outcome.

12) On receipt of the third country response to the questionnaire/undertaking input, the national supervisory authority should begin the desk-based assessment. This stage should be allowed a minimum of 30 working days.

13) During the desk-based assessment, the national supervisory authority should ensure it has all information it needs in order to pursue the assessment and request additional clarifications from the third country supervisor/requesting undertaking, as appropriate. EIOPA should be kept informed of the assessment progress in order to be able to assist the group supervisor. At all times, the communications should be well documented.

14) During the desk-based assessment, the national supervisory authority should also utilise data/information from a variety of other sources, as appropriate. The national supervisory authority should ask EIOPA to bring to its attention any pertinent information in its possession or provided by other national supervisory authorities.

15) In undertaking the assessment, each criterion as provided in article [366GTCE1] of the [draft Implementing Measures of Solvency II] should be assessed using five categories: fulfilled, largely fulfilled, partly fulfilled, not fulfilled and not applicable. For a criterion to be considered fulfilled, the third country supervisory authority/undertaking must provide evidence that:

    a) The relevant national provisions which may include legal, regulatory and/or administrative provisions exist; and

    b) The national provisions are applied effectively in practice.

16) Where national provisions are not in place at the time of the assessment, the national supervisory authority should note in the assessment report the proposed improvements, where appropriate.

<u>C. Outcome of equivalence assessment or results:</u>

17) At the end of the assessment period, the national supervisory authority should draft a report containing the following:

    a) Short presentation of the national supervisory authority's actions and their chronology;

    b) Indication as to whether the third country has been cooperating in the process;

    c) Indication/details as to how the information was collected – when it originates outside of a third country supervisors' submission;

    d) A brief overview of the third country's market;

    e) Detailed analysis of the relevant aspects of the third country's supervisory system;

    f) Outcome of the analysis performed by the national supervisory authority which should provide the findings for each of the criteria set out by Art. [366GTCE1];

    g) Conclusion of the equivalence assessment, which should be one of the following:

        i. Country A is equivalent under the criteria set out by Art. [366GTCE1] of the [draft Implementing Measures of Solvency II];

        ii. Country A does not meet the criteria and is not equivalent.

18) The national supervisory authority should communicate the draft report of the assessment to college members and EIOPA. The national supervisory authority should also request EIOPA to further communicate the conclusions to other national supervisory authorities. National supervisory authorities should comment within a period of 20 working days, and the national supervisory authority should consider carefully in cooperation with EIOPA any observations it receives as a result of this process before finalising its conclusions.

19) Following this step, the national supervisory authority should share the report with the third country supervisor for a factual accuracy check, regardless of its cooperation or not in the process. The third country supervisor should be allowed a minimum of 15 and maximum of 25 working days to present its comments on the factual accuracy.

20) In case comments from the third country supervisor are received, these should be considered by the assessment team and the report should be revised as appropriate before its finalisation.

21) Following the decision on the third country's equivalence by the national supervisory authorities, the outcome and supporting analysis should be communicated to EIOPA with the request to distribute the report and supporting analysis among its membership via the restricted area of the website.

22) Within 10 working days from the day EIOPA circulated the equivalence decision and rationale under paragraph 21, national supervisory authorities should lodge via email to EIOPA any objections to the proposed decision. The national supervisory authority should not communicate any decision to the requesting undertaking until this period has elapsed and no objections have been lodged. Should objections be lodged, the group supervisor should consider the objections before confirming its decision to EIOPA and communicating the result to the participating undertaking.

Part II: Template Questionnaire

1) Please provide information on the existence, content and extent of provisions in respect of financial supervision, including as to:

   - Verification of state of solvency and financial condition of undertaking;
   - Verification of establishment and ability to request increase of technical provisions and covering assets;
   - Obligation of the undertaking to report its financial and solvency position to the supervisor in order to enable timely supervisory intervention.

2) Please describe provisions as to rules for valuation of assets and liabilities, and indicate whether the following are applicable:

   - The valuation of assets and liabilities is based on an economic valuation of the whole balance sheet;
   - Assets and liabilities are valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
   - Valuation standards for supervisory purposes are consistent with international accounting standards, to the extent possible[4].

[4] IFRS provide principles and guidance for the calculation of fair value for almost all assets and liabilities that are significant to (re)insurance undertakings. As a result, referring to the general IFRS framework for the determination of an 'economic valuation' is a useful starting point for determining the financial position of the undertaking. However, EIOPA recognises that adjustments may have to be made for local GAAP when the impact on the balance sheet is significant.

3) Please provide details as to the legal and supervisory regime applicable in relation to technical provisions (TP) and indicate whether / what requirements are in place to ensure that:

- TP are established in respect of all (re)insurance obligations and aim to capture all expected risks related to (re)insurance obligations of the undertaking;
- TP are calculated in a prudent, reliable and objective manner;
- The level of TP is the amount a third country (re)insurance undertaking would have to pay if it transferred or settled its contractual rights and obligations immediately to another undertaking/knowledgeable willing party in an arm's length transaction;
- The valuation of TP is market consistent and, to the extent possible, makes use of and is consistent with information provided by financial markets and generally available information on underwriting risks;
- A segmentation of the (re)insurance obligations into appropriate risk groups and as a minimum by lines of business is carried out in order to achieve an accurate valuation of reinsurance obligations;
- Processes and procedures exist to ensure the appropriateness, completeness and accuracy of the data used in the calculation of TP.

4) Please provide details as to the regime applicable in relation to own funds including, where applicable, whether / what requirements are in place to ensure that:

- Own funds are classified in accordance with their ability to absorb losses in the case of winding-up and on a going concern basis;
- The highest quality own funds are available to absorb losses in a going concern and in case of a winding up, with additional requirements of sufficient duration of the own fund item, absence of incentives to redeem, absence of mandatory servicing costs and absence of encumbrances;
- A distinction is made between own funds on the balance sheet and off-balance sheet items[5] (for example guarantees);
- According to their classification, own funds are eligible to cover partially or fully (for the best quality own funds) the capital requirements;
- Quantitative limits apply to the own funds to ensure the quality of own funds covering the capital requirements. In the absence of quantitative limits other supervisory requirements should ensure the high quality of own funds.

5) Please describe the applicable regulatory and supervisory regime in relation to investments providing details supporting that:

- Undertakings are only allowed to invest in assets and instruments where the risks can be properly identified, measured, monitored, managed, controlled and reported and appropriately taken into account in their solvency needs;

[5] Also referred to as "ancillary funds"

- Assets held to cover TP are invested prudently in the best interest of all policyholders and beneficiaries;
- All assets are invested in such a manner as to ensure the security, quality, liquidity, availability and profitability of the portfolio as a whole;
- Prudent levels of investments in assets not admitted to trading are required;
- Investment in derivative instruments are possible only insofar as they contribute to a reduction of risks or facilitate an efficient portfolio management;
- There is avoidance of excessive reliance on any one particular asset, issuer or accumulations of risk; no excessive risk concentration.

6) Please provide details as to the legal and supervisory regime applicable in relation to capital requirements and indicate whether and/or how:
   - Capital requirements are risk-based and aim to measure all quantifiable unexpected risks of the undertaking. Please cover the following points:
     - ❖ Where significant risks are not captured in the capital requirements, please provide details as to the mechanism applied to guarantee that capital requirements adequately reflect such risks;
     - ❖ How the capital requirements reflect a level of own funds that would enable the undertaking to absorb significant losses and that gives reasonable assurance to policyholders and beneficiaries that payments will be made as they fall due;
     - ❖ What is the calibration target for the capital requirements? Do the requirements enable the undertaking at a minimum to withstand a 1 in 200 ruin scenario over a one year period or ensure that policyholders and beneficiaries receive at least the same level of protection?
     - ❖ The calculation of capital requirements shall ensure an accurate and timely intervention by supervisory authorities of the third country;
     - ❖ Obligation on undertakings to communicate concerns relating to their financial position;
     - ❖ Obligation on undertakings to respond to concerns raised;
     - ❖ The supervisory authority has powers to take the necessary and appropriate actions against the undertaking to restore compliance with that requirement;
     - ❖ Appropriate standards are in place where capital requirements take into account the effect of risk mitigation techniques.
   - There is a minimum level under which capital requirements should not fall which equates to a minimum level of policyholder protection which triggers immediate and ultimate supervisory intervention action.
   - Solo capital requirements are calculated at least annually and monitored on an on-going basis.

7) If your regime provides for the use of internal models, please describe the applicable provisions regarding specificities of assessment of internal models in the context of assessing capital requirements, including information relating to the following areas:

   - Where the (re)insurance undertaking uses a full or a partial internal model to calculate its capital requirements, the resulting capital requirements provide a level of policyholder protection that is at least comparable to the level that would be required under local rules if no internal model is used (i.e. it adequately models the risks the undertaking is or could be exposed to and provide capital requirements with the same confidence level as the standard approach);
   - The regime has a process for the approval of internal models which includes a requirement for prior approval of the internal model before the undertaking is permitted to use the model to determine its regulatory capital requirements;
   - The applicable regime includes the following requirements for an internal model to be used to calculate regulatory capital:
     - ❖ An adequate risk management system;
     - ❖ The internal model is widely used in and plays an important role in the undertaking’s system of governance (use test);
     - ❖ Statistical quality standards;
     - ❖ Validation standards;
     - ❖ Documentation standards;
     - ❖ Calibration standards;
     - ❖ Profit and loss attribution.
   - Where a (re)insurance undertaking uses a partial internal model to calculate its capital requirements, the scope of the partial internal model is clearly defined and justified to avoid the "cherry picking" of risks (e.g. the undertaking models only the risks where this will result in a lower capital requirement). Please provide any supporting information to demonstrate that there is no ambiguity as to which risks, assets and/or liabilities are included or excluded from the scope of the partial internal model.

8) Please describe the applicable regime with regard to the professional secrecy obligations the authority must observe (please include in all answers references to any laws and regulations relevant in this context):

   - Legal Obligation. Please explain the legal obligation to keep supervisory information confidential, in particular:
     - ❖ Identification of confidential information;
     - ❖ Legal duty to protect confidential information;

- Applicable to all relevant individuals (i.e. all those who work, have worked or act(ed) on behalf of the supervisory authority, regardless whether they are/were staff, board members, or e.g. external experts);
- On-going obligation (applicable whilst working/acting on behalf of supervisory authority and on continuous basis thereafter).

- Use of information. Please explain the restrictions on the use of confidential supervisory information, in particular how information must only be used in the course of supervisory duties of:
  - Compliance monitoring (including monitoring of technical provisions, solvency margins, administrative/accounting procedures and internal controls);
  - Imposition of penalties;
  - Court proceedings/appeals.
- Disclosure. Please explain under what circumstances information may be disclosed to third parties (i.e. all persons/institutions outside the authority):
  - Explain whether prior explicit consent of the authority where the confidential information originates is a precondition to onwards disclosure;
  - Explain whether there are situations where information is mandatory to disclose to third parties (e.g. courts, prosecutors, governmental bodies). Describe the preconditions to disclosure as well as the purposes for which information may be disclosed, and the means your authority could use to resist disclosure. Use practical examples to illustrate practical constellations;
  - Explain the procedure with regard to civil/criminal proceedings (where the undertaking has been declared bankrupt or is being compulsorily wound up): information to be disclosed must not concern third parties involved in rescue attempts.
- Sanctions. Please describe national applicable legal provisions in case of breach of the obligation of professional secrecy like for example the provisions in national law in respect of the breach of professional secrecy (for example offences, penalties, enforcement).
- Cooperation Agreements. Describe your Ability to enter into cooperation agreements (subject to guarantees of professional secrecy).

Technical Annex II – Equivalence assessment under Article 260 of the Solvency II Directive

Part I: To perform an assessment under Guideline 9, national supervisory authorities should follow the steps described below.

A. Start of the assessment:

1) Within 20 working days from receipt of request under Article 260(1) of Solvency II Directive, the national supervisory authority should notify EIOPA as to the request received and provide the following details:

   a) Date of the request from the undertaking;

   b) Name of the requesting undertaking;

   c) Name of group to which the requesting undertaking belongs;

   d) Country or countries for which the assessment has been requested;

   e) Name and email of the contact person(s) in the national supervisory authority for the purpose of the assessment.

   The notification should also be communicated to the EU members of the group college.

   The requested national supervisory authority should, together with EIOPA, check if a decision on equivalence regarding that third country has already been taken by another national supervisory authority. If so, the following detailed steps are only necessary to take into account significant changes to the supervisory regime laid down in Title I of Solvency II Directive and to the supervisory regime in that third country.

2) If no decision has been previously taken, the national supervisory authority should request EIOPA to circulate the information to its Board of Supervisors within 5 working days from the receipt of the notification, asking for details on any material interest from national supervisory authorities in the equivalence assessment relating to the undertakings that they supervise.

3) National supervisory authorities should provide such details within 15 working days to the person responsible for the assessment at the corresponding national supervisory authority and to EIOPA.

4) Within 20 working days from the receipt of the request under Article 260(1) of Solvency II Directive, the national supervisory authority should contact the third country supervisor to notify them of the request and to ask them if they want to participate or cooperate in the assessment, indicating the proposed timeline for the assessment to the third country supervisor. The notification should be communicated to EIOPA.

5) The national supervisory authority should ask the third country supervisor to provide a reply within 20 working days since the date it receives the request.

B. Undertaking the assessment:

6) Within 10 working days from the receipt of a reply from a third country supervisor refusing cooperation, and after having discussed the issue with EIOPA, the national supervisory authority should issue the decision ending the assessment process stating that it does not find the third country equivalent due to absence of supporting evidence. The national supervisory authority should decommission the assessment team and inform EIOPA of the outcome.

7) The decision should be notified to the requesting undertaking, EIOPA and national supervisory authorities. Furthermore, the national supervisory authority should decommission any resources allocated to the assessment and end the process.

8) Within 10 working days from the receipt of a reply from the third country supervisor confirming cooperation in the assessment, the national supervisory authority should initiate the information collection process by sending questionnaire in Part II of this Technical Annex. National supervisory authorities should allow the third country supervisor at least 40 working days to provide the information. The national supervisory authority should copy the request for information to EIOPA.

9) By the deadline for receipt of the responses to the questionnaire from the third country authority, the national supervisory authority should have in place the assessment team with appropriate expertise, knowledge and experience which should comprise experts coming from other national supervisory authorities where agreed and EIOPA.

10) On receipt of the third country response to the questionnaire, the national supervisory authority should begin the desk-based assessment. This stage should be allowed a minimum of 40 working days.

11) During the desk-based assessment, the national supervisory authority should ensure it has all information its needs in order to pursue the assessment and request additional clarifications from the third country supervisor/requesting undertaking, as appropriate. EIOPA should be kept informed of the assessment progress in order to be able to assist the group supervisor. At all times, the communications should be well documented.

12) During the desk-based assessment, the national supervisory authority should also utilise data/information from a variety of other sources, as appropriate. The national supervisory authority should ask EIOPA to bring to its attention any pertinent information in its possession or provided by other national supervisory authorities.

13) In undertaking the assessment, each criterion as provided in article [368GSTCE1] of the [draft Implementing Measures of Solvency II] should be assessed using 5 categories: fulfilled, largely fulfilled, partly fulfilled, not fulfilled and not applicable. For a criterion to be considered fulfilled, the third country supervisory authority must provide evidence that:

    a) The relevant national provisions which may include legal, regulatory and/or administrative provisions exist; and

b) The national provisions are applied effectively in practice.

14) Where national provisions are not in place at the time of the assessment, the national supervisory authority should note in the assessment report the proposed improvements, where appropriate.

C. Outcome of equivalence assessment or results:

15) At the end of the assessment period, the national supervisory authority should draft a report containing the following:

a) Short presentation of the national supervisory authority's actions and their chronology;

b) Indication/details as to how the information was collected – when it originates outside of a third country supervisor submission;

c) An overview of the third country's market;

d) Detailed analysis of the relevant aspects of the third country's supervisory system;

e) Outcome of the analysis performed by the national supervisory authority which should provide the findings for each of the criteria set out by Art. [368GTCE1];

f) Conclusion of the equivalence assessment, which should be one of the following:

i. Country A is equivalent under the criteria set out by Art. [368GTCE1] in Directive 2013/YYY/EC;

ii. Country A does not meet the criteria and is not equivalent.

16) The national supervisory authority should communicate the draft report to college members and EIOPA. The national supervisory authority should also request EIOPA to further communicate the conclusions to other national supervisory authorities. National supervisory authorities should comment within a period of 20 working days, and the national supervisory authority should consider carefully in cooperation with EIOPA any observations it receives as a result of this process before finalising its conclusions.

17) Following this step, the national supervisory authority should share the report with the third country supervisor for a factual accuracy check. The third country supervisor should be allowed a minimum of 15 and a maximum of 25 working days to present its comments on the factual accuracy.

18) In case comments from the third country supervisor are received, these should be considered by the national supervisory authority and the report should be revised as appropriate before its finalisation.

19) Following the decision on the third country's equivalence by the national supervisory authorities, the outcome and supporting analysis should be communicated to EIOPA with the request to distribute the report and supporting analysis among its membership via the restricted area of the website.

20) Within 10 working days from the day EIOPA circulated the proposed equivalence decision and rationale under paragraph 19, national supervisory authorities should lodge via email to EIOPA any objections to the decision taken. The national supervisory authority should not communicate any decision to the requesting undertaking until this period has elapsed and no objections have been lodged. Should objections be lodged, the group supervisor should consider the objections before confirming its decision to EIOPA and communicating the result to the undertaking.

Part II - Template Questionnaire:

1) Please provide a comprehensive presentation of your supervisory authority, including details as to:
   - A legal basis specifying supervisory responsibilities and enforcement powers;
   - Freedom from undue political, governmental and industry interference in the performance of supervisory responsibilities;
   - Transparency of supervisory processes/procedures;
   - Adequate financial and non-financial (e.g. sufficient numbers of appropriately skilled staff) resources;
   - Appropriate protection from being liable for actions taken in good faith.
2) Please provide details as to supervisory powers available to the authority in respect of undertakings in difficulties (solo) / ultimate parent undertakings in difficulties (groups), which may include:
   - Prohibition of disposal of assets;
   - A recovery plan, finance scheme;
   - Reestablishment of the level of own funds, reduction of risk profile;
   - Downward revaluations;
   - Preventing the conclusion of new contracts;
   - Withdrawal of authorisation;
   - Measures relating to directors, managers, controllers and other relevant persons.
3) Please offer a detailed overview of the enforcement actions available to the authority including as to the supervisory authority's ability to cooperate with other authorities/bodies in respect of enforcement action.
4) Please provide information on your authority's powers to take preventative and corrective measures to ensure that insurance and reinsurance undertakings comply with the applicable laws, regulations and administrative provisions including details as to the authority's:
   - Ability to ensure compliance on a continuous basis with laws, regulations and administrative provisions (including through on-site inspections) including measures to prevent/penalise further infringements;

- Ability to communicate concerns, including those relating to the undertaking's/group's financial position;
- Ability to oblige the (re)insurer to respond to concerns raised by the supervisor;
- Ability to obtain all information necessary to conduct the supervision of the undertaking /group.

5) Please indicate whether in the exercise of your general duties, you are duly considering the potential impact of your decisions on the stability of financial systems globally, particularly during emergency situations, on the basis of the information available at the time.
    - Please provide any examples of actions recently undertaken in this respect;
    - Please provide details as to regulatory requirements as to information sharing in crisis/normal situation with foreign supervisors;
    - In the context of group supervision, please provide details as to regulatory requirements as to information sharing in crisis/normal situations which may include:
        - ❖ Ability/Willingness to submit information on intra-group transactions;
        - ❖ Exchange of prior information on decisions that could affect the solvency of the entities belonging to an EEA Member State;
        - ❖ Ability/Willingness to allow the transfer of cash;
        - ❖ Ability/Willingness to support restrictions on free assets for supervised entities.
6) Please indicate whether you are taking into account the potential pro-cyclical effects of your actions where exceptional movements in the financial markets occur.
    - Please provide any examples of actions recently undertaken in this respect.
7) In the context of group supervision, please explain your supervisory powers/arrangements/requirements for cooperation with other countries. Please indicate whether:
    - Under your national provisions, you may act as group supervisor for the entirety of groups domiciled in your jurisdiction;
    - Where you are the group supervisor, do you act as the point of contact for key questions at group level and take responsibility for:
        - ❖ The coordination and dissemination of information;
        - ❖ Review of the groups' financial position;
        - ❖ Planning and coordination of supervisory actions in respect of the group as a whole;
        - ❖ Establishment of a framework for crisis management;

    - ❖ Assessing of the application for a group internal model if relevant and taking your decision in consultation with other supervisory authorities concerned.

- As group supervisor do you have the prerogative to consult and involve in advance the relevant supervisory authorities concerned in case you intend to carry out an inspection in an (re)insurance undertaking situated in the EEA?
- Do you have provisions in place for the establishment of cooperation arrangements, which allow that:
    - ❖ A college of supervisors or similar cooperation arrangements can be established composing a minimum of all relevant authorities for the group supervision under the following criteria: Relevance of the group to overall financial stability; Relevance of the group in specific insurance market; Similarity of supervisory practices; The nature and complexity of the business undertaken by the group;
    - ❖ In case a College of supervisors or similar cooperation arrangements are established, the functioning and organisation of these mechanisms is based on written arrangements, including provisions on obligation to cooperate/exchange of information and decision-making processes (aimed at consensus);
    - ❖ Please indicate whether there is a dispute solving mechanism in case of disagreement with other relevant supervisory authorities, and if so provide details.

8) Please describe the applicable regime with regard to the professional secrecy obligations the authority must observe (please include in all answers references to any laws and regulations relevant in this context):

- Legal Obligation. Please explain the legal obligation to keep supervisory information confidential, in particular:
    - ❖ Identification of confidential information;
    - ❖ Legal duty to protect confidential information;
    - ❖ Applicable to all relevant individuals (i.e. all those who work, have worked or act(ed) on behalf of the supervisory authority, regardless whether they are/were staff, board members, or e.g. external experts);
    - ❖ On-going obligation (applicable whilst working/acting on behalf of supervisory authority and on continuous basis thereafter).
- Use of information. Please explain the restrictions on the use of confidential supervisory information, in particular how information must only be used in the course of supervisory duties of:
    - ❖ Compliance monitoring (including monitoring of technical provisions, solvency margins, administrative/accounting procedures and internal controls);
    - ❖ Imposition of penalties;

- Court proceedings/appeals.

- Disclosure. Please explain under what circumstances information may be disclosed to third parties (i.e. all persons/institutions outside the authority):
  - Explain whether prior explicit consent of the authority where the confidential information originates is a precondition to onwards disclosure;
  - Explain whether there are situations where information is mandatory to disclose to third parties (e.g. courts, prosecutors, governmental bodies). Describe the preconditions to disclosure as well as the purposes for which information may be disclosed, and the means your authority could use to resist disclosure. Use practical examples to illustrate practical constellations;
  - Explain the procedure with regard to civil/criminal proceedings (where the undertaking has been declared bankrupt or is being compulsorily wound up): information to be disclosed must not concern third parties involved in rescue attempts).
- Sanctions. Please describe national applicable legal provisions in case of breach of the obligation of professional secrecy like for example the provisions in national law in respect of the breach of professional secrecy (for example offences, penalties, enforcement).
- Cooperation Agreements. Describe your ability to enter into cooperation agreements (subject to guarantees of professional secrecy).

9) Please describe the applicable provisions regarding the existence and extent of provisions with regard to your ability to exchange information with:
   - Supervisory authorities including in relation to authorisation and suitability assessments covering individuals, as well as communication of concerns regarding financial soundness of supervised undertakings/groups;
   - Other authorities/bodies/persons/institutions responsible for, or having oversight of:
     - supervision of financial organisations/markets;
     - liquidation/bankruptcy proceedings;
     - carrying out statutory audits of accounts;
     - detection/investigation of breaches of company law.
   - Central banks;
   - Government administrations responsible for financial legislation (for reasons of prudential control);
   - Other authorities/bodies/persons/institutions (please indicate).

10) Please provide an overview of the governance requirements applicable in your regime, particularly whether there are requirements for groups to have an effective system of governance, including:

- a transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
- an effective system for timely transmission of information;
- written policies; and
- contingency plans.

11) Please describe the applicable requirements relevant to the fitness (for example appropriate professional qualification, knowledge and experience) and propriety (for example good repute and integrity) of management and key function holders.

12) Please provide an overview of the risk management requirements applicable in your regime, particularly whether there are requirements for groups to have:

- an effective and well integrated risk management system aimed at identifying, measuring, monitoring, managing and reporting (on a continuous basis) the risks to which the group is or could be exposed (on an individual and aggregated level, with regard to interdependencies); and
- a risk-management function structured in such a way as to facilitate the implementation of the risk management system.

13) Please provide an overview of any requirements for the group to assess its own solvency needs taking into account its risk profile, risk tolerance limits and business strategy (comparable to an own risk and solvency assessment).

14) Please describe any provisions which ensure that groups have an effective, objective and independent internal audit function whose findings and recommendations are reported to the administrative, management or supervisory body.

15) Please provide an overview of the internal control requirements applicable in your regime, including any requirements for the group to have:

- administrative/accounting procedures;
- an internal control framework;
- appropriate reporting arrangements at all levels of the group; and
- a compliance function (please provide details of the responsibilities of that function).

16) Please indicate whether and under which conditions an actuarial function is required by your system. Please set out the responsibilities of this function and any specific requirements in terms of expertise or qualifications.

17) Please provide information on the existence/extent of provisions in relation to outsourcing, including as to:

- whether insurance groups remain responsible for discharging their regulatory obligations when they outsource functions or activities;

- any circumstances where groups are not permitted to outsource critical or important functions or activities;
- notification to the supervisory authority prior to outsourcing of critical or important functions or activities; and
- whether it is possible for the supervisory authority to conduct inspections of outsourced activities.

18) Please provide details as to requirements that ensure groups have procedures in place to identify deteriorating financial conditions and notify the supervisory authorities.
19) Please provide details as to the existence and extent of the auditors' duty to report:
    - Breach of laws, regulations, administrative provisions;
    - Issues which may affect the continuous functioning of the undertaking;
    - Refusal (or reservations) in respect of certification of accounts;
    - Non-compliance with capital requirements.
20) Please provide a comprehensive overview of what information groups are required to disclose publicly, and with what frequency. In particular, please cover whether there are requirements for groups to disclose information regarding their:
    - Business and performance;
    - System of governance;
    - Risk exposure, concentration, mitigation and sensitivity;
    - Valuation bases and methods for assets, technical provisions and other liabilities;
    - Capital management, including the amount of their own funds and capital requirements;
    - Significant intra-group transactions and significant risk concentrations.
21) Please describe the type and frequency of accounting, prudential, statistical information obtainable by the supervisory authority.
22) Please provide information on the existence/extent of provisions and supervisory powers in respect of acquisitions, including as to:
    - Notification of intention to hold or increase directly or indirectly a qualifying holding;
    - Right of supervisory authority to oppose proposed acquisition as well as ability to suspend voting rights and/or ability to annul casted votes;
    - Existence of thresholds prompting notification;
    - Possibility for assessment of acquisition by financial undertakings to be subject to prior consultation.

23) Please provide information on the existence/extent of provisions and supervisory powers in relation to disposals, including as to:

- Notification of intention to dispose directly/indirectly of a qualifying holding;
- Thresholds prompting notification.

24) Please provide information on the existence/extent of provisions and supervisory powers regarding the information obtainable from an undertaking, including as to:

- Thresholds prompting notification of acquisitions/disposals;
- Regular notification (e.g. annual) of qualifying holdings, including size.

25) Please provide information on the existence/extent of provisions and supervisory powers in relation to the requirements for on-going assessment, approval and disclosure of relevant information, including information in respect of:

- Portfolio transfers or transfer of individual contracts (e.g. in the context of reinsurance contracts);
- Changes to management; and
- Scheme of operation.

26) Please provide details as to existence and content of standards and supervisory powers in respect to the undertaking's obligation to provide information on assessment of reputation and financial soundness of the new owner/acquirer.

27) Please provide information on the existence, content and extent of provisions in respect of financial supervision, including as to:

- Verification of state of solvency and financial condition of undertaking /of the group;
- Verification of establishment and ability to request increase of technical provisions and covering assets;
- Obligation of undertaking to submit financial reporting to supervisor.

28) Please describe provisions as to rules for valuation of assets and liabilities, and indicate whether the following are applicable:

- The valuation of assets and liabilities is based on an economic valuation of the whole balance sheet;
- Assets and liabilities are valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
- Valuation standards for supervisory purposes are consistent with international accounting standards, to the extent possible[6].

29) Please provide details as to the legal and supervisory regime applicable in relation to technical provisions (TP) and indicate whether and/or how:

[6] IFRS provide principles and guidance for the calculation of fair value for almost all assets and liabilities that are significant to (re)insurance undertakings. As a result, referring to the general IFRS framework for the determination of an 'economic valuation' is a useful starting point for determining the financial position of the undertaking. However, EIOPA recognises that adjustments may have to be made for local GAAP when the impact on the balance sheet is significant.

- TP are established in respect of all (re)insurance obligations and aim to capture all expected risks related to (re)insurance obligations of the undertakings that are part of the group;
- TP are calculated in a prudent, reliable and objective manner;
- The level of TP is the amount a third country (re)insurance undertaking would have to pay if it transferred or settled its contractual rights and obligations immediately to another undertaking/knowledgeable willing party in an arm's length transaction;
- The valuation of TP is market consistent and makes use, to the extent possible, of and is consistent with information provided by financial markets and generally available information on underwriting risks;
- A segmentation of the (re)insurance obligations into appropriate risk groups and as a minimum by lines of business is carried out in order to achieve an accurate valuation of reinsurance obligations;
- Processes and procedures exist to ensure the appropriateness, completeness and accuracy of the data used in the calculation of TP;
- The supervisor is able to require the undertaking that is part of the group to raise the amount of technical provisions if it does not comply with the requirements.

30) Please provide details as to the regime applicable in relation to own funds including, where applicable, as to:

- Own funds are classified in accordance with their ability to absorb losses in the case of winding-up and on a going concern basis;
- The highest quality own funds are available to absorb losses in a going concern and in case of a winding up, with additional requirements of sufficient duration of the own fund item, absence of incentives to redeem, absence of mandatory servicing costs and absence of encumbrances;
- A distinction is made between own funds on the balance sheet and off-balance sheet items[7] (for example guarantees);
- According to their classification, own funds are eligible to cover partially or fully (for the best quality own funds) the capital requirements;
- Quantitative limits apply to the own funds to ensure the quality of own funds covering the capital requirements. In the absence of quantitative limits other supervisory requirements should ensure the high quality of own funds.

31) Please describe the applicable regulatory and supervisory regime in relation to investments providing details supporting that:

- Undertakings are only allowed to invest in assets and instruments where the risks can be properly identified, measured, monitored, managed, controlled and reported and appropriately taken into account in their solvency needs;

[7] Also referred to as "ancillary funds"

- Assets held to cover TP are invested prudently in the best interest of all policyholders and beneficiaries;
- All assets are invested in such a manner as to ensure the security, quality, liquidity, availability and profitability of the portfolio as a whole;
- Prudent levels of investments in assets not admitted to trading are required;
- Investment in derivative instruments are possible insofar as they contribute to a reduction of risks or facilitate an efficient portfolio management;
- There is avoidance of excessive reliance on any one particular asset, issuer or accumulations of risk; no excessive risk concentration.

32) Please provide details as to the legal and supervisory regime applicable in relation to capital requirements and indicate whether and/or how:

- Capital requirements are risk-based and aim to measure all quantifiable unexpected risks of the undertaking. Please cover the following points:
  - ❖ Where a significant risk is not captured in the capital requirements, please provide details as to the mechanism applied to guarantee that capital requirements adequately reflect such risk;
  - ❖ How the capital requirements reflect a level of own funds that would enable the undertaking to absorb significant losses and that gives reasonable assurance to policyholders and beneficiaries that payments will be made as they fall due;
  - ❖ What is the calibration target for the capital requirements? Do the requirements enable the undertaking at a minimum to withstand a 1 in 200 ruin scenario over a one year period or ensure that policyholders and beneficiaries receive at least the same level of protection;
  - ❖ The calculation of capital requirements shall ensure an accurate and timely intervention by supervisory authorities of the third country;
  - ❖ Obligation on undertakings to communicate concerns relating to their financial position;
  - ❖ Obligation on undertaking to respond to concerns raised;
  - ❖ The supervisory authority has powers to take the necessary and appropriate actions against the undertaking to restore compliance with that requirement;
  - ❖ Appropriate standards are in place where capital requirements take into account the effect of risk mitigation techniques.
- There is a minimum level under which capital requirements should not fall which equates to a minimum level of policyholder protection which triggers immediate and ultimate supervisory intervention action.
- Solo and group capital requirements are calculated at least annually and monitored on an on-going basis.

33) If your regime provides for the use of internal models, please describe the applicable provisions regarding specificities of assessment of internal models in the context of assessing capital requirements, including information relating to the following areas:

- Where the (re)insurance undertaking uses a full or a partial internal model to calculate its capital requirements, the resulting capital requirements provide a level of policyholder protection that is at least comparable to the level that would be required under local rules if no internal model is used (i.e. it adequately models the risks the undertaking is or could be exposed to and provide capital requirements with the same confidence level as the standard approach);
- The regime has a process for the approval of internal models which includes a requirement for prior approval of the internal model before the undertaking is permitted to use the model to determine its regulatory capital requirements;
- The applicable regime includes the following requirements for an internal model to be used to calculate regulatory capital:
    - ❖ A pre-requisite for an adequate risk management system;
    - ❖ The internal model is widely used in and plays an important role in the undertakings system of governance (use test);
    - ❖ Statistical quality standards;
    - ❖ Validation standards;
    - ❖ Documentation standards;
    - ❖ Calibration standards;
    - ❖ Profit and loss attribution.
- Where a (re)insurance undertaking uses a partial internal model to calculate its capital requirements, the scope of the partial internal model is clearly defined and justified to avoid the "cherry picking" of risks. Please provide any supporting information to demonstrate that there is no ambiguity as to which risks, assets and/or liabilities are included or excluded from the scope of the partial internal model.

34) Please provide details as to the legal and supervisory regime applicable in relation to group capital requirements and indicate whether and/or how:

- Appropriate standards are in place where capital requirements take into account the effect of risk mitigation techniques and diversification effects at group level;
- In order to reflect the total risks that the group may face, the group solvency capital requirement also reflects the risks that arise at the level of the group and that are specific to the group;
- The calculation methods used for determining the group capital requirement.

35) Please provide details as to the regime applicable in relation to group own funds including, where applicable, as to provisions requiring that:

- Double use of own funds and the intra-group creation of capital through reciprocal financing is eliminated;
- Non-fungible/non-transferable own funds are restricted by the group supervisor and are subject to related reporting requirements;
- Solo deficits of regulated entities in the group are fully taken into account at group level unless the group can prove that its responsibility is limited to its proportional share of the capital;
- The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings. However, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its prescribed Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

36) Please explain what entities are included in the scope of group supervision. Does it include entities over which a group exercises a dominant[8] or significant influence[9]?

37) Please indicate your approach, as group supervisor, to informing other supervisory authorities concerned where you have decided that an entity within the group should be excluded from group supervision. In communicating with the other supervisory authorities in such cases do you include the reasons for this decision?

38) Please provide any other relevant information on how your regulatory framework provides for a single identified group supervisor responsible for coordination and exercising group supervision.

[8] Directive 80/723/EEC – Art. 2: A dominant influence shall be presumed when an undertaking,, directly or indirectly in relation to another undertaking: (a) holds the major part of the undertaking's subscribed capital; or (b) controls the majority of the votes attaching to shares issued by the undertakings; or (c) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

[9] Directive 83/349/EEC: Art. 33 – “An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking”

2. Explanatory text

Guideline 1- General principles

National supervisory authorities should apply the following overarching principles underpinning equivalence assessments:

a) Equivalence assessments aim to determine whether the third country supervisory system provides a similar level of policyholder/beneficiary protection.

b) Equivalence assessments are a flexible process based on the criteria set in [articles 366GTCE1 and 368GSTCE1 of the draft implementing measures] which develop the relevant supervisory principles embedded in Directive 2009/138/EC (Solvency II Directive).

c) With the exception of the professional secrecy criterion, equivalence assessments take into account the proportionality principle.

d) Equivalence of professional secrecy regime in the third country is a precondition for a positive equivalence finding on the third country group supervisory regime.

e) An equivalence judgement can only be made in respect of the regime in existence and applied by a third country supervisory authority at the time of the assessment.

f) It is necessary for the assessment to cover all elements of the third country supervisory regime not only those elements directly relevant to the group that has requested the assessment.

g) Positive equivalence assessments need regular review.

2.1. In line with the spirit and text of the Solvency II Directive, national supervisory authorities are expected to assess whether the third country supervisory system provides for a similar level of policyholder protection as under Solvency II to be considered equivalent. In order to assess the level of policyholder protection under a third country supervisory regime, national supervisory authorities should not be seeking to establish whether a third country employs identical means of achieving policyholder protection. The national supervisory authorities should establish via their equivalence assessment whether the criteria in articles [366GTCE1] and [368GSTCE1] are met.

2.2. The OMDII introduces text that removes the possibility for national supervisory authorities to take divergent equivalence decisions regarding the same third country. As binding mediation would then become the only remedy, any insurance supervisory authority under the Solvency II framework shall be deemed concerned for the purpose of these Guidelines.

2.3. Professional secrecy is the basis for all supervisory cooperation among EEA and third country supervisors. National supervisory authorities need to ensure that appropriate professional secrecy and confidentiality requirements are in place allowing for the exchange of information with the third country supervisor concerned. When pursuing the assessment of the requirements relating to professional secrecy, the principle of proportionality will not apply.

2.4. When pursuing an equivalence assessment, proper consideration should be given to the adequacy of third country practice in applying a proportionality principle. A proportionality principle in the application of regulatory provisions in third country jurisdictions (contingent upon the nature, scale and complexity of the risks inherent in the business) should not in itself be an obstacle or a prerequisite to the recognition of equivalence.

2.5. The proportionality principle relates to how rules are applied, but does not extend to their non-application for certain undertakings/types of undertakings. National supervisory authorities should take into account the application of the proportionality principle under the Solvency II regime.

2.6. Plans and on-going initiatives for changing the third country national supervisory regime should not be considered an adequate support for a positive equivalence finding until their actual implementation.

2.7. Positive equivalence assessments should be kept under regular review in order for the national supervisory authority to take into account any developments that might lead to relevant changes in the third country supervisory regime. National supervisory authorities, in conjunction with EIOPA, should review their assessments at least every 3 years or upon learning of significant developments within jurisdictions already found equivalent that may be relevant to the equivalence determination.

Guideline 2- Equivalence assessment request

National supervisory authorities should notify EIOPA, upon receipt of a request to undertake an equivalence assessment according to articles 227 and/or 260 of Solvency II Directive, within 20 working days from receipt of the request whether:

a) It wishes to undertake the assessment at national level, assisted by EIOPA and consulting the other national supervisory authorities concerned; or
b) It wishes to request an assessment to EIOPA. The requesting national supervisory authority should participate in the technical assessment.

Guideline 3- Assessment by EIOPA

National supervisory authorities should, where they decide to request an assessment to EIOPA, provide the following information via email together with their request:

a) Date of the request from the undertaking;
b) Name of the requesting undertaking;
c) Name of the group to which the requesting undertaking belongs;
d) Country or countries for which the assessment has been requested;
e) Name and email of the contact person(s) in the national supervisory authority for the purpose of providing details on the assessment request.

Guideline 4- Assessment by EIOPA

The national supervisory authority acting as group supervisor should, where the assessment is undertaken by EIOPA, take into account the conclusion of the assessment provided by EIOPA in the equivalence decision.

Guideline 5- Communication of the group supervisor's decision

The national supervisory authority acting as group supervisor should communicate to EIOPA the outcome and rationale for its proposed decision which will be made available to all national supervisory authorities.

Guideline 6- Objections to the group supervisor's decision

National supervisory authorities should send via email to EIOPA any objections to the proposed decision within a maximum of 10 working days from the day EIOPA circulates the equivalence decision and rationale under Guideline 5.

Guideline 7- Final decision of the group supervisor

The national supervisory authority acting as group supervisor should wait until the stipulated period in Guideline 6 has elapsed and consider any objection before confirming its decision to EIOPA and communicating the result to the undertaking.

2.8. In accordance with article 33 of Regulation No 1094/2010, EIOPA is expected to assist in "preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the acts referred to in Article 1(2)" [among which Directive 2009/138/EC is listed].

2.9. The national supervisory authorities are provided with an interval of 20 working days to decide on the approach to follow in respect of a request to undertake an equivalence assessment. In the spirit of transparency and cooperation, the national supervisory authority should inform EIOPA as soon as possible of the receipt of the request.

2.10. National supervisory authorities that have been requested to undertake an equivalence assessment may ask that the Board of Supervisors mandates EIOPA to undertake the equivalence assessment via its dedicated working group/structure(s). This approach would allow involvement of experts from all countries interested, pooling of resources and knowledge.

2.11. Should the national supervisory authority's request be accepted by the BoS, then the dedicated working group/structure(s) for equivalence assessments is mandated to undertake the assessment work. EIOPA working group/structure(s) will take responsibility for the execution of the technical equivalence assessment. The national supervisory authority will be expected to participate fully in the assessment.

2.12. The actual equivalence decision belongs to the relevant group supervisors. The technical assessment provided by the EIOPA working group/structure(s) should be used as the technical basis for the equivalence decision at national level.

Guideline 8– Assessment at national level

When they decide to undertake an equivalence assessment under article 227 of the

Directive, national supervisory authorities should organise their work in such a manner that it complies with the actions and deadlines outlined in Technical Annex I.

2.13. EIOPA considers that the active cooperation of the third country supervisor and its ability to exchange information under conditions of professional secrecy are critical for effective group supervision. Therefore, the active cooperation of the third country supervisor in the equivalence assessment is expected.

2.14. Nevertheless, as the criteria set in Art.[366GTCE1] of the [draft Implementing Measures of Solvency II] do not include a criterion for supervisory cooperation, national supervisory authorities can technically still pursue Article 227 of Solvency II Directive equivalence assessments in the absence of confirmation of willingness to participate from the third country supervisory authority should all relevant information be made available to them. As this is upon the request of an undertaking, then the undertaking should produce all needed documentation.

2.15. EIOPA will assist the national supervisory authority undertaking the assessment process. National supervisory authorities should inform EIOPA as to requests received and request that EIOPA disseminates the information among its Membership. As equivalence judgements are made in relation to a system rather than for the sole use of a group, this will allow supervisory authorities to be aware of developments and to potentially cooperate in such assessments.

2.16. In the context of the process at national supervisory authority level, the national supervisory authority may request EIOPA to pursue a call for evidence in order to allow any interested parties an opportunity, early in the process, to bring to assessors attention any factors that they think may be relevant to the equivalence assessment. In line with EIOPA practice, the information provided under a call for evidence should be considered by the supervisory authority but not be published. Neither should the national supervisory authority respond to the points made.

2.17. It is important that the assessment team established has the right balance of expertise, knowledge and supervisory experience. The assessment teams should at a minimum include/have access to:

a) Financial requirements expertise (pillar I issues) including actuarial expertise;

b) Group supervision expertise;

c) Legal expertise.

2.18. The number of assessors per team should be no less than 3. The assessment team size should reflect the complexity of the third country supervisory system being assessed.

2.19. Where necessary, the national supervisory authority may request additional evidence from the respective third country supervisory authority/undertaking including by way of follow-up written clarifications, telcos, face to face meetings etc.

2.20. A thorough analysis of the information received, including practical evidence, should be carried out.

2.21. While the responses of the third country supervisor to the questionnaires issued by the national supervisory authority, or the undertaking input, should form the basis of the assessment, the supervisory authority should not be restricted to considering only this material.

2.22. The national supervisory authority may also consider other relevant information available, where appropriate, such as any assessment carried out by the IMF or World Bank. However, such information will only be used as supporting information for an equivalence assessment.

2.23. The information provided by the third country supervisor authority should be subject to professional secrecy requirements unless clearly already in the public domain.

2.24. An on-site visit to the third country, in which EIOPA staff should participate, may be arranged as a means of obtaining information/clarifications after the initial desk-based assessment. EIOPA considers it may be useful for the national supervisory authority pursuing an equivalence assessment to have discussions with the third country supervisory authority on the assessment in order to clarify any issues. An on-site visit usually allows a better understanding of how the supervisory authority operates in practice.

Guideline 9- Assessment at national level

When they decide to undertake an equivalence assessment under article 260 of the
Directive, national supervisory authorities should organise their work in such a manner that it complies with the actions and deadlines outlined in Technical Annex II.

2.25. EIOPA considers that the active cooperation of the third country supervisor is determinative in terms of pursuing the equivalence assessment in relation to group supervision framework of a third country. The refusal of a third country supervisor to cooperate in an equivalence assessment under Article 260 of Solvency II Directive deprives the EU group supervisor of the ability to access the practical experience of group supervision in the third country.

2.26. It is important that the assessment team established has the right balance of expertise, knowledge and supervisory experience. The assessment teams should at a minimum include/have access to:

a) Financial requirements expertise (pillar I issues) including actuarial expertise;

b) Governance /supervisory review expertise;

c) Group supervision expertise;

d) Legal expertise.

2.27. The number of assessors per team should be no less than 4. The assessment team size should reflect the complexity of the third country supervisory system being assessed.

2.28. All other considerations discussed in paragraphs 2.13 to 2.24 regarding process outlined under Guideline 8 remain, mutatis mutandis, applicable in the context of an Article 260 of Solvency II Directive Equivalence assessment.