

**Cover note for the Consultation
On Guidelines on the
Operational Functioning of Colleges**

1. Introduction

- 1.1. EIOPA invites comments from stakeholders on the Guidelines on the Operational Functioning of Colleges.
- 1.2. Comments are due by 30 June 2014, using the template provided on EIOPA's website.
- 1.3. EIOPA's aim is to allow (re)insurance groups to prepare themselves by setting out all requirements for effective and efficient cooperation with the supervisors in the frame of colleges. This will benefit for example the preparatory efforts that are being undertaken by undertakings and supervisors for the approval processes of internal models, and hence supports further the consultation on the Implementing Technical Standards that are being launched at the same time in this area.
- 1.4. The Commission's Delegated Acts containing the implementing measures are not public; where reference is being made to draft articles of the implementing measures, an annex accompanies the consultation listing the relevant articles. This annex is not subject to the consultation.

2. Nature of guidelines

- 2.1 Guidelines (GL) are non-binding instruments addressed to National Competent Authorities (NCAs) or Financial Institutions, with the aim of ensuring the common, uniform and consistent application of Union law as well as with a view to establishing consistent, efficient and effective supervisory practices drafted by EIOPA in accordance with Article 16 of the Regulation establishing EIOPA.¹ They shall be in line with the empowering regulation and delegated acts which the GL are aiming to clarify.
- 2.2 The NCAs shall make every effort to comply: within a period of two months following the issuance of the Guidelines, they shall report to EIOPA whether they comply, intend to comply or do not comply with the GL. When reporting non-compliance, the NCA shall state the reasons for this non-compliance. EIOPA publishes the replies; the reasons for non-compliance are only published on a case-by-case basis.
- 2.3 EIOPA publishes the status of the compliance, but the reasons for non-compliance are only published on a case-by-case basis.
- 2.4 EIOPA has the obligation to list in its Annual Report the NCAs that reported non-compliance as well as the measures to be taken. A report on the compliance will be sent to the COM, EP and Council.

¹ Regulation (EU) no 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority).

- 2.5 As for any policy development tool EIOPA will conduct a public consultation, perform a cost and benefit analysis (Impact Assessment) and consult the relevant Stakeholder Group for their opinion.
- 2.6 EIOPA will adopt and translate the Guidelines, which will be published on its website.

3. The aim of the guidelines and expected benefits

- 3.1 Article 248(6) SII Directive (OMDII) explicitly requires EIOPA to issue guidelines on the operational functioning of colleges.
- 3.2 The guidelines have been drafted with the following aims in mind:
- Specify responsibilities of college members and participants;
 - Clarify and enhance the cooperation between competent supervisory authorities for cross-border groups;
 - Enhance information-sharing among supervisors and communication to the group;
 - Enhance the single market level playing field by ensuring a consistent approach among colleges.
- 3.3 In drafting the guidelines, EIOPA has aimed to reach an appropriate balance between practical solutions and necessary requirements to ensure the proper functioning of colleges, while minimising the burden on supervisors and undertakings alike.
- 3.4 The guidelines should achieve the following benefits for supervisors:
- A step-by-step approach to set-up colleges
 - Exchange of qualitative and quantitative information including a list of ratios and selected data to be exchanged on a regular basis for improving information exchange
 - A shared view on the business' financial position and the risks of the group and major individual entities of the group as part of the supervisory review process
 - Templates to prepare the Coordination Arrangements and the Emergency Plan
- 3.5 Supervisors and, indirectly, consumers should benefit from:

- Detection of potential serious financial disturbances at an early stage
- Coordination of supervisory actions in emergency situations

3.6 The groups should benefit from:

- Facilitated communication with supervisors by organising regular meetings and coordinating information requests to avoid duplications;
- Ensure equal treatment of groups through the standardisation of information requests within colleges and the facilitation of applications and approval process

4. Key features of the guidelines

4.1. The guidelines deal with processes for the:

- Establishment of the College of Supervisors, the initial meeting of the College

The establishment of the college will start with the identification of the college members and participants in the EEA and third countries through a mapping of the group. This will require the assessment of the significance and materiality of the undertakings of the group.

- On-going functioning of the College

To ensure an efficient on-going functioning of the College, specialised teams can be set up for certain work streams or projects.

Also the tasks of the group supervisor shall be developed, communication channels and a work plan for the college shall be established.

- Joint and local examinations

The purpose of joint examinations is to allow supervisors to verify in specific cases information according to Art.255 of Directive 2009/138/EC deemed appropriate for the supervision of the group or entities within the group.

- Delegations of tasks

The purpose of delegation of tasks is to assign tasks to supervisors well placed to exercise supervision in an effective and efficient way, so as to avoid duplication of tasks, optimise supervisory resources and expertise and remove unnecessary burdens for the supervised undertakings.

4.2. Annexes within the guidelines provide:

- A Coordination Arrangement Template

A coordination arrangement is a document organising the cooperation among supervisors in a college regarding for example information sharing, the supervisory work plan, the assessment of risks, joint and local examinations, decisions and consultation processes, and the handling of emergency situations.

- An Emergency Plan Template

The emergency plan is a document organising the cooperation among supervisors in a college with regards to the identification, emergency alert, management, information exchange and external communication of an emergency situation.

- A list of ratios and selected data to be exchanged within colleges

For the college to form a shared view of the business and financial condition as well as the risks of the group and its main entities, relevant information has to be exchanged on a regular and ad hoc basis and in emergency situations. This information includes financial ratios and selected data supporting the risk analysis in the college.

5. **Proportionality**

- 5.1. The Solvency II Directive stipulates that its provisions should be applied in a manner that is proportionate to the nature, scale and complexity of the business of insurance and reinsurance undertakings.² In developing the Guidelines, EIOPA has duly considered the proportionality principle to ensure that the proposed guidelines will be applied in a manner that is proportionate to the nature, scale and complexity of the business of insurance and reinsurance undertakings.
- 5.2. In doing so, EIOPA has considered if more specific or additional criteria to nature, scale and complexity are appropriate within a particular context to ensure a proportionate application of the requirements.³ EIOPA has also considered where it may be appropriate to differentiate the requirements imposed to smaller insurance undertakings.⁴

² Numerous references are made in the Directive to proportionality, in particular in Article 29(3).

³ For example this could be achieved by the use of the terms 'significant' or 'material' to indicate that requirements do not have to be met in all circumstances.

⁴ For example through the use of a threshold.

5.3. It is important to underline that

- The principle of proportionality applies even where not explicitly mentioned: the application of the rules by supervisors must be carried out in a proportionate way at all times.
- The application of the proportionality principle should not be equated with a reduction or disapplication of the regulatory requirements. The application of the principle can equally demand that more stringent or detailed requirements are necessary with regard to particular risks or complexities.
- EIOPA cannot propose specific measures or treatments, for example for different types of undertakings as this may be inconsistent with the treatment specified in the Directive or Delegated Acts.

5.4. The proportionality analysis is undertaken in the framework of the policy development process and as part of the impact assessment, where the expected impact on the relevant stakeholders for the proposed policy is analysed. A specific section in the impact assessment annex documents the analysis.

5.5. In particular, the guidelines aim to ensure the proportionate treatment of groups by:

- Providing a template for coordination arrangements that may be adapted to specific situations when justified, i.e. timeframes;
- Providing a list of ratios and selected data that may be adapted to specific situations when justified.