



EIOPA-Bos-14/228

27 November 2014

Cover note for final reports on the Guidelines for Solvency II (set 1)

1. Introduction

- 1.1. EIOPA would like to thank stakeholders for their comments on the first set of Guidelines and their accompanying Impact Assessment for Solvency II.
- 1.2. The consultation was launched on 2 June 2014 and ended on 29 August 2014. 2156 comments were received from 27 stakeholders (3 stakeholders confidential).
- 1.3. EIOPA has developed the Guidelines based on Directive 2009/138/EC (hereafter "Solvency II Directive"), as amended by the Omnibus II Directive, and Commission's implementing measures published on 10 October 2014.
- 1.4. Following the period of public consultation, EIOPA has considered whether modifications to the Guidelines are necessary. All comments to all resolutions are being published together with the revised guidelines.
- 1.5. Following the publication of the final reports, the Guidelines are being translated in all European languages. At the stage of writing the final reports, the comply-or-explain procedure with the National Competent Authorities is planned to run from February until March 2015.

2. Nature of Guidelines

- 2.1. Guidelines are non-binding instruments drafted by EIOPA 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 in accordance with Article 16 of the Regulation establishing EIOPA.¹ They shall be in line with the empowering regulation and implementing measures which the Guidelines 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 Guidelines. 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 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 European Commission, Parliament 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).

- 2.4. As for any policy development tool, EIOPA conducts a public consultation, performs a cost and benefit analysis (Impact Assessment) and consults the relevant Stakeholder Group for their opinion.
- 2.5. Following the public consultation EIOPA intends to adopt the final Guidelines, which would then be translated and published on its website.

3. Summary feedback on the Consultation

- 3.1. EIOPA has issued Final Reports containing Guidelines in the following key areas:
 - Pillar 1, including on Own Funds, the Standard Formula SCR and Technical Provisions ;
 - Group Solvency;
 - Internal models;
 - Supervisory Review Process (SRP); and
 - Equivalence.
- 3.2. EIOPA also consulted on Guidelines regarding Governance and the Own Risk and Solvency Assessment. The Final Report on these guidelines will be published in February 2015.
- 3.3. A separate Final Report containing the impact assessment for the Guidelines accompanies this first set of Guidelines.
- 3.4. The particular issues relating to the different areas described in paragraph 3.1 are summarised in the separate Final Reports. The present note reflects on the general comments received from stakeholders on the first set of guidelines.

General comments on the appropriateness of the guidelines for the first day of application of Solvency II

- 3.5. In their responses to the public consultation various stakeholders, including the Insurance and Reinsurance Stakeholders Group, commented on the number of Guidelines in view of the first day of implementation of Solvency II, noting in particular that the Guidelines to be issued for the launch of Solvency II “should be essential to ensure the appropriate levels of harmonisation across Europe” and should be required to “complete the meaning of the elements of the directive and delegations acts” or “to avoid material inconsistency in the interpretation of those texts”.

- 3.6. As a consequence, EIOPA has taken particular care in addressing comments that touched on the legal consistency of the Guidelines with the Directive or Implementing Measures, or on the general appropriateness of the Guidelines in respect of the level of detail brought by the Guidelines. In this respect, EIOPA would like to thank stakeholders for the discussions that were held following the end of the consultation period with EIOPA experts and management on particular areas of concern.
- 3.7. EIOPA confirms that it has chosen to issue Guidelines in the areas set out in the draft consultation papers as they are considered to be essential for the convergent implementation of Solvency II from the first day of its application.
- 3.8. EIOPA also confirms that a proportionate approach has been taken as to the level of detail of the Guidelines.
- 3.9. Many comments were received in particular on the Guidelines on the classification of own funds, technical provisions and group solvency calculations. The comments ranged from finding the Guidelines to be "too detailed and restrictive" to being "inconsistent or duplicating the legal texts of the Directive or Implementing Measures."
- 3.10. EIOPA has carefully considered the detailed comments in this respect, and where appropriate, amended the text of the Guidelines.
- 3.11. In particular, EIOPA has ensured that its Guidelines are in line with the legal basis provided by the Directive and Implementing Measures. The final publication by the Commission of the Implementing Measures has helped to clarify positions in some important areas.
- 3.12. Where the Guidelines were found to be too detailed or restrictive, it should be acknowledged that convergence in key prudential areas cannot be achieved without a certain level of detail. EIOPA considers that the current wording of the Guidelines following the consultation has the right balance between a certain level of detail and a need for flexibility.
- 3.13. One of the main aims of the Guidelines is to specify the supervisory expectations related to the proper fulfilment of requirements laid down in the Solvency II Directive and Implementing Measures. Due to current diverging practice in many areas, EIOPA puts a particular emphasis on achieving convergence in key areas of Solvency II. For example, in the area of own funds they contribute towards a level playing field in terms of eligible funding as well as consistently high quality own-funds. The convergence in calculation methods of technical provisions should contribute to the comparability of the value of the liabilities of insurers and is essential for policyholder protection. Or also, harmonisation in the calculation of group solvency should enhance the efficiency and

transparency of cross-border activity. It should be noted that in many cases, stakeholders require more guidance or more detail, and this also varies according to the nature, scale and complexity of the undertakings' business. While pursuing the objective of establishing convergent practices in a currently non-convergent regulatory and supervisory reality, EIOPA has aimed to find a balance in the different expectations from stakeholders.

- 3.14. The application of the new regulatory framework will be refined in a continuous process and the appropriateness of the Guidelines will be reviewed based on further experience. A Questions and Answers process will accompany the publication of the Guidelines in all European languages in the first quarter of 2015, and this will be a key input to the continuous monitoring of the quality of the Guidelines, feeding into the identification of areas for future review.

Areas of particular attention in some Guidelines

- **SRP** – comments on impact and risk classification systems (*comment: "contrary to national law"*): EIOPA has introduced these measures for supporting a convergent implementation of the risk-based supervision in order to achieve a comparable risk assessment across Europe. The Guidelines affect the internal processes of NSAs and clarify the expectations that supervisors have in carrying out their reviews.

- **Group solvency calculation** – (*comment: "Guideline 5 goes beyond the Directive, as far as the Guideline makes the exemption of group supervision at the ultimate level in the Union for groups located in an equivalent third country conditional to criteria set out in the Guidelines."*): A case-by-case waiver is the most appropriate and legally sound way to reconcile Article 215 and Recital 99 of the Directive ("*Group supervision should apply in any case at the level of the ultimate parent undertaking which has its head office in the Community*") with Article 261 of the Directive ("*In the event of equivalent supervision referred to in Article 260, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraph 2.*") Paragraph 2 of Article 261 requires the application of Articles 247 to 258 *mutatis mutandis* to the cooperation with third-country supervisory authorities: the criteria regarding the cooperation with the third-country group supervisor were introduced to comply with the above mentioned provisions of Solvency II.

In the review following consultation, the Guideline was amended to reflect the two principles set out in Article 215 / Recital 99 on the one hand in the first paragraph, and the exception created by Article 261 on the second

hand in the following paragraphs. The three criteria were further specified to clarify the underlying requirements and the words "at least" deleted to form a close list of criteria. A reference was made to the acting group supervisor as defined in Article 260 of Solvency II and to groups outside the EEA subject to an equivalent third country group supervision to clarify the addressee and the scope of Guideline 5.

- **Technical provisions** - (comment: "*the Guidelines duplicate standards of good practices already defined in actuarial manuals*"): One of the key objectives of Solvency II has been, since its inception, to harmonise the calculation of technical provisions across Europe. The Guidelines will achieve the next level of convergence in the coordination of the calculation of technical provisions, reflecting indeed in some areas what can be considered good actuarial practices, but made applicable to all persons responsible for the (coordination of the) calculation of technical provisions in (re)insurance undertakings. EIOPA has particularly reviewed the Guidelines to ensure their appropriateness in some of the areas listed hereafter. For example, the application of proportionality in assessing whether approximations can be used to make data adjustments, was specified. As to the actuarial function, the Guideline has been redrafted to become less prescriptive and further clarifies that the actuarial function delivers a recommendation, not a decision, and that such recommendation is not solely the task of the actuarial function. As to the tests for the accuracy, robustness and market-consistency on economic scenario generators, EIOPA has further clarified the frequency of the test and that the calibration test should be performed in accordance with Recital 23 of the Implementing Measures. Furthermore, Guidelines were redrafted following comments asking for more clarity (e.g. hierarchy of methods for the calculation of the risk margin). Finally, as to the requirement for the separation of insurance obligations, the conditions which a separation method should have met, have been deleted.
- **Classification of own funds:** (comment: in various areas, stakeholders commented that the Guidelines would go beyond the legal basis of the Directive and Implementing Measures): EIOPA is of the view that the Guidelines provide a legally appropriate and suitably prudent implementation of the Directive or Implementing Measures. In particular, regarding some of the main stakeholder concerns, EIOPA considers the treatment of repayment and redemptions to be in line with the Implementing Measures that 'early calls' within the first 5 years are prohibited in any circumstances, unless an item is replaced by own funds of at least the same quality. Secondly, the supervisory approval of exchanges or and conversions of own-fund items at the issuance would not fulfil the *ratio legis* of the Implementing Measures, which requires the approval of such transactions. Also, as to the scope of repayment and redemption, EIOPA considers that it is difficult to argue that share

buybacks, repurchase plans or tender operations would not fall under the scope foreseen by the Implementing Measures. Furthermore, the Implementing Measures are clear that repayments and redemptions must be suspended upon the breach of the SCR; the Guidelines clarify that although a supervisory waiver can be sought, the undertaking needs in practice to be able to effect this suspension (i.e. based on the contractual arrangements) in case the waiver is not granted, or is not granted before the date on which the undertaking was due to make the payment.