EIOPA-BoS-15/106

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Final Report on public consultation No. 14/044 on Guidelines on methods for determining the market shares for reporting

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1. Executive summary

Introduction

According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation) EIOPA shall issue Guidelines addressed to competent authorities or financial institutions.

EIOPA shall, where appropriate, conduct open public consultations and analyse the potential costs and benefits. In addition, EIOPA shall request the opinion of the Insurance and Reinsurance Stakeholder Group (hereinafter "IRSG") referred to in Article 37 of EIOPA Regulation.

According to paragraph 11 of Article 35 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), EIOPA has developed guidelines on methods for determining the market shares for limited regular reporting.

As a result of the above, on 3 December 2014 EIOPA launched a public consultation on the draft Guidelines on methods for determining the market share for reporting. The Consultation Paper has also been published on EIOPA's website[1].

These Guidelines are addressed to competent authorities to ensure a coherent and consistent application of the methods used in the determination of the market shares by national competent authorities.

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/044) and the full package of the public consultation, including:

Annex I: Guidelines

Annex II: Impact Assessment

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[1] Consultation Paper

Next steps

In accordance with Article 16 of the EIOPA Regulation, within 2 months of the issuance of these Guidelines, each competent authority shall confirm if it complies or intends to comply with these Guidelines. In the event that a competent authority does not comply or does not intend to comply, it shall inform EIOPA, stating the reasons for non-compliance.

EIOPA will publish the fact that a competent authority does not comply or does not intend to comply with these Guidelines. The reasons for non-compliance may also be decided on a case-by-case basis to be published by EIOPA. The competent authority will receive advanced notice of such publication.

EIOPA will, in its annual report, inform the European Parliament, the Council and the European Commission of the Guidelines issued, stating which competent authority has not complied with them, and outlining how EIOPA intends to ensure that concerned competent authorities follow its Guidelines in the future.

2. Feedback statement

Introduction

EIOPA would like to thank the IRSG and all the participants to the public consultation for their comments on the draft Guidelines. The responses received have provided important feedback to EIOPA in preparing a final version of these Guidelines. All of the comments made were given careful consideration by EIOPA. A summary of the main comments received and EIOPA's response to them can be found in the sections below. The full list of all the comments provided and EIOPA's responses to them is published on EIOPA's website.

General comments

2.1. Information toward undertakings that have been granted an exemption

a) Stakeholders stressed the importance for undertakings to know well in advance that they would have to complete quarterly reporting or item-by-item reporting.

b) EIOPA believes this is a key point in order for undertakings to be prepared right on time for this reporting. As a consequence, an additional guideline has been drafted to stress that the National Competent Authorities should inform, within a reasonable timeframe, undertakings that they have been granted an exemption. However, no specific deadline has been set up at a European level, as this issue could be implemented in a different way at a national level, depending on specific provisions in administrative law.

2.2. Transition period once exemption ceased to exist

a) A few stakeholders raised the necessity, for some undertakings at least, to have a transitory period to implement reporting they were exempted from, once the exemptions, they have been granted, ceases to exist.

b) EIOPA believes that all undertakings should fulfill their reporting obligations, as provided within the Directive 2009/138/EC, Commission Delegated regulation 2015/35 and implementing technical standards, including deadlines. In this specific case, no guideline has been added because the deadlines are foreseen within the Directive 2009/138/EC.

2.3. Publication of market share by National Competent Authority

a) Some stakeholders wonder how supervisory authorities intend to publish the annual market share thresholds for the purposes of transparency.

b) EIOPA believes that no such process is intended by the Directive 2009/138/EC, and thus should not be reflected in the Guidelines on methods for determining the market shares for reporting. Each National Competent Authority should only exempt undertakings within the limit set up in article 35 of Directive 2009/138/EC (without the need to publish any market share).

General nature of participants to the public consultation

EIOPA received comments from the IRSG and four responses from other stakeholders to the public consultation. All the comments received have been published on EIOPA's website.

Respondents can be classified into three main categories: European trade, insurance, or actuarial associations; national insurance or actuarial associations; and (re)insurance groups or undertakings.

IRSG opinion

The particular comments from the IRSG on the Guidelines at hand can be consulted on EIOPA's website[2].

Comments on the Impact Assessment

No particular comments were received on the Impact Assessment.

[2] IRSG opinion

3. Annexes

Annex I: Guidelines

Guidelines on methods for determining the market shares for reporting

1. Introduction

1.1. According to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council (hereafter EIOPA Regulation)[3], EIOPA is issuing Guidelines on how to determine the market shares for limited regular reporting as required by Article 35(11) of Directive 2009/138/EC of the European Parliament and of the Council (hereafter Solvency II Directive)[4].

1.2. The purpose of these Guidelines is to specify the methods to be used when determining the market shares referred to in Article 35(6) and (7) and Article 254 of Solvency II Directive.

1.3. These Guidelines define the market shares corresponding to 100% of the markets that each national competent authority supervises under Solvency II Directive.

1.4. To calculate the market share, relevance is given to the type of business, i.e. life and non-life business, rather than to the authorisation granted to undertakings, i.e. life insurance authorisation or non-life insurance authorisation.

1.5. The specific situation of composite undertakings and of the reinsurance market was considered due to the potential complexity of the risk profile. EIOPA considers that this should be addressed when considering the criteria defined in Article 35(8) of Solvency II Directive.

1.6. In Member States where there is a high volume of reinsurance business, the inclusion of such business in the market share may lead to different exemptions than if considering four different market shares, two for direct business (life and non-life) and two for reinsurance (life and non-life). However, as national competent authorities shall apply Article 35(8) of Solvency II Directive, it is more likely to find more situations of companies that would have to report due to the distortion of the inclusion of the reinsurance business in the market shares.

1.7. The business undertaken by insurance and reinsurance undertakings through their branches (EEA and non-EEA) and under freedom to provide services should be considered in the relevant market shares of the country where the undertaking is located.

[3] 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48)

[4] 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) (OJ L 335, 17.12.2009, p. 1)

1.8. Exempted insurance and reinsurance undertakings should be aware that they might need to report in the future due to changes in the annually recalculated market shares even if the size of their business remains unchanged.

1.9. These Guidelines are addressed to national competent authorities under Solvency II Directive.

1.10. The Guidelines shall apply from 1 January 2016.

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

Guideline 1 – Scope of market

1.12. National competent authorities should ensure that the market share:

a) includes the business underwritten by all insurance and reinsurance undertakings which are established according to Article 2 of Solvency II Directive;

b) does not include the business underwritten by insurance and reinsurance undertakings that meet the criteria laid down in Article 4 of Solvency II Directive.

Guideline 2 – Calculation of the Life Market

1.13. National competent authorities should ensure that the life insurance and reinsurance market is determined annually by aggregating the amount of gross technical provisions of the life business, including technical provisions for index-linked and unit-linked insurance, of the relevant insurance and reinsurance undertakings identified in Guideline 1.

Guideline 3 – Calculation of the Non-Life Market

1.14. National competent authorities should ensure that the non-life insurance and reinsurance market is determined annually by aggregating the amount of gross written premiums of the non-life business of the relevant insurance and reinsurance undertakings identified in Guideline 1.

Guideline 4 – Inclusion of the business of insurance and reinsurance undertakings with a different financial year than the calendar year end in the market

1.15. National competent authorities should ensure that where an insurance or reinsurance undertaking has a different financial year than the calendar year, the latest annual information available is considered in the calculation of the non-life or life market.

Guideline 5 – Treatment of insurance and reinsurance undertakings that pursue both life and non-life insurance obligation

1.16. National competent authorities should ensure that an insurance or reinsurance undertaking which has business in both the non-life and the life market are not exempted if its business is above the 20% threshold in one of the market shares.

Guideline 6 – Information to be used to determine the market

1.17. National competent authorities should consider the latest annual information available from the solvency regime previously in place to the maximum extent possible to apply Guidelines 1 to 5 regarding the first and second year of Solvency II Directive’s application.

1.18. National competent authorities should consider the information reported in the annual quantitative reporting templates S.05.01 and S.12.01 as defined under the Implementing Technical Standard on Supervisory Reporting[5] of the third and following years after the application of Solvency II Directive.

Guideline 7 - Information to undertakings

1.19. National competent authorities should inform within a reasonable timeframe insurance or reinsurance undertakings that they have been granted an exemption from quarterly reporting or annually item-by-item reporting.

Guideline 8 – Information to undertakings that are part of a group

1.20. National competent authorities should inform the insurance or reinsurance undertakings that are part of a group of the process, including the timeframe, to demonstrate to the satisfaction of the supervisory authority that quarterly reporting or reporting on an item-by-tem basis is inappropriate, given the nature, scale and complexity of the risks inherent to the business of the group and taking into account the objective of financial stability.

Guideline 9 – Consultation with the group supervisor

1.21. When assessing the request for exemption of insurance or reinsurance undertakings that are part of a group, national competent authorities should take into account the opinion of the group supervisor.

Compliance and Reporting Rules

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

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

1.24. Competent 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.

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

Final Provision on Reviews

1.26. The present Guidelines shall be subject to a review by EIOPA.

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[5] The Consultation Paper for the Submission of information ITS, including templates, can be found here: https://eiopa.europa.eu/Pages/Consultations/Public-consultation-on-the-Set-2-of-the-Solvency-II-Implementing-Technical-Standards-(ITS)-and-Guidelines.aspx

Annex II: Impact Assessment

Procedural Issues and Consultation of Interested Parties

2.1. According to Article 16 of the Regulation (EU) No 1094/2010, EIOPA conducts analysis of costs and benefits in the policy development process. The analysis of costs and benefits is conducted according to an Impact Assessment methodology.

2.2. The Impact Assessment was prepared in the course of the policy drafting process, with the contribution of experts from different national competent authorities and EIOPA.

Problem definition

2.3. Solvency II Directive – Article 35(11) - introduces the obligation for EIOPA to elaborate guidelines to further specify the methods to be used when determining the market shares referred to paragraphs (6) and (7) of Article 35 of the same directive.

2.4. It is important to harmonise the way supervisors calculate the market share for the limitation and exemption of the quarterly reporting and item-by-item annual reporting.

Baseline

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

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

2.7. In particular the baseline includes:

- The relevant content of Directive 2009/138/EC as amended by Directive 2009/51/EC.
- The relevant provisions of Commission Delegated Regulation (EU) 2015/35[6].

Objective pursued

2.8. These guidelines aim at ensuring a consistent application of the directive in order to provide National Supervisory Authorities some guidance on the

[6] Commission Delegated Regulation (EU) No 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.01.2015, p. 1.)

methodology to follow to calculate the market share of exemptions provided in article 35 (6) and (7) of Solvency II Directive.

2.9. Therefore the objective of these guidelines is to provide a common framework for NSAs with regard to the calculation of the market share for quarterly exemptions and item-by-item ones in the limit of the 20% of a Member States' life and non-life insurance or reinsurance market respectively.

2.10. The objective pursued in developing these guidelines corresponds to the respective Solvency II's objectives:

- Enhanced policy holder protection;
- To advance supervisory convergence and cooperation.

Proportionality

2.11. The approach of the proposed policy is intended to be proportionate, avoiding entering into detailed legal processes, that could be easily solved at a national level, and also supportive for national supervisory authorities when providing common methods to calculate the market share exemptions/ limitations.

Policy options

2.12. In the Solvency II project policy-makers have already considered, analysed and compared a number of policy options. Based on the impact assessment already done for the requirements set in the directive and in the Commission Delegated Regulation (EU) 2915/35, EIOPA has considered a wide range of policy options referring to the concrete solutions set out in the guidelines. In this section EIOPA would like to show the policy alternatives which were considered, the preferred policy options, as well as those which were discarded.

2.13. EIOPA proposes to approach the analysis of the impact by addressing the following specific policy issues:

- **Policy issue 1: Number of insurance/reinsurance markets**
- **Policy issue 2: Calculation of market share**

2.14. For each of these areas the respective proposed policy options are outlined including the developments following the pre-consultations and the Solvency II text, where applicable.

Policy issue 1: Number of insurance/reinsurance markets

- **Option 1:** Calculation based on split into "life insurance and reinsurance market" and "non-life insurance and reinsurance market" (2 markets);
- **Option 2:** Calculation based on split into life insurance market, life reinsurance market, non-life insurance market and non-life reinsurance market (4 markets).

Policy issue 2: Calculation of market share

- **Option 1:** Calculation follows the type of business, e.g. life or non-life business;

- **Option 2:** Calculation follows the legal form of the undertaking, e.g. life or non-life undertaking.

Analysis of Impacts

2.15. This chapter describes the analysis of impact conducted by EIOPA in order to identify the best options. For each option, the impact on Policyholders, the industry (comprising both regulated insurance undertakings and non-EEA insurers with EEA branches) and national supervisory authorities (NSAs) were considered.

Policy issue 1: Number of insurance/reinsurance markets

Option 1: Calculation based on split into "life insurance and reinsurance market" and "non-life insurance and reinsurance market" (2 markets)

Pros (+):

2.16. It is consistent with the requirements from the Solvency II directive which do not specify in particular to split the insurance and reinsurance market into two markets, i.e.: the wording, "insurance and reinsurance undertakings" is used throughout the directive only to address all undertakings.

2.17. Article 35 (6) and (7) provide general requirements for exemption of all undertakings. Solvency II does not in general distinguish the treatment of insurance undertakings from reinsurance undertakings.

2.18. Supervisors are still allowed, based on the criteria of article 35 (8), to exempt undertakings based on risk-based criteria.

Cons (-):

2.19. It does not take into account the specificities of each national market, in particular the proportion of insurance and reinsurance undertakings.

2.20. In Member States where there is a high volume of reinsurance business the inclusion of this business in the market share may lead to different exemptions than if considering four different market shares, two for direct business (life and non-life) and other two for reinsurance (life and non-life).

Option 2: Calculation based on split into life insurance market, life reinsurance market, non-life insurance market and non-life reinsurance market (4 markets)

Pros (+):

2.21. It allows NSA to take into consideration the specific case of the reinsurance market which could be material in some jurisdictions.

Cons (-):

2.22. It creates a bias in the analysis as it would lead to exempt reinsurance undertakings of different sizes compared to the one exempted for direct business.

2.23. The calculation should be based on straightforward criteria, and supervisors can still exempt undertakings based on supervisory judgment with article 35 (8).

2.24. In Member States where there is a high volume of reinsurance business the inclusion of this business in the market share may lead to different exemptions than if considering four different market shares, two for direct business (life and non-life) and other two for reinsurance (life and non-life).

Policy issue 2: Calculation of market share

2.25. The issue at stake is that at the end the NSA needs to exempt the "undertaking as a whole", not part of its business. However, due to the fact that some undertakings pursue business in both markets the following two options for the calculation of the market share were discussed.

Option 1: Calculation follows the type of business, e.g. life or non-life business

Pros (+):

2.26. This approach allows to reach the 20% of a Member State's life and non-life insurance and reinsurance market respectively, considering all the life and non-life business of every single undertaking, in line with article 35 (6) and (7).

2.27. The key element of this market share calculation is to assess which part of each life and non-life market is exempted, meaning that what is important is not the legal form of an undertaking but its activity in terms of premiums and technical provisions.

2.28. It takes into account all the business performed by each undertaking, which is in line with the spirit of exemptions based on market share calculation.

2.29. It allows supervisors to have an accurate level of exemptions as it is a precise criterion; i.e.: it covers all the activity of each undertaking.

2.30. Although it might not be consistent with the approach which NSAs take to assess impact of undertakings (e.g. during Risk Assessment Framework - RAF), where in some cases the operation of the undertaking might be taken into account as a whole without splitting into lines of business, it would be impossible to align it as the Solvency II Directive also requires the use of premiums and technical provisions for the market share calculation while NSA might also consider for the RAF impact assessment the value of the assets or any other criteria.

Cons (-):

2.31. Assessment following the lines of business leads to splitting the business of the undertakings pursuing business in both life and non-life markets into these two markets.

2.32. It does not address the undertaking as a whole but its operation in life or non-life lines of business.

2.33. Many undertakings are included in two markets (even if they are authorised as an undertaking operating in only one - life or non-life - market and not as a composite).

2.34. May not be consistent with the approach which NSAs take to assess impact of undertakings (e.g. during Risk Assessment Framework), where the operation of the undertaking might be taken into account as a whole without splitting into lines of business.

Option 2: Calculation follows the legal form of the undertaking, e.g. life or non-life undertaking

Pros (+):

2.35. Assessment following the legal form of the undertaking is consistent with the approach taken in Solvency II Directive regarding life and non-life undertakings, i.e. life undertakings are those which get authorisation for at least one class of life insurance (annex II of Directive), non-life undertakings are those which get authorisation for at least one class of non-life insurance (annex I of Directive).

2.36. Assessment following the legal form of the undertaking may be consistent with the approach taken by some NSAs to assess impact of undertakings (e.g. during Risk Assessment Framework), which means that it could be the same approach which will be taken to prioritise the smallest undertakings.

Cons (-):

2.37. This approach leads to ignoring part of the business of the undertakings due to the fact that only one activity is considered and so creating a bias in the calculation, i.e.: life business for life undertakings and non-life business for non-life undertakings.

2.38. Even if in the end the aim is to exempt legal undertakings, the Directive is clear that exemptions are based on a market share calculation in life and non-life business.

Comparing the options

Policy issue 1: Number of insurance/reinsurance markets

2.39. On the basis of the analysis of impacts, EIOPA believes that option 1 (Calculation based on split into "life insurance and reinsurance market" and "non-life insurance and reinsurance market" (2 markets)); is more effective and efficient with respect to achieving the objective of this guideline. It would allow all national competent authorities to calculate the relevant market shares taking into account the different set up of their national markets.

Therefore, Option 1 is the preferred policy option.

Policy issue 2: Calculation of market share

2.40. On the basis of the analysis of impacts, EIOPA believes that option 1 (Calculation follows the type of business, e.g. life or non-life business) is more effective and efficient with respect to achieving the objective of this guideline. The proposed policy option is expected to allow national competent authorities to calculate the relevant market share following the intention of the Solvency II regulation and also adequately considering the business of undertakings writing both non-life and life insurance/reinsurance business.

Therefore, Option 1 is the preferred policy option.

Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/044 CP-14-044-GL on methods to determine market share				
EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), AMICE, GDV, Insurance Europe, and MetLife. The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/044.				
No.	**Name**	**Reference**	**Comment**	**Resolution**
1.	IRSG	General Comment	Guideline 5 should be deleted as it goes against the spirit of Article 35(6)(a) in that it requires a composite undertaking that would normally qualify for the reporting exemption in one business line, for example life, to still report on that part because it exceeds in the other business line, for example non-life, the 20% threshold Guideline 8 should be deleted as it is unclear what its purpose is.	Guideline 5 considers the special situation of undertakings writing both non-life and life business. Taking the wording of Art. 35 (6) to (8) into account, exemption should only be considered if both businesses are below the relevant market share. What is subject to exemption is the undertaking not the business. Also, the exemption of part of the business would create problems in the submission of some information e.g. own funds. Composite undertakings are already "de-scaled" by the split of the business the approach proposed would be completely disproportionate regarding the business of such companies. Guideline 8 indicates that a dialogue between the local supervisor and the group supervisor should take place in case undertakings, belonging to a group, ask for a possible exemption from the local supervisor. In that case, it appears important that the group supervisor feedback is taken into account by the

			The Guidelines could usefully deal with some other issues such as: - how will the proportionality test referred to in Article 35(8) of the Solvency II Framework Directive be applied by supervisory authorities - an obligation for the supervisory authorities to inform companies about granting or cancelling the exemption on quarterly reporting in advance - how to determine a transition period for implementing the reporting process in the company when the exemption on quarterly reporting no longer applies - how supervisory authorities intend to publish the annual market share thresholds for the purposes of transparency	local supervisor in its decision. EIOPA has issued an additional guideline so that National Competent Authorities should inform in a reasonable timeframe the undertakings that they are exempted from quarterly or item-by-item reporting. On the other topics, EIOPA believes that no further guidelines should be drafted.
2.	AMICE	General Comment	AMICE welcomes the opportunity to comment on the EIOPA Guidelines on methods for determining the market share for reporting. The supervisor should, when considering cancelling the exemption on quarterly and/or on item-by-item reporting of a firm which has been granted an exemption until the latest reporting date, be allowed to extend the original submission period; Insurance firms that were granted the exemption on quarterly and/or on item-by-item reporting but that at the end of the financial year fall out of the 20% exemption threshold, should submit the set of quaterly quantitative information starting in the third quarter of the following financial year. National supervisory authorities should notify those insurance firms which will no longer be exempted within a reasonable time before the first reporting.	Noted. The extension of the submission dates as well as the submission periods is not foreseen by the Directive 2009/138/EC. The deadlines are defined in the Directive 2009/138/EC and cannot be derogated by any regulation or Guidelines. EIOPA has issued an additional guideline so that National Competent Authorities should inform in a reasonable timeframe the undertakings that have been granted an exemption from quarterly or item-by-item reporting.

			Guideline 5 should be deleted as it is not aligned with the Directive. Guideline 7 should be also deleted as it does not serve the purpose of this paper.	See comment No. 1 on Guideline 5. On Guideline 7, EIOPA believes it is a crucial guideline. Without an advance notice of the deadline to request an exemption, it might happen that when an undertakings belonging to a group requests an exemption the decisions of the National Competent Authority for the following year are already taken and the request could not be considered.
3.	GDV	General Comment	GDV welcomes the opportunity to comment on the proposal for guidelines on methods for determining the market share for reporting. GDV principally shares the views expressed by Insurance Europa. In addition to those comments already submitted by Insurance Europe we would like to address our issues of concern in the following. In our view important details are missing such as the following: ☐ An approach regarding how the proportionality criteria in Art. 35 (8) of the Directive will be applied by National Supervisory Authorities (NSA) in a transparent manner ☐ How NSAs are going to publish the annual market share thresholds for the purposes of transparency ☐ An obligation of the NSA to inform companies about granting or cancelling the exemption of the quarterly reporting in advance (adequate harmonised time slot required) ☐ The alloted transition period to implement the reporting process within the undertaking when the exemption of the quarterly reporting will be cancelled	Noted. Noted. See comment No. 1.

			Furthermore, explanatory texts are non-binding explanations and clarifications. This is why they are not and have not been part of the consultations. This should be clarified by EIOPA.	The guidelines in question do not comprise any explanatory text.
4.	Insurance Europe	General Comment	Insurance Europe welcomes the Guideline on Methods for determining the Market Share for Reporting, and the opportunity to comment on them. Our issues of primary concern related to this paper are the following: Guideline 5 should be deleted as it goes against the spirit of Article 35(6)(a) of the framework directive in the sense that a composite undertaking that qualifies for the reporting exemption for example in the life business, will have to report anyway on that part because of another business unit (e.g. non-life) falling above the 20% threshold. Guideline 8 should be deleted as we question their purpose for inclusion in these guidelines. In our view important details are missing such as the following: ☐ An approach regarding how the proportionality criteria in Art. 35 (8) of the Directive will be applied by National Supervisory Authorities (NSA) in a transparent manner ☐ How NSAs are going to publish the annual market share thresholds for the purposes of transparency ☐ An obligation of the NSA to inform companies about granting or cancelling the exemption of the quarterly reporting in advance (adequate harmonised time slot required) ☐ The alloted transition period to implement the reporting	Noted. See comment No. 1. See comment No. 1 See comment No. 1.

			process within the undertaking when the exemption of the quarterly reporting will be cancelled	
5.	MetLife	General Comment	We believe that there should be consideration of or clarification on calculation of health insurance market share. The practicability of market share measures for life insurers should be further clarified in the context of negative technical provisions under Solvency II. The lead time to determine whether an insurer or a group falls into scope of reporting on account of its market share, must be clarified. We believe at least 12 months' would be appropriate.	As Directive 2009/138/EC asked to calculate both the market share for non-life and life insurance business, the relevance calculating the market shares is given to the type of business, i.e. life and non-life business, rather than to the authorisation granted to undertakings, i.e. life insurance authorisation or non-life insurance authorisation. Negative technical provisions will reduce the market share calculations. This could however be considered in the risk-based analysis to be performed by the National Competent Authority. See comment No. 1.
6.	GDV	1.8.	A transparent process for the exemption from quarterly reporting is needed. At least companies need time in advance to implement all needed processes for quarterly reporting. There must be detailed rules for implementation periods if the exemption from quarterly reporting of a company should be cancelled.	See comment No. 1.
7.	Insurance Europe	1.8.	Undertakings need a transparent process around the exemption of the quarterly reporting requirement. Companies that now fall outside the exemption threshold will need time in advance to implement all the requisite processes for quarterly reporting. Also, an alloted transition period will need to be set to implement the reporting process within the undertaking when the exemption of the quarterly reporting has been cancelled.	See comment No. 1.
8.	Insurance	1.12.	Guideline 1 – Scope of the market	Guideline 1 clarifies the scope of the

	Europe		The contents of this Guideline would be better placed in the Introduction, as unlike the remainder of the Guidelines in this document, they do not describe methods for determining market shares.	market to be considered while calculating the market shares.
9.	GDV	1.13.	Guideline 2 To increase transparency the annual market share threshold of the Live Market should be published.	See comment No. 1.
10.	Insurance Europe	1.13.	Guideline 2 – Calculation of the Life Market If the assumption underlying the market share threshold is that undertakings with a riskier balance sheet should not be exempted from reporting then it might be prudent to exclude pure unit-linked business when assessing the market share given that the bulk of the risk is borne by the policyholder. For transparency the annual market share threshold of the Life Market should be published.	The general assumption underlying the exemption from reporting as specified in Directive 2009/138/EC is that only the bottom 20% of both markets might be exempted. The calculation of the market share address paragraphs 35 (6) and 35(7). The risk-based approach is dealt with as a second step (described in 35(8)) and takes a case-by-case basis where the unit linked business might be considered. See comment No. 1.
11.	MetLife	1.13.	Guideline 2 - We believe EIOPA should consider excluding the pure unit-linked business, when assessing the market share as the underlying risk on such business lies with the policyholders.	See comment No. 10.
12.	GDV	1.14.	Guideline 3 To increase transparency the annual market share threshold of the Non-Live Market should be published.	See comment No. 1.
13.	Insurance Europe	1.14.	Guideline 3 – Calculation of the Non-Life Market For transparency the annual market share threshold of the Non-Life Market should be published.	See comment No. 1.

14.	IRSG	1.15.	GL 4: …with a different financial year than the calendar year in the market”	Text amended.
15.	IRSG	1.16.	“…or reinsurance undertaking which has business…not be exempted from reporting if the undertaking’s business is…”	Text amended.
16.	AMICE	1.16.	Guideline 5 should be deleted as it is not in line with Article 35 paragraph 6 of the Level 1 text.The Directive states that the limitation to regular supervisory reporting shall be granted to undertakings that do not represent more than 20% of a MS´s life and non-life market respectively.	See comment No. 1.
17.	Insurance Europe	1.16.	Guideline 5 – Treatment of insurance and reinsurance undertakings that pursue both life and non-life insurance activity This guideline should be deleted as it goes against the spirit of Article 35(6)(a) of the framework directive insofar as a composite undertaking that qualifies for the reporting exemption for example in the life business, will have to report anyway on that part because of another business unit (e.g. non-life) falling above the 20% threshold. Insurance Europe believes an undertaking should only report on the business unit that is above the 20% threshold, there is no need for quarterly reporting of affiliated companies of a group with a low market share.	See comment No. 1.
18.	MetLife	1.16.	Guideline 5 - This guideline should consider where a composite undertaking qualifies for a reporting exception for its life business, but will have to report on non-life business falling above the 20% threshold.We believe proportioanality should apply to the undertaking as a whole rather than to the various components.	See comment No. 1.
19.	Insurance Europe	1.18.	Guideline 6 – Information to be used to determine the market There is a timeline of 20 weeks for undertakings to deliver their reporting templates to supervisors. With that in mind, it is not clear what figures will therefore be used to assess market share as some undertakings will have to report/or not quarterly figures.	Guideline 6 specifies that the latest available annual information should be used calculating the market shares for the first and second year of application of Solvency II. Paragraph 1.18. was amended

				accordingly to stress that annual information should be used.
20.	MetLife	1.18.	Guideline 6 – Given the deadline for third-year reporting under Solvency II is 16 weeks for solo and 22 weeks for group, it should be clarified what data will be used instead to assess market share.	Guideline 6 specifies that the data specified in the Implementing Technical Standards on Supervisory Reporting should be used for the calculations.
21.	IRSG	1.19.	"…of the deadline for requesting a limitation of regular…"	Text amended.
22.	AMICE	1.19.	Guideline 7 should be deleted as it does not serve the purpose of this paper.	See comment No. 2.
23.	Insurance Europe	1.19.	Guideline 6 – Information to be used to determine the market There is a timeline of 20 weeks for undertakings to deliver their reporting templates to supervisors. With that in mind, it is not clear what figures will therefore be used to assess market share as some undertakings will have to report/or not quarterly figures.	Guideline 6 specifies that the latest available annual information should be used calculating the market shares for the first and second year of application of Solvency II. Paragraph 1.18. was amended accordingly to stress that annual information should be used.
24.	IRSG	1.20.	"…while assessing the request for exemption from insurance or reinsurance…"	Text amended.
25.	Insurance Europe	1.20.	Guideline 8 – Consultation of the group supervisor This Guideline should be deleted as we question its inclusion within the scope of these guidelines.	See comment No. 1.