



EIOPA-BoS-15/108

30 June 2015

**Final Report**  
**on**  
**public consultation No. 14/046 on**  
**Guidelines on**  
**the extension of the recovery period**  
**in exceptional adverse**  
**situations**

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# 1. Executive summary

## Introduction

According to Article 16 of Regulation (EU) No 1094/2010 (hereinafter "EIOPA Regulation") EIOPA may 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 the EIOPA Regulation.

According to paragraph 4 of Article 138 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 (hereinafter "Solvency II"), supervisory authorities may, under certain circumstances, extend the recovery period for the re-establishment of compliance with the Solvency Capital Requirement (hereinafter "SCR") as set out in Article 138(2) of Solvency II by a maximum period of 7 years. In order to ensure fair competitive conditions in situations where an extension of the recovery period is a possibility, it is of outmost importance that supervisory authorities develop convergent practices from the entry into force of Solvency II when deciding to whom an extension should be granted and the duration of the extension. According to Article 16 of EIOPA Regulation, EIOPA therefore issues Guidelines on the extension of the recovery period in exceptional adverse situations.

As a result of the above, on 2 December 2014 EIOPA launched a public consultation on the draft Guidelines on the extension of the recovery period in exceptional adverse situations. The Consultation Paper is also published on EIOPA's website<sup>1</sup>.

These Guidelines are addressed to competent authorities to:

- ensure that supervisory authorities use a consistent approach to the extension of the recovery period during exceptional adverse situations;
- address further issues that call for convergent supervisory practices or enhanced harmonisation (withdrawal/revocation of an extension, further extensions of extensions already granted, and the disclosure of withdrawals of extensions).

## Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/046) and the full package of the public consultation, including:

Annex I: Guidelines

Annex II: Impact Assessment

Annex III: Resolution of comments

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<sup>1</sup> [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. "Restrictive use" of the power to extend the recovery period**

- a. Most stakeholders were concerned about the statement in Guideline 2 that supervisory authorities should be restrictive in granting extensions. Stakeholders are concerned that this would result in insufficient timeframes for recoveries. They claimed that a tight timeframe for the recovery period could trigger unintended financial consequences for undertakings as it may result in decisions affecting the business in an adverse way. Instead, stakeholders asked for a "reasonable" approach to deciding on the duration of the extension of the recovery period and advised that it would be better to rely on an ongoing dialogue between companies and supervisors such that realistic timelines can be agreed upon.

Furthermore, stakeholders stated that this Guideline would also contradict the requirements set out in Guideline 9 (now Guideline 8) referring to a further extension on a later date, whereas Guideline 9 (now Guideline 8) relates specifically to the existence of materially worse conditions in order for the extension to be granted.

- b. EIOPA wants to clarify that the use of "restrictive" was not meant to imply that the supervisory authority should grant less time to recover than considered appropriate. The intention was to highlight that additional time should not be added to the recovery period in order "to be on the safe side". When determining the duration of the recovery period the supervisory authority should strike the right balance between avoiding the effects of the exceptional and adverse situation and providing for proper policyholders' protection. A consequence of granting an extension which is too long could be that the supervisory authority needs to reduce or revoke the extended recovery period, where the circumstances which led to the extension of the recovery period have changed or where EIOPA has declared the exceptional adverse situation no longer to exist.

EIOPA has redrafted Guideline 2 (now Guideline 3) to avoid the term "restrictive", which has been interpreted incorrectly by stakeholders.

When determining the duration of the extension of the recovery period, the supervisory authority should make the decision subject to the provision that the supervisory authority may revoke or reduce the extended recovery period as appropriate where the circumstances which led to the original extension have changed, such that the supervisory authority would not have granted the extension in the first place or would have granted a more limited extension. On the other hand, if things develop differently, there is always the possibility to further extend the extension period. This is why Guideline 9 (now Guideline 8) has been introduced. It provides for a possible further extension of an extended recovery period if circumstances that led to the original decision to extend the recovery period have changed, such that the supervisory authority should grant a longer extension of the recovery period.

## **2.2. Repetition of Solvency II/Commission Delegated Regulation (EU) 2015/35**

- a. Stakeholders claimed that Guidelines 5 to 7 should be deleted as these would repeat Article 138(4) of Solvency II and Articles 288 and 289 of Commission Delegated Regulation (EU) 2015/35.

With respect to Guideline 5 it was specifically stated that this Guideline seems to contradict to Article 288 of Commission Delegated Regulation (EU) 2015/35 by stating that EIOPA, and not the supervisory authority, should take into account pro-cyclicality when declaring the existence of an exceptional adverse situation affecting insurance firms to exist.

- b. In the first place, it should be clarified that EIOPA should take into account the factors mentioned in Article 288 of Commission Delegated Regulation (EU) 2015/35, when deciding whether an exceptional adverse situation exists. In cases where EIOPA has declared an exceptional adverse situation to exist, the supervisory authority, when deciding on the extension of the recovery period and its duration, should take into account the factors c) to h) laid down in Article 288 thereof as well as the factors laid down in Article 289 thereof.

Taking this into account, the Guidelines 5 to 7 stress, for each type of the exceptional adverse situations, the most decisive factor to be taken into account according to Commission Delegated Regulation (EU) 2015/35. Therefore, these Guidelines provide guidance on how these factors should be weighted, without repeating or contradicting them.

## **2.3. Overlap with the RTS on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions**

- a. Stakeholders considered that this Guideline is already covered in CP-14-062 as this draft technical advice concerns the harmonisation of information in the recovery plan and the finance scheme. Therefore, Guideline 4 should be deleted from this paper and a cross reference to the CP-14-062 should be inserted in the introduction instead.

- b. EIOPA agrees that there is a potential overlap of Guideline 4 with the Final Report on public consultation no. 14/062 on the Advice to the European Commission in response to the Call for Advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions. Subject to the Commission's adoption of this advice through amendments to Commission Delegated Regulation (EU) 2015/35, EIOPA will consider deleting some parts of the Guideline in order to avoid any possible overlap.

However, the Guideline should be read in the context of additional information concerning an extension of the recovery period only and not the 'normal' recovery period that would be covered by the Commission Delegated Regulation (EU) 2015/35.

#### **2.4. Concerns about the reduction or revocation of the extension of the recovery period**

- a. Stakeholders believed that Guideline 8 (now Guideline 2) should be deleted since it goes beyond Solvency II and Commission Delegated Regulation (EU) 2015/35 and considered it to be imprudent and unsound to remove or reduce the recovery period due to one of the situations defined in Articles 138(4)(a)(b) and (c) of Solvency II improving significantly.
- b. EIOPA takes the view that whenever a decision has a long term impact it is appropriate to review that decision on a regular basis, and whenever there is an indication that the reasons for taking that decision no longer apply. Policyholders' interests are at stake when an undertaking does not comply with the Solvency Capital Requirement ("SCR"), so an undertaking cannot expect to be allowed extra time to re-comply with the SCR after circumstances have improved such that there is no longer a good reason for not meeting the SCR.

The Guideline has been redrafted to clarify that the Guideline covers two distinct situations. In the first place the decision to extend the recovery period should be made subject to provision whereby the supervisory authority may revoke or reduce the extended recovery period, as appropriate, where the circumstances which led to the extension being granted have changed such the supervisory authority would not have granted the extension or would have granted a more limited extension. Secondly, on grounds of fairness and equal treatment of all undertakings in the market the supervisory authority needs to review an existing extension of the recovery period where EIOPA has declared the exceptional adverse situation no longer exists.

#### **2.5. Maximum extension period of seven years**

- a. Based on the wording of Guideline 9 (now Guideline 8) some stakeholders were concerned that EIOPA did not identify the maximum length of the recovery period correctly as seven years and nine months.

Those stakeholders suggested that the Guideline should be redrafted to read “resulting overall extended recovery period does not exceed the maximum period of 7 years and 9 months”.

- b. EIOPA agrees that the maximum recovery period, including the extension of the recovery period, is indeed seven years and nine months. But the maximum extension of the recovery period is seven years. Guideline 9 (now Guideline 8) relates only to the maximum period of the extension of recovery period beyond the ‘normal’ recovery period of 6-9 months. In order to avoid confusion about the difference between the maximum recovery period and the maximum extension of the recovery period the Guideline no longer names a specific timeframe but rather refers to the timeframe according to Article 138(4) of Solvency II.

## **2.6. Information exchange**

Although no stakeholders’ comments were issued on this Guideline, EIOPA would like to point out that Guideline 10 on information exchange between supervisory authorities and EIOPA has been removed. EIOPA decided to do so because it believed that this Guideline does not fit within the scope of the Guidelines on the extension of the recovery period. Such mutual cooperation between supervisory authorities and between supervisory authorities and EIOPA is covered by the General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union. This General Protocol will be revised based on the provisions of Solvency II and this Guideline will be considered in this revision.



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

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

Respondents can be classified into two main categories: European trade, insurance, or actuarial associations and national insurance or actuarial associations.

### **IRSG opinion**

The particular comments from the IRSG on the Guidelines at hand can be consulted on EIOPA's website<sup>2</sup>.

### **Comments on the Impact Assessment**

No specific comments have been received from stakeholders with respect to the Impact Assessment including the cost and benefits analysis of the proposed measures. Nevertheless, some revisions have been made to Impact Assessment to fully align it with the final drafting of the Guidelines.

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<sup>2</sup> [IRSG opinion](#)

### **3. Annexes**

## **Annex I: Guidelines**

### **Guidelines on the extension of the recovery period in exceptional adverse situations**

#### **1. Introduction**

- 1.1. According to Article 138(4) of Directive 2009/138/EC of the European Parliament and of the Council (hereinafter Solvency II Directive)<sup>3</sup>, supervisory authorities may, under certain circumstances, extend the recovery period for the re-establishment of compliance with the Solvency Capital Requirement (hereinafter SCR) as set out in Article 138(3) and Article 218(4) of the Solvency II Directive by a maximum period of 7 years. This power applies in the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or affected lines of business, where undertakings fail to fulfil their SCR. It is vested in supervisory authorities to enable them to mitigate undue potential pro-cyclical effects on the financial system or adverse effects on the financial markets, in particular, on the insurance market that would ultimately be detrimental to the interests of policyholders and beneficiaries.
- 1.2. In order to ensure fair competitive conditions in situations where an extension of the recovery period is a possibility, it is of utmost importance that supervisory authorities develop convergent practices when deciding to whom an extension should be granted and the duration of the extension. According to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council (hereinafter EIOPA Regulation)<sup>4</sup>, EIOPA therefore issues these Guidelines.
- 1.3. These Guidelines are addressed to the supervisory authorities to ensure that they use a consistent approach to the extension of the recovery period in exceptional adverse situations. These Guidelines also address related issues that call for convergent supervisory practices or enhanced harmonisation. These include the withdrawal/revocation of an extension, further extensions of the extension already granted and the disclosure of withdrawals of the extensions.
- 1.4. When EIOPA declares an exceptional adverse situation to exist according to Article 138(4) of the Solvency II Directive this does not automatically mean that any insurance or reinsurance undertaking (hereinafter 'undertakings') from a Member State to which this declaration applies is potentially eligible for an extension of the recovery period.

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<sup>3</sup> 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)

<sup>4</sup> 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)

- 1.5. Out of the three exceptional adverse situations referred to in the second subparagraph of Article 138(4) of the Solvency II Directive, only a fall in financial markets that is unforeseen, sharp and steep will presumably have a major negative impact on most undertakings as this creates an unfavourable business environment. A persistent low interest rate environment is expected to mainly affect life insurance undertakings, life insurance activities of reinsurance undertakings and some lines of business of non-life insurance undertakings. A high impact catastrophic event may only affect some undertakings to a considerable extent as it will mostly affect certain lines of business.
- 1.6. There are important differences between the above mentioned three exceptional adverse situations with regard to the ability of undertakings to guard against such situations, preventing undertakings from breaching their SCR or recovering from such a breach within the required timeframe. These differences need to be taken into account by the supervisory authority when deciding on whether an undertaking is eligible for an extension and on the duration of the extension.
- 1.7. The power to extend the recovery period is provided for no other reason than to create flexibility with regard to supervisory measures where a significant part of the insurance market faces major problems that could lead to serious repercussions for the market as a whole. These could develop if all players concerned were forced to take similar measures within the same limited time frame, thus creating pro-cyclical effects on the financial system or where important elements of the insurance market are in financial difficulties with detrimental effects on the market.
- 1.8. In deciding on the duration of the extension of the recovery period, supervisory authorities are expected to consider the exceptional character of an extension of the recovery period and the general rule of Article 138(3) of the Solvency II Directive which prescribes that undertakings need to ensure that they put in place the necessary measures to comply with the capital requirements within a limited timeframe of 6 to 9 months.
- 1.9. When the exceptional adverse situation is an unforeseen, sharp and steep fall in financial markets or a persistent low interest rate environment, decisions on the time period for extensions of the recovery period will require supervisory authorities to make assumptions about developments in financial markets. Where those assumptions are shown over time to have been significantly overoptimistic or pessimistic, supervisory authorities need to be able to correct their decisions by either further extending a given extension where expected improvements to the exceptional adverse situation have not materialised or by revoking the extension where obstacles to a quicker recovery are no longer present.
- 1.10. Guidelines 1 to 11 shall apply to individual undertakings and *mutatis mutandis* to groups, i.e. when these Guidelines are applied to groups "undertaking" is to be read as "group" and "supervisory authority" is to be read as "group supervisor".

1.11. For the purpose of these Guidelines, the following definitions have been developed:

(a) "extension of the recovery period" means the extended period to remedy a breach of the SCR, exceeding the original period provided under Article 138(3) of the Solvency II Directive;

(b) "withdrawal of the extension" means the supervisory authority taking back an extension of the recovery period where the undertaking concerned has failed to demonstrate significant progress in remedying the breach of the SCR in accordance with subparagraph five of Article 138(4) of the Solvency II Directive;

(c) "revocation of the extension" means the supervisory authority taking back an extension of the recovery period on account of a material change in the circumstances which were the basis for the extension.

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

1.13. The Guidelines shall apply from 1 January 2016.

### **Guideline 1 – General considerations with regard to the granting of an extension of the recovery period**

1.14. The supervisory authority should aim to prevent disproportionate negative effects for the financial market in general or the insurance market in particular when granting an extension of the recovery period and deciding on the duration of that extension. It should ensure that macro-prudential considerations are appropriately balanced against the need to avoid unduly jeopardising the protection of the policyholders and beneficiaries of the undertaking concerned.

### **Guideline 2 – No extension of the recovery period without the provision that the extension may be reduced or revoked**

1.15. The supervisory authority should make all decisions to extend the recovery period subject to the provision whereby the supervisory authority may revoke or reduce the extended recovery period, as appropriate, where the underlying circumstances of the extension have changed in a way that under those new circumstances the supervisory authority would not have granted the extension or would have granted a more limited extension.

1.16. Where EIOPA has declared that the exceptional adverse situation no longer exists, the supervisory authority should review any extension granted as soon as possible.

### **Guideline 3 - Deciding on the duration of the extension of the recovery period**

1.17. The supervisory authority should further extend the extension of the recovery period as appropriate, rather than grant a very long extension of the recovery period from the start.

#### **Guideline 4 – Request for information and recovery plan**

- 1.18. The supervisory authority should require the undertaking to provide all relevant information to assist the supervisory authority in assessing the factors and criteria defined in Article 288 c) to h) and in Article 289 of Commission Delegated Regulation (EU) 2015/35<sup>5</sup>.
- 1.19. With regard to the extension of the recovery period, the recovery plan under Article 142(1) of the Solvency II Directive should include in addition:
- a) a justification of the extension and the proposed duration of the extended recovery period needed in order to address the exceptional adverse situation;
  - b) the progress to be achieved in every three months as a result of the proposed measures and their expected effect on the solvency position.

#### **Guideline 5 - Extension of the recovery period on account of a fall in financial markets which is unforeseen, sharp and steep**

- 1.20. Where EIOPA has declared a fall in financial markets which is unforeseen, sharp and steep to exist, the potential pro-cyclical effects should be the decisive factor for the supervisory authority when deciding on the extension of the recovery period and its duration.

#### **Guideline 6 – Extension of the recovery period on account of a persistent low interest rate environment**

- 1.21. Where EIOPA has declared a persistent low interest rate environment to exist, the measures taken by the undertaking to limit the deterioration of its solvency position should be the decisive factor for the supervisory authority, when deciding on the extension of the recovery period and its duration.

#### **Guideline 7 – Extension of the recovery period on account of a high impact catastrophic event**

- 1.22. Where EIOPA has declared a high impact catastrophic event to have taken place, the decisive factor for the supervisory authority should be the extent to which the undertaking faces claims significantly higher than could have been expected under normal circumstances.

#### **Guideline 8 – Applying a further extension of the recovery period where original assumptions have changed materially**

- 1.23. The supervisory authority should only consider a request for a further extension where the underlying circumstances of the original extension of the recovery period have changed in a way that under those new circumstances the

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<sup>5</sup> 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)

supervisory authority could have granted a longer extension of the recovery period and the request is supported by an adapted realistic recovery plan.

- 1.24. The supervisory authority should allow an undertaking to request a further extension of the recovery period as long as the resulting overall extended recovery period does not exceed the maximum period as referred to in Article 138(4) of the Solvency II Directive.

### **Guideline 9 – Assessing significant progress**

- 1.25. When assessing whether the undertaking has made significant progress towards compliance with its SCR as mentioned in the fifth subparagraph of Article 138(4) of the Solvency II Directive, the supervisory authority should determine whether the undertaking is still likely to meet its recovery plan. The supervisory authority should consider at least whether the undertaking:

- (a) failed without sufficient justification to implement any measures it has committed itself to take; or
- (b) failed in making significant progress on any of the objectives to be achieved in every three months as a result of the proposed measures that were included in the recovery plan.

### **Guideline 10 - Withdrawal or revocation of the extension**

- 1.26. If the supervisory authority concludes that the extension of the recovery period should be withdrawn or revoked, it should give the undertaking the opportunity to give its view on the proposed withdrawal or revocation within an appropriate timeframe.

### **Guideline 11 – Public disclosure of the withdrawal or revocation of the extension**

- 1.27. Where the supervisory authority withdraws or revokes an extension of the recovery period, it should ensure that the undertaking complies without any delay with the requirement of Article 54(1) of the Solvency II Directive to publicly disclose such information, and the reasons for the withdrawal or revocation, in an update of its Solvency and Financial Condition Report.

### **Compliance and Reporting Rules**

- 1.28. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions shall make every effort to comply with guidelines and recommendations.
- 1.29. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.

- 1.30. 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.
- 1.31. 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**

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



## 2. Explanatory text

### **Guideline 1 – General considerations with regard to the granting of an extension of the recovery period**

The supervisory authority should aim to prevent disproportionate negative effects for the financial market in general or the insurance market in particular when granting an extension of the recovery period and deciding on the duration of that extension. It should ensure that macro-prudential considerations are appropriately balanced against the need to avoid unduly jeopardising the protection of the policyholders and beneficiaries of the undertaking concerned.

- 2.1. The supervisory authority needs to ensure it satisfies the purpose of Article 138(4) of the Solvency II Directive. The power to grant an extension of the recovery period is vested in the supervisory authority in order to provide it with the necessary flexibility to take decisions it considers necessary to prevent or mitigate disproportionate negative effects for the stability of the financial systems or pro-cyclical consequences.
- 2.2. The supervisory authority needs to take into account undertaking-specific factors and criteria according to Article 289 and Article 288 c) to h) of Delegated Regulation (EU) 2015/35, but the primary objective in granting an extension is the reduction or avoidance of pro-cyclical effects.
- 2.3. The decision to apply an extension of the recovery period and its duration is at the discretion of the supervisory authority. Whether it is justified to apply an extension and the duration of any extension needs to be determined on a case-by-case basis having regard to all the relevant factors and criteria in Article 289 and Article 288 c) to h) of Delegated Regulation (EU) 2015/35. The supervisory authority needs to give proper consideration to whether an extension of the time to re-establish compliance with the SCR is an adequate measure, considering the solvency position of the undertaking and potential consequences of requiring short-term rectification.
- 2.4. In the case of groups, the group supervisor needs to take into account a wider perimeter of analysis for the macro-prudential considerations and needs also to consider the national specific provisions undertaken for the protection of national policyholders and beneficiaries of the individual undertakings included in the group. This implies a dialogue (communication) between the group supervisor and the supervisory authorities concerned, in line with Guideline 15 (group part).

**Guideline 2 – No extension of the recovery period without the provision that the extension may be reduced or revoked**

The supervisory authority should make all decisions to extend the recovery period subject to the provision whereby the supervisory authority may revoke or reduce the extended recovery period, as appropriate, where the underlying circumstances of the extension have changed in a way that under those new circumstances the supervisory authority would not have granted the extension or would have granted a more limited extension.

Where EIOPA has declared that the exceptional adverse situation no longer exists, the supervisory authority should review any extension granted as soon as possible.

- 2.5. How the supervisory authority ensures that it is able to revoke or reduce the extension of the recovery period depends on the legal framework of the relevant Member State. It may have to point out that the extension may be revoked or reduced under certain circumstances when it grants the extension.
- 2.6. Although the supervisory authority is expected to consider carefully the duration of any extension of the recovery period it grants, in particular in the case of an unforeseen, sharp and steep fall in financial markets, it may turn out that the situation improves in such a way that an undertaking concerned could take faster actions to re-establish compliance with the SCR without significant detrimental effects for the market. If that is the case there would no longer be a justification for putting the interests of policyholders and beneficiaries at risk by maintaining inadequate own funds levels. Hence, the supervisory authority is expected to require the undertaking concerned to re-establish compliance with the SCR as soon as practicable.
- 2.7. A material improvement has taken place in particular where EIOPA has declared the relevant exceptional adverse situation to no longer exist.
- 2.8. Where the material improvement of the situation is not undertaking-specific, the supervisory authority is expected to ensure equal treatment of the undertakings still benefitting from an extension of the recovery period and also equal treatment of those undertakings and to undertakings that are subject to the normal recovery period. This is achieved by reviewing any existing extensions and reducing or revoking these as appropriate.
- 2.9. It may be expected that undertakings will rely on the extension period granted even where they are notified upfront that the extended period may be reduced under certain circumstances later on. So, even where the situation is fully back to normal and fast remedial actions are possible in general, the supervisory authority needs to consider what the realistic timeframe is for a recovery for the undertaking concerned under the changed circumstances.
- 2.10. Where the supervisory authority intends to revoke or reduce an extended recovery period it needs to provide the undertaking with the opportunity to provide its views before the final decision to reduce or revoke the extended recovery period is taken.

### **Guideline 3 - Deciding on the duration of the extension of the recovery period**

The supervisory authority should further extend the extension of the recovery period as appropriate, rather than grant a very long extension of the recovery period from the start.

- 2.11. In deciding on the appropriate timeframe of the extension of the recovery period for an undertaking, the supervisory authority will not base its decision on the period of time expected to pass until the exceptional adverse situation has ceased to exist. The supervisory authority needs to take this into account but extension periods cannot be chosen with a view to allowing undertakings to “sit out” an exceptional adverse situation. Therefore, the expected duration of the exceptional adverse situation does not provide the minimum extension period.
- 2.12. Article 138(4) of the Solvency II Directive represents an exception to the general rule that a recovery from non-compliance with the SCR needs to be performed within a very limited time frame. As any non-compliance with the SCR puts the interests of policyholders and beneficiaries at risk, the supervisory authority is supposed to make use of the power to extend the recovery period as carefully as possible. The more the proposed extension of the recovery period deviates from the recovery period according to Article 138(3) of the Solvency II Directive the more justification is needed. The maximum possible period for extending the recovery period is no indicator as to what is an appropriate “average” extension. The supervisory authority also needs to be very careful in order to prevent the maximum period of 7 years from serving as an unconscious “anchor”, drawing it towards longer extensions.
- 2.13. In particular in case of a high impact catastrophic event taking place, the supervisory authority is expected to consider carefully whether a limited extension of the recovery period could be sufficient to avoid the negative effects of a number of undertakings implementing a recovery plan at about the same time. The external situation could be such that it could be possible to mitigate potential detrimental effects for the market sufficiently without resorting to a longer extension of the recovery period.
- 2.14. It is not the objective of an extension of the recovery period to enable the undertaking - for economic reasons - to choose a solution that takes considerably longer to implement than other options. The supervisory authority is required to always bear in mind that the ultimate objective of such extension is the protection of policyholders and beneficiaries.
- 2.15. EIOPA is responsible for regular monitoring where the “exceptional adverse situation” is still existent. When EIOPA has determined that the situation has recovered in such a manner that the exceptional adverse situation no longer exists, the supervisory authority is not entitled to grant any further extensions of the recovery period on account of Article 138 (4) of the Solvency II Directive. Existing extensions continue to have effect. A supervisory authority would be expected to be especially careful about granting an extension of the recovery period where it believes that a declaration that the exceptional adverse situation is over is imminent.

- 2.16. The final decision of the supervisory authority will depend on its assessment of the particular external and undertaking-specific situation and the business of the particular undertaking. There can be no "formula" regarding how the supervisory authority concludes on the appropriate timeframe for any extension.
- 2.17. The closer to the minimum capital requirement the level of own funds has fallen, the more urgent the need for the undertaking to improve its solvency position and the shorter the possible extension of the recovery period. How fast the solvency position is deteriorating and how close the undertaking gets to insolvency also needs to be considered.
- 2.18. Where an undertaking, in the opinion of the supervisory authority, has ready access to new capital on financial markets, the duration of any extension of the recovery period applied could potentially be shorter.
- 2.19. The liquidity of the market may have an impact on the valuation of the undertaking's assets. If an undertaking does not have a readily available source of funds to finance short-term commitments, it will need to address this in addition to the longer term solvency problem. This could potentially have a bearing on the supervisory authority's decision on whether to grant an extension and the duration of the extension period.
- 2.20. An undertaking could close the gap between the SCR and the level of own funds by taking measures to reduce the SCR through financial risk mitigation instruments. How feasible that option is depends not only on the availability of such instruments but also on the ability of the undertaking to manage, monitor and control the instruments. When this option is an available and adequate means, this could potentially mean that an extension of the recovery period is not necessary or that the duration of the extension would be reduced.
- 2.21. Own funds are categorised into different tiers. This tier system may restrict an undertaking's ability to solve the situation quickly. While it may be easier to raise tier 3 capital than higher level capital, an undertaking may need additional tier 1 or 2 capital to comply with the SCR. This could also potentially have a bearing on the supervisor's decision to allow a longer extension period.
- 2.22. The composition of the undertaking's assets needs to be considered, as the undertaking could have a large stake in assets that would affect the market adversely if they were to be sold.
- 2.23. The undertaking may also be exposed to risks via its assets. The effect on the liquidity of the markets of a fall in financial markets which is unforeseen, sharp and steep on the undertaking's asset portfolio is relevant in that it will affect how easily an undertaking may be able to dispose of assets. The undertaking may still be able to sell some assets in order to change its risk profile and thereby reduce its exposure to market risk. On the other hand the quality of the assets held could be below average or more concentrated, thus increasing the risk to the undertaking independently from temporary market fluctuations.
- 2.24. Where the exceptional adverse situation is a fall in financial markets which is unforeseen, sharp and steep or a persistent low interest rate environment, the

supervisory authority needs to consider the nature and duration of the undertaking's liabilities from an asset and liability management point of view. It could be appropriate to give a longer extension period to an undertaking whose liabilities have a longer duration.

- 2.25. While some solutions may generally help to improve the solvency position of an undertaking, these solutions may not be appropriate in individual cases where the costs are disproportionate to the benefits. Where an undertaking is seriously limited in the options that it can take for remedial actions, this could lead the supervisory authority to consider applying a longer extension of the recovery period – within the boundaries of the maximum extension of the recovery period – than would otherwise be applied.
- 2.26. Where an undertaking is part of a group and other undertakings in the group are in a position to help an undertaking in financial difficulties this is a possible way out of the situation. Where such assistance is available for the undertaking this potentially reduces the need for an extension of the recovery period or a longer duration of that period.
- 2.27. Undertakings cannot expect to be granted an extension of the recovery period if they choose not to use reasonable measures available to them to improve their situation.
- 2.28. Undertakings are allowed to request a further extension of the recovery period before the end of a recovery period already granted, if an exceptional adverse situation declared by EIOPA continues to exist.
- 2.29. This request for a further extension would have to include an adapted realistic recovery plan.

#### **Guideline 4 – Request for information and recovery plan**

The supervisory authority should require the undertaking to provide all relevant information to assist the supervisory authority in assessing the factors and criteria defined in Article 288 c) to h) and in Article 289 of Commission Delegated Regulation (EU) 2015/35.

With regard to the extension of the recovery period, the recovery plan under Article 142(1) of the Solvency II Directive should include in addition:

- a) a justification of the extension and the proposed duration of the extended recovery period needed in order to address the exceptional adverse situation;
- b) the progress to be achieved in every three months as a result of the proposed measures and their expected effect on the solvency position.

- 2.30. It is not a precondition for granting the extension that the “exceptional adverse situation” is the only or main cause of an undertaking's non-compliance with the SCR. However, an undertaking nevertheless would have to demonstrate how the “exceptional adverse situation” significantly affects its ability to re-establish coverage of the SCR.

- 2.31. It is for the undertaking to propose suitable remedial actions and a realistic recovery plan, including the necessary extension of the recovery period. The supervisory authority needs to assess the recovery plan submitted by the undertaking and decide on its feasibility and appropriateness. The supervisory authority will comment on any concerns it has with regard to the draft recovery plan as well as on the proposed duration of the extension and indicate if the undertaking needs to make changes before the supervisory approval of the recovery plan can be obtained.
- 2.32. The supervisory authority will react to the proposed recovery plan as soon as possible. Since the duration of the extension has a major effect on the content of the recovery plan, the undertaking may have to revise the plan if the supervisory authority is not prepared to grant the duration of the extension period the undertaking asked for initially.
- 2.33. The objectives of the recovery plan are to outline the measures the undertaking proposes to take to meet its SCR and to project the SCR and the expected level of eligible own funds at the end of each three months' period. The recovery plan also has to cover the description of the proposed measures in sufficient detail to allow for an assessment of whether the expected effect of the measures is realistic.
- 2.34. As the undertaking does not have to meet the SCR as it stood at the moment of the breach but the projected SCR at the end of the recovery period, the undertaking has to extrapolate the expected SCR. With regard to the SCR the undertaking therefore needs to provide the supervisory authority with:
- a) the projected SCR;
  - b) information on how it arrived at the projected SCR;
  - c) a demonstration that the assumptions for the estimate are reasonable and sufficiently prudent to ensure that by meeting the targeted SCR at the end of the recovery period it will no longer be in breach of the actual SCR at that time.
- 2.35. As with any recovery plan the supervisory authority needs to be satisfied that the measures set out in the plan are likely to succeed and to achieve the effect of remedying the SCR breach before agreeing to it. This includes being satisfied that the undertaking has not underestimated the prospective SCR at the end of the recovery period.

**Guideline 5 - Extension of the recovery period on account of a fall in financial markets which is unforeseen, sharp and steep**

Where EIOPA has declared a fall in financial markets which is unforeseen, sharp and steep to exist, the potential pro-cyclical effects should be the decisive factor for the supervisory authority when deciding on the extension of the recovery period and its duration.

- 2.36. When the exceptional adverse situation that exists is a fall in financial markets, which is unforeseen, sharp and steep, possible pro-cyclical effects are the major

concern, and are the most important deciding factor concerning an extension and its duration. Such effects could be either triggered by an individual undertaking or by several undertakings facing financial difficulties at the same time. Where one undertaking by itself or as part of a cluster of undertakings in difficulties has little effect on the financial market through its remedial actions, an important criterion for granting a longer recovery period is missing.

**Guideline 6 – Extension of the recovery period on account of a persistent low interest rate environment**

Where EIOPA has declared a persistent low interest rate environment to exist, the measures taken by the undertaking to limit the deterioration of its solvency position should be the decisive factor for the supervisory authority, when deciding on the extension of the recovery period and its duration.

2.37. A persistent low interest rate environment is by its nature not a sudden or unforeseen event. As the undertaking concerned could see the risk of such an event taking place a long way ahead, it is not appropriate that it benefits from a long extension of the recovery period if it seriously failed to take reasonably available measures to protect its solvency position against the impact of a long term low interest rate level. This in particular applies where the supervisory authority has already tried to get the undertaking to take appropriate steps.

**Guideline 7 – Extension of the recovery period on account of a high impact catastrophic event**

Where EIOPA has declared a high impact catastrophic event to have taken place, the decisive factor for the supervisory authority should be the extent to which the undertaking faces claims significantly higher than could have been expected under normal circumstances.

2.38. High impact catastrophic events, while likely to have some effect for a large number of undertakings, do not necessarily hit all these undertakings to a degree that justifies an extension of the recovery period where they fail to comply with the SCR at that time. Undertakings that cannot meet the SCR in a situation when EIOPA has declared a high impact catastrophic event to have taken place are only eligible for an extension of the recovery period if they are directly and severely affected by that event.

### **Guideline 8 – Applying a further extension of the recovery period where original assumptions have changed materially**

The supervisory authority should only consider a request for a further extension where the underlying circumstances of the original extension of the recovery period have changed in a way that under those new circumstances the supervisory authority could have granted a longer extension of the recovery period and the request is supported by an adapted realistic recovery plan.

The supervisory authority should allow an undertaking to request a further extension of the recovery period as long as the resulting overall extended recovery period does not exceed the maximum period as referred to in Article 138(4) of the Solvency II Directive.

- 2.39. Article 138(5) of the Solvency II Directive obliges the supervisory authority to withdraw the extension of the recovery period if an undertaking fails to show significant progress towards compliance with the SCR. However, in a persistent low interest rate environment or in a fall in financial markets which is unforeseen, sharp and steep the actual progress achieved does not solely depend on the undertaking concerned. Assumptions about developments could turn out to be vastly incorrect and after the approval of a recovery plan the situation could change so much that the supervisory authority agrees that on account of current developments the recovery plan can no longer be considered to be realistic. This is why an extension can be further extended.
- 2.40. A further extension of an initially extended recovery period is considered to be preferable to revoking an extension that with hindsight is recognised as overly long.
- 2.41. A request for a further extension of an initially extended recovery period requires the undertaking to submit an adapted realistic recovery plan within two months of discovering and notifying the supervisory authority that the current plan is no longer feasible on the basis of the extension the supervisory authority was previously prepared to grant. This is based on the mutatis mutandis application of the timeframe allowed for the submission of a realistic recovery plan according to Article 138(2).

### **Guideline 9 – Assessing significant progress**

When assessing whether the undertaking has made significant progress towards compliance with its SCR as mentioned in the fifth subparagraph of Article 138(4) of the Solvency II Directive, the supervisory authority should determine whether the undertaking is still likely to meet its recovery plan. The supervisory authority should consider at least whether the undertaking:

- (a) failed without sufficient justification to implement any measures it has committed itself to take; or
- (b) failed in making significant progress on any of the objectives to be achieved in every three months as a result of the proposed measures that were included in the recovery plan.



- 2.42. Significant progress will not be judged in absolute terms but individually against the undertaking's own recovery plan. This needs to include well defined and realistic interim milestones (measures to be taken for the re-establishment of the eligible own funds or the reduction of the risk profile) and timelines, according to which progress can be assessed.
- 2.43. A quarterly milestone does not necessarily have to show a quantifiable improvement of eligible own funds or reduction of the risk profile as it may take some time until measures to be taken show a positive effect. However in general, re-compliance with the SCR is expected to be commensurate with the amount of time of the recovery period that has already elapsed. This instance has to be taken into account in the drafting of the recovery.
- 2.44. Once a recovery plan is approved, an undertaking has to follow the plan and not deviate from it without consultation with the supervisory authority. Hence, the undertaking needs a good explanation for any failure to take the actions it has planned to take when submitting the recovery plan to the supervisory authority for approval. Not following the measures set out in the plan without demonstrating that there were very good reasons for not proceeding as planned will thus be considered as a significant lack of progress.
- 2.45. Where an undertaking does take the planned actions the results may fall behind the targeted results. This can still be considered to show significant progress as long as the deviation from the intended target is exceptional. Falling behind target could normally no longer be considered to be exceptional if it occurs two times in a row.
- 2.46. In a group context, information about significant progress, in particular on the SCR of the group undertakings concerned and the connected initiatives that have been undertaken (whether the undertaking is still likely to meet its recovery plan), needs to be exchanged within the College, also to inform the members of the college itself.

#### **Guideline 10 - Withdrawal or revocation of the extension**

If the supervisory authority concludes that the extension of the recovery period should be withdrawn or revoked, it should give the undertaking the opportunity to give its view on the proposed withdrawal or revocation within an appropriate timeframe.

- 2.47. As the withdrawal of the extension is a very serious supervisory measure, the undertaking concerned ought to be heard before any final decision to withdraw an extension is taken. In line with the basic idea that breaches of the SCR call for prompt measures, as evidenced by the short "normal" recovery periods and time limits for the submission of a recovery plan, undertakings however cannot expect an extensive period for comments.
- 2.48. When an extension is withdrawn, the undertaking is still in breach of the SCR but has run out of time to remedy the situation. In this case the supervisory authority has the power to take appropriate measures against the undertaking concerned. As when the normal recovery period has run out without full remedy of the SCR breach, these can be any measures necessary to close the gap

between the SCR and the level of own funds as long as they are proportionate, i.e. no other adequate, less onerous measures are available.

**Guideline 11 – Public disclosure of the withdrawal or revocation of the extension**

Where the supervisory authority withdraws or revokes an extension of the recovery period, it should ensure that the undertaking complies without any delay with the requirement of Article 54(1) of the Solvency II Directive to publicly disclose such information, and the reasons for the withdrawal or revocation, in an update of its Solvency and Financial Condition Report.

2.49. The fact that a supervisory authority has withdrawn or revoked the extension of a recovery period which it originally agreed is a major development, significantly affecting the relevance of the information disclosed in the undertaking's Solvency and Financial Condition Report. As such the undertaking has to disclose the fact of the withdrawal or revocation and specify the reasons why it was considered not to have achieved significant progress towards remedying the breach of its SCR or why the supervisory authority has seen fit to cut the recovery period short. The supervisory authority needs to ensure that the information provided is appropriate and timely.

## **Annex II: Impact Assessment**

### **Section 1: Procedural Issues and Consultation of Interested Parties**

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 undertaken according to an Impact Assessment methodology.

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.

On the 29th of January 2010 EIOPA's predecessor CEIOPS provided advice to the European Commission for the draft Implementing Measures<sup>6</sup>. In particular the advice covered:

- The extension of the recovery period, including advice on a maximum period of 21 months for the extension of the recovery period, as referred to in Article 138 (4) of the Directive 2009/138/EC Directive, in case of an exceptional fall in the financial markets;
- And the factors to be taken into account by the supervisory authority when applying an extension of the recovery period beyond the recovery period as referred to in Article 138 (3), first and second subparagraphs. This advice included an impact assessment as well.

On several instances the advice announced that further so-called Level 3 guidance would be contemplated in order to achieve further harmonisation between supervisory authorities beyond the subject matter of the advice<sup>7</sup>.

By Directive 2014/51/EU<sup>8</sup> Article 138 (4) Directive 2009/138/EC was amended in that manner that an extension of the recovery period may be applied in case of exceptional adverse situations affecting insurance and reinsurance undertakings representing significant share of the market or affected lines of business and that the recovery period may be extended by a maximum period of 7 years.

The draft Guidelines and its Impact Assessment were subject to public consultation between 3 December 2014 and 2 March 2015. Stakeholders' comments were duly taken into account and served as a valuable input in order to revise the Guidelines.

The comments received and EIOPA's responses to them are summarised in the section Feedback Statement of the Final Report.

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<sup>6</sup> CEIOPS-DOC-60/10.

<sup>7</sup> See for instance paragraph 1.6: The Advice also touches upon how Article 138(4) is to be interpreted in CEIOPS' view and the questions that arise in the application of the article. It will, however, be left to Level 3 guidance to establish how the provision should be applied in practice in order to achieve a sufficient level of harmonisation, and paragraph 3.47: In order to make the withdrawal of an extension predictable, supervisors would however still have to establish what degree of fulfilment of the recovery plan's milestones is required for the progress to be taken as significant. CEIOPS proposes to settle this question in its Level 3 guidance.

<sup>8</sup> DIRECTIVE 2014/51/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

## **Section 2: Problem Definition**

The provision in Directive 2009/138/EC that undertakings only have a period of time of six months (recovery period) to remedy the situation in case of a breach of the Solvency Capital Requirement (hereinafter SCR), with the power of the supervisory authority to extend that period, if appropriate, by three months, as such is new. And new is also the additional provision, in the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, to further extend the recovery period by a maximum period of seven years. There is no previous or current supervisory experience with applying the power to extend the recovery period in exceptional adverse situations.

Directive 2009/138/EC is not specific about the relation between the named exceptional adverse situations, namely a fall in financial market which is unforeseen, sharp and steep, a persistent low interest rate environment or a high-impact catastrophic event, as referred to in Article 138 (4), subparagraph 2, as amended by Directive 2014/51/EU, and the length of the extension of the recovery period, including the maximum period of seven years.

The Commission Delegated Regulation 2015/35 names the relevant factors and criteria for the purpose of deciding on an extension of the recovery period and determining its length. However, the Commission Delegated Regulation 2015/35 is not explicit about the relation between certain factors and criteria and the decision to apply an extension of the recovery period and the appropriate timeframe for the extension of the recovery period or about the relative weighing of such factors and criteria in an individual case.

Without EIOPA Guidelines on the extension of the recovery period there would be considerable room for different interpretations as to whether to apply an extension of the recovery period and how to determine the appropriate duration of the extension of the recovery period. In the same manner, without issuing guidelines there would be uncertainty among supervisory authorities as to finding an appropriate balance, as regards supervisory actions and measures, such as whether or not to grant an extension of the recovery period and the duration of the recovery period, between the objective of achieving the protection of policy holders and beneficiaries on the one hand and considering the impact of such supervisory actions and measures on the stability of the financial system and preventing pro-cyclical effects of such supervisory measures and actions on the other hand.

An issue for undertakings might be a wish to know under which circumstances a withdrawal of the extension could take place after insufficient progress in the execution of the recovery plan or a revocation of the decision to extend the recovery period could take place in case the circumstances that led to that decision have changed significantly.

Since the circumstances under which Article 138(4) applies are considered to be relatively rare, this may not be a pressing problem. Nevertheless there are good reasons to ensure that supervisory authorities from day one of the application of Directive 2009/138/EC have a common understanding about how their power under

Article 138(4) will be applied, and what will be the requirements on undertakings in such a situation.

### **Proportionality**

According to Article 34 (6) of Directive 2009/138/EC supervisory powers shall be applied in a timely and proportionate manner. This also applies to the power to extend the recovery period. Recital 18 of Directive 2009/138/EC further explains the relevance of the proportionality principle as regard the application of supervisory powers by stating that "in order to ensure the effectiveness of the supervision all actions taken by the supervisory authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking, regardless of the importance of the undertaking concerned for the overall financial stability of the market." The factors and criteria to be taken into account, when deciding on a possible extension of the recovery period and the length of the extended recovery period, serve as a basis for supervisory authorities to apply the power to extend the recovery period in a proportionate manner.

### **Baseline**

When analysing the impact from policies, the 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 or supervisory intervention.

The baseline is based on the current situation of EU insurance and reinsurance markets, taking account of the progress towards the implementation of the Directive 2009/138/EC framework achieved at this stage by insurance and reinsurance undertakings and supervisory authorities.

In particular the baseline will include:

- The content of Directive 2009/138/EC as amended by Directive 2014/51/EC.
- The Commission Delegated Regulation 2015/35.

### **Section 3: Objective Pursued**

The objective of the present guidelines is to provide a common understanding between supervisory authorities as to how the powers under Article 138(4) are to be applied, so promoting supervisory convergence (on methods, tools and powers) and cooperation and increasing transparency. Also, these guidelines should help supervisory authorities, when applying the power to extend the recovery period, to strike an appropriate balance between the main objective of supervision, according to Article 27 of Directive 2009/138/EC, of the protection of policy holders and beneficiaries on the one hand, and - according to Article 28 of Directive 2009/138/EC - the impact of their decisions on the stability of the financial system, including preventing potential pro-cyclical effects on the other hand.

Furthermore, such a common understanding would provide for making potential decisions of the supervisory authorities with regard to extension of the recovery period more predictable for the undertakings. Also, more clarity would be provided regarding the circumstances under which the supervisory authority will withdraw or revoke the decision to extend the recovery period or reduce the duration of the extended recovery period. That is important because the duration of the extended recovery period may have a significant impact on the financial situation of an undertaking.

The degree of predictability is however necessarily limited since the supervisory power to apply an extension of the recovery period and the decision on the appropriate duration of the recovery period depends on a number of factors and criteria that make it difficult to pre-determine which duration of the recovery period is the most appropriate in any given situation. The approach cannot be too prescriptive, but must leave supervisory authorities with the necessary flexibility.

A decision to extend the recovery period and more specifically, a decision on the duration of the extended recovery period, should also take into account that the duration of the extended recovery period should be:

- sufficiently long in order for the undertaking to be able to overcome the exceptional adverse situation affecting insurance and reinsurance undertakings representing a significant market share or affected lines of business, taking into account the stability of the financial markets and considering possible pro-cyclical effects,
- no longer than necessary in order to serve the objective of protection of policy holders as far as possible.

Moreover, serving the protection of policy holders also means that, not being able to extend the recovery period or not applying such a power in case of exceptional adverse situations could have a detrimental effect on the insurance market as a whole and at the end of the day could seriously endanger the interests of policyholders and beneficiaries. However, where such extraordinarily adverse situations on financial markets are not manifested anymore, the power to extend the recovery period should be withdrawn.

Therefore, the options and approaches have to be chosen with a view to properly cater for the needs of policyholders and beneficiaries in order to arrive at a way to apply the power vested in supervisory authorities that enhances their general protection.

#### **Section 4: Policy Options**

EIOPA has identified four issues that have been considered based on what EIOPA believes to be the most pressing themes for undertakings or supervisory authorities with regard to the application of the power to extend the recovery period. The options identified were also based on what issues could cause the most disruptive consequences to the level playing field if not appropriately addressed:

### **Policy issue 1: Decision on the extension of the recovery period and its duration (Guidelines 1-7)**

Option 1.1: Provide no guidance on the decision on the extension of the recovery period and its duration;

Option 1.2: Provide guidelines, when deciding on the duration of the recovery period, on the application of the maximum period of seven years;

Option 1.3: Provide guidelines on a weighing of the factors and criteria to be taken into account when deciding on the extension of the recovery period and on the duration of the extension of the recovery period.

### **Policy issue 2: Review of the decision to extend the Recovery period (further extension, reduction, revocation or withdrawal) (Guidelines 8-11)**

Option 2.1: Provide guidelines on making the decision to extend the recovery period subject to the provision whereby the supervisory authority may revoke or reduce the extended recovery period

Option 2.2: Provide guidelines specifying the milestones to be considered by the supervisory authority when deciding whether there has been significant progress in achieving the re-establishment of the Solvency Capital Requirement or a reduction of the risk profile.

### **Policy issue 3: Exchange of information between supervisory authorities**

Option 3.1: Provide guidelines on the exchange of information between supervisory authorities regarding decisions to extend the recovery period.

Option 3.2: Provide no guidelines on the exchange of information between supervisory authorities regarding decisions to extend the recovery period.

### **Policy issue 4: Consistency of decision and consultation between national supervisory authorities in case of extension of recovery period in a group**

Option 4.1: Provide guidelines establishing a principle of consistency for decisions on the extension of the recovery period within a group and a specific obligation to consult on this issue.

Option 4.2: Provide no guidelines with respect to decisions on the extension of the recovery period within a group.

## **Section 5: Analysis of Impact**

In adopting Directive 2009/138/EC, policy-makers have already considered, analysed and compared a number of policy options. Based on the impact assessment done for the requirements set in Directive 2009/138/EC and in the Commission Delegated Regulation 2015/35, EIOPA has considered the aforementioned options. In this section EIOPA discusses the options on which the impact assessment is focused.

Besides respecting the aforementioned principle of proportionality, the analysis was also closely linked to the principle of subsidiarity, which states that the Community

actions should be as simple as possible and leave as much scope for national decision as possible, and should respect well established national arrangements and legal systems.

### **Policy issue 1: Decision on the extension of the recovery period and its duration**

- **Option 1.1: Provide no guidance on the decision on the extension of the recovery period and its duration.**

The power to extend the recovery period is new. Undertakings and supervisory authorities do not have experience with such a power. Both have to gain experience with applying this power, the more so where the possible duration of the extended recovery period ranges from 1 month to seven years. Providing guidance from the outset would possibly limit undertakings and supervisory authorities in gaining full experience with the application of these powers and would limit the possibilities of developing best practices from practical experience with a range of concrete situations. Not providing guidance on the decision on the extension of the recovery period and its duration would not limit the expectations of undertakings as regards any request to extend the recovery period and its duration in case an exceptional adverse situation has been declared. Such would leave as much as possible room for undertakings to justify any request, taking into account the specific circumstances at hand. Also, supervisory authorities would be able to apply the power to extend the recovery period, taking into account all relevant circumstances, without being restricted by any predetermined reasoning. Any supervisory decision to extend the recovery period could be as much as possible proportionate to the specific circumstances of the undertaking.

On the other hand, lacking any guidance on the application of the power to extend the recovery period and its duration could increase uncertainty of undertakings on how to apply for an extension of the recovery period and its duration. Supervisory authorities would need to develop complete new processes, each on their own. Such would impact on the efficiency and effectiveness of the process of requesting (undertakings) and decision making (supervisory authorities) for an extension of the recovery period and its duration.

- **Option 1.2: Provide guidelines, when deciding on the duration of the recovery period, on the application of the maximum period of seven years.**

An extension of the recovery period with a maximum period of 7 years creates a recovery period of 93 (84+9) months, i.e. a recovery period that is more than 10 times as long as a normal (already extended) recovery period. A deviation from normal proceedings of that magnitude requires very strong arguments that are balanced against the risks such a long period of non-compliance with the SCR poses for policyholders and beneficiaries. This long period should be considered to be absolutely necessary in order to avoid or mitigate pro-cyclical effects or otherwise detrimental effects to the stability of the financial markets of supervisory measures or actions addressing such exceptional adverse situations affecting insurance and



reinsurance undertakings representing significant share of the market or affected lines of business.

Undertakings may feel the impact from an exceptional adverse situation for quite some time but the purpose of an extension of the recovery period is not to cover the time until the situation is back to normal. However, in order to mitigate the impact of an exceptional adverse situation on a significant part of the insurance market of affected lines of business having to remedy solvency problems at roughly the same time, any extension of the recovery period does not have to be based on how long the exceptional adverse situation is expected to continue. It is only necessary to ensure that the impact of a number of undertakings taking remedial actions is spread over a sufficiently long time.

EIOPA considered whether, as regards the application of the maximum period of seven years for the recovery period, the Guidelines should differentiate between the exceptional adverse situations identified in Directive 2009/138/EC. From neither of these exceptional adverse situations it is from the outset clear how long such a situation in extreme circumstances might prolong. Differentiating between these exceptional adverse situations might therefore be considered disproportionate. On the other hand, a period of seven years is of such a duration that it is for all parties involved – undertakings, supervisory authorities – almost impossible to reasonably predict how the situation, as well as the impact on the ability to recover from non-compliance with the SCR because of the situation, will evolve over the full duration of the maximum period of seven years. Because of this uncertainty there is the risk that the initially granted extended recovery period may, at some point in time in the future, appear to be too long, as the situation that led to the decision to grant that extension of the recovery period and the duration of such recovery period has improved in such a manner that no or not such a long remaining extension of the recovery period will be justified at that point in time in the future. The supervisory authority may then feel the need to reduce or revoke the extension of the recovery period. This risk could be avoided by not applying from the outset the maximum period of seven years when deciding on the duration of the recovery period.

Not providing guidance on how to decide on the duration of the extension of the recovery period, including the maximum period of seven years, might provoke unwarranted expectations by undertakings. Also, supervisory authorities may feel the need to consider and justify (where a decision to extend the recovery period may be brought to court) in any case a possible maximum period of seven years without taking into account the uncertainty about how the situation will evolve and the risk of having to reduce or revoke the initially granted extended recovery period.

- **Option 1.3: Provide guidelines for a weighing of the factors and criteria to be taken into account when deciding on the extension of the recovery period and on the duration of the extension of the recovery period.**

The Commission Delegated Regulation 2015/35 provide an exhaustive list of factors and criteria to be taken into account in deciding whether an extension of the recovery period should be applied and, where appropriate, in deciding on the duration for the extension. However, the Commission Delegated Regulation 2015/35 do not specify

which factors and criteria could potentially matter more in favour or against a decision to extend the recovery period. Nor do they provide any steering to the supervisory authority as to how such factors and criteria should be weighed when deciding on the duration of the recovery period. EIOPA discussed the benefits of having more specific guidance in order to produce more comparable supervisory decisions.

Generally, undertakings would benefit from supervisory authorities applying a predetermined weighing of factors and criteria when deciding to extend the recovery period and on the duration of the recovery period. Such features and approaches would enhance predictability of supervisory decisions and would enhance level playing field between undertakings applying for an extension of the recovery period. On the other hand, an undertaking, when applying for an extension of the recovery period, is not supposed to take for granted a positive decision, neither a specific duration of the extended recovery period. On the contrary, the undertaking has to base its contingency plans for capital management on the assumption that the recovery period will not exceed the normal length of at the most nine months.

From the perspective of supervision it is in the interest of supervisory authorities to set clear criteria according to which a supervisory authority can extend the recovery period in the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or affected lines of business. A prescribed weighing of factors and criteria would serve the efficiency and effectiveness of the decision making process.

From the perspective of policy holders and beneficiaries, limiting the degree of freedom of supervisory authorities when deciding on the extension of the recovery period and the duration of the recovery period, by 'prescribing' the weighing of such factors and criteria, would prevent the decision on the recovery period being potentially unbalanced as regards their interest of having the undertaking recovered its SCR as soon as possible.

On the other hand, when the weighing of factors and criteria would have been predetermined from the outset, supervisory authorities would not be able to learn from experiences from applying the power to extend the recovery period nor could they take into account another possible weighing of factors and criteria, emerging from such supervisory experience. The result would be that supervisory authorities being prevented from taking an otherwise appropriate decision to extend the recovery period could put undertakings in a disadvantageous situation. Such an approach would therefore unnecessarily tie the hands of supervisory authorities with the result that they would not be able to apply the power to extend the recovery period 'in a proportionate manner', as required by Article 34 (6) of Directive 2009/138/EC. This could result in outcomes that would be at the detriment of undertakings and policy holders and beneficiaries.

Furthermore, a too strictly prescribed application of the power to extend the recovery period could potentially limit undertakings to pursue their businesses and policy holders to engage with such undertakings. Reducing the number and variety of undertakings offering products and services in the market may reduce the variety of insurance products offered, which could also have a negative impact on pricing. Such effects would be at the detriment of the interests of policy holders and beneficiaries.

What is required is a proportionate application of these powers by supervisory authorities, for good reasons laid down as a leading principle when applying supervisory powers.

**Policy issue 2: Review of the decision to extend the recovery period (further extension, reduction, revocation or withdrawal)**

- **Option 2.1: Provide guidelines on making the decision to extend the recovery period subject to the provision whereby the supervisory authority may revoke or reduce the extended recovery period.**

As stated already, as regards the duration of the extension of the recovery period in case of an exceptional adverse situation Directive 2009/138/EC provides for a maximum extension period of seven years. Theoretically and practically, it would be deemed to be impossible to predict that a declared exceptional adverse situation would prolong over the full period of seven years. Nor will it be possible to predict how long such an exceptional adverse situation would in fact prolong. This impacts the decision making on the appropriate duration of the extended recovery period.

In a given case, where an undertaking A has been granted an extension of the recovery period of x months, it could occur that before this period of x months has come to an end EIOPA declares the relevant exceptional adverse situation no longer to exist or that the situation which has led to the extension of the recovery period being granted has improved materially. Any undertaking B that after this point in time would become in breach of the SCRSCR would be granted a recovery period of 6 months, possibly extended to 9 months, or, where the exceptional adverse situation still exists but has improved materially, much shorter extended recovery periods would be granted. It could then occur that undertaking A would benefit from a longer (remaining) recovery period than the recovery period of undertaking B. This would imply an unlevelled playing field between undertakings. In order to prevent such a potential unlevelled playing field, supervisory authorities will be inclined to provide for rather limited (initial) recovery periods. However, where, at the close of such a limited recovery period it would still be justified for the undertaking to be granted a further extension of the recovery period, the undertaking needs to apply for a further extension of the recovery period and the supervisory authority would have to decide on such a further extension. Such would impose additional costs on undertakings and supervisory authorities.

The potential unlevelled playing field described in the previous paragraph could be prevented where the supervisory authority would have the power to reduce or revoke an initially granted extended recovery period at that point in time where EIOPA declares the relevant exceptional adverse situation no longer to exist or where the situation that has led to the application of the recovery period has improved materially. However, it is uncertain whether each supervisory authority within the legal regime of the Member State would have the power to reduce or revoke the initial decision to extend the recovery period. Moreover, even if supervisory authorities would have the power to reduce or revoke an initially granted extended recovery period, between Member States there could be differences as regards the possibility of undertakings to object to such a decision to reduce or revoke the extended recovery

period or to appeal against such a decision. This would create uncertainties for undertakings and supervisory authorities and would trigger a further unlevelled playing field between undertakings.

In order to overcome the drawbacks and potential costs described in the previous paragraphs EIOPA has considered to introduce as much as possible legal certainty as regard the power to reduce or revoke an initially granted extended recovery period by providing for a guideline implying that supervisory authorities should make all decisions to extend the recovery period subject to the provision whereby the supervisory authority may revoke or reduce the extended recovery period as appropriate where the situation which has led to the extension of the recovery period has improved materially. Such a provision on the power to revoke or reduce the extended recovery period, including the circumstances in which such a power may be applied, will be an integral part of the initial decision to extend the recovery period, thereby increasing legal certainty about the application of this power.

Where supervisory authorities include such a provision in the decision to extend the recovery period, they will be more comfortable about applying a realistic duration of the extension of the recovery period, taking into account the exceptional adverse situation at stake as well as the specific circumstances of the undertaking applying for an extension of the recovery period, thereby reducing the need for further extensions of the recovery period. And, where unforeseen, the duration of the recovery period would need to be reduced or revoked at some point in time in the future, the supervisory authority will have a secure power to do so. At such a future point in time the supervisory authority could then prevent an unlevelled playing field between undertakings that have been granted with an extended recovered period on the one hand and other undertakings in breach of the SCR by that time that need to comply with the normal recovery period of 6 or possibly 9 months on the other hand.

- **Option 2.2: Provide guidelines specifying the milestones to be considered by the supervisory authority, when deciding whether there has been significant progress in achieving the re-establishment of the Solvency Capital Requirement or a required reduction of the risk profile.**

EIOPA discussed the precise milestones that an undertaking would have to reach in order for the supervisory authority to determine that the progress towards re-compliance with the SCR is to be considered significant as requested by Article 138 (4), third subparagraph of Directive 2009/138/EC. If no such progress has been achieved, according to Article 138(4), fourth subparagraph of Directive 2009/138/EC, the supervisory authority is required to withdraw its decision to extend the recovery period. Specifying such milestones would provide for transparency and would ensure a fair and equal treatment for all undertakings to which an extension of the recovery period has been applied and would provide clarity to stakeholders, and more specifically to policy holders and beneficiaries, up to which point any further extension of the recovery period would not be considered justified.

Detailing the milestones to be achieved and putting quantitative thresholds on the achievements of such milestones would benefit undertakings and stakeholders, including policy holders and beneficiaries, when supervisory authorities assess

progress of re-establishment of the SCR, especially where not showing the required progress would force supervisory authorities to withdraw the extension of the recovery period. And, as the decision to withdraw the extension of the recovery period may have a considerable potential impact on the undertaking, it is of interest of the supervisory authority to apply as clear and unambiguous criteria determining the progress to be achieved in re-establishing the SCR as possible.

EIOPA considered that the withdrawal of an extension of the recovery period because the undertaking failed to demonstrate significant progress towards the aim of re-establishing the SCR has considerable consequences for the undertaking concerned, in particular since this supervisory measure has to be publicly disclosed. As a withdrawal of the extension of the recovery period is mandatory when progress is not significant, this is also an important issue for the supervisory authority. Guidelines that would specify when progress is not significant would inform undertakings and enable them to assess whether they are in danger of losing an extension. They could take this into account in their efforts to re-establish compliance with the SCR and this could help avoid situations where the supervisory authority is obliged to withdraw the extension as undertakings could be expected to do their utmost to reach the milestone of significant progress.

However, it has also been considered that very specific milestones, such as exact percentages, could produce the opposite effect for some undertakings as they could try to meet the thresholds rather than the full milestones. Therefore, prescribing such milestones and thresholds in detail could prevent supervisory authorities from applying this power in a proportionate manner. Moreover, having in place sufficiently precise milestones could also be provided for by the recovery plan to be submitted by the undertaking to the supervisory authority and to be approved by the supervisory authority.

Guidelines specifying milestones could also help to ensure fair and equal treatment for all undertakings to whom an extension has been applied. In view of the consequences of a withdrawal of an extension of the recovery period for an undertaking, it is particularly important that the same measure should be applied to all undertakings so nobody is put at a disadvantage.

On the downside, being very prescriptive provides no flexibility to supervisory authorities not to withdraw the extension where an undertaking fails to meet the milestones, when this failure is due to factors and criteria over which it has no control. While it is easy in theory to set milestones they may well turn out not to meet the purpose and fail to cover just those cases for which a withdrawal of the extension would be an appropriate reaction.

### **Policy issue 3: Exchange of information between supervisory authorities**

- **Option 3.1: Provide guidelines on the exchange of information between supervisory authorities regarding decisions to extend the recovery period.**

According to Article 31 of Directive 2009/138/EC and the Commission Delegated Regulation 2015/35 supervisory authorities have to disclose aggregated statistical data on among others the number of extensions granted in accordance with Article

138(4) Directive 2009/138/EC and their average duration. Supervisory authorities also have to share such information about individual undertakings when cross-border groups or undertakings with (significant) business in other Member States are concerned.

Where exchange of information between supervisory authorities on the application of the power to extend the recovery period and on the duration of the recovery period would inform and thereby support proper supervisory decision making, undertakings would benefit from such information exchange between supervisory authorities, also because this would improve the level playing field.

An exchange of information might also give more assurance to supervisory authorities, undertakings and policy holders and beneficiaries that the undertakings on the national market are not treated either more leniently or more strictly than undertakings across the EU and that the supervisory decisions contribute to keeping the level playing field.

- **Option 3.2: Provide no guidelines on the exchange of information between supervisory authorities regarding decisions to extend the recovery period.**

Considering that the cooperation between supervisory authorities is covered by the General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union, issuing specific guidelines on the cooperation with respect to the extension of the recovery might be neither necessary nor appropriate at this stage. The absence of a specific guideline should not be an obstacle for the proper supervisory cooperation.

If an exchange of information was required, it might help if the process for doing so was clearly set out in order to ensure that all relevant information reaches the other supervisory authorities in a timely manner and in sufficient detail. It may however not be necessary to design a specific process just for the exchange of information about the extension of the recovery period. Supervisory authorities are already required to exchange important or relevant information without delay. They could use the same processes and procedures for the exchange of information about extensions of the recovery period.

#### **Policy issue 4: Consistency of decision and consultation between national supervisory authorities in case of extension of recovery period in a group**

- **Option 4.1: Provide guidelines establishing a principle of consistency for decisions on the extension of the recovery period within a group and a specific obligation to consult on this issue.**

According to Article 218 of Directive 2009/138/EC, Article 138 (1) to (4) applies to groups mutatis mutandis. There may be cases where both the group and undertakings within the group are at the same time in breach of the SCR and whereby an exceptional adverse situation as declared by EIOPA is applicable. Then both the group and the relevant undertakings may apply for an extension of the recovery period. According to Article 218 (5) of Directive 2009/138/EC, any non-compliance of the group with the SCR will be analysed by the college of supervisors. According to Article

248(2), second subparagraph, the college of supervisors shall ensure that cooperation, exchange of information and consultation processes among supervisory authorities are effectively applied. In this respect it may be expected that the group supervisor and supervisory authorities of the relevant undertaking in breach of the SCR will align their decisions as regards the extension of the recovery period and the duration of the extended recovery period, where appropriate.

It may be perceived that without any guiding principle of consistency of decision making in a group context as regards the application of the power to extend the recovery period and its duration, national supervisory authorities may experience uncertainties about the application of the power to extend the recovery period and on deciding on the (duration of) the recovery period. Providing specific guidance might also contribute to ensure that the consultation on the decision regarding extension of recovery period take place in case such a decision is taken at the level of the group and individual undertakings being part of this group.

- **Option 4.2: Provide no guidelines with respect to decisions on the extension of the recovery period within a group.**

The need for ensuring consistency as well as the need for consulting decisions on extension of recovery period at the level of the group and individual undertakings being part of this group is recognised, as stated above.

At the same time, it is considered that the Directive 2009/138/EC and other guidelines already provide relevant requirements. Article 250 of the Directive establishes a general rule regarding consultation of decisions which are of importance for other supervisory authorities. Guideline 16 of EIOPA guidelines on operational functioning of colleges provides a detailed procedure of consultation within the college of supervisors. This process would apply for the purpose of consulting the decision on extension of recovery period. In addition to that, Guideline 19 of EIOPA guidelines on operational functioning of colleges establishes a procedure for ad-hoc exchange of information, which would apply for exchanging information necessary for the purpose of taking the decision in question. As regards the consistency of decisions taken, pursuant to Article 258 (1) of the Directive, the supervisory authorities concerned, including the group supervisor, shall, where appropriate, coordinate their measures. This requirement is further specified in Guideline 37 of EIOPA guidelines on supervisory review process, according to which, where measures are taken both at group and individual levels, the group supervisor and the supervisory authorities should coordinate measures, where appropriate, to enhance the effectiveness of the measures.

## **Section 6: Comparison of Options**

### **Policy issue 1: Decision on the extension of the recovery period and its duration**

In comparing the options against the objects pursued, i.e.:

- advancing supervisory convergence and cooperation and increasing transparency, and on a more operational level, harmonising supervisory methods, tools and powers,

- striking an appropriate balance between the main objective of supervision of the protection of policy holders and beneficiaries on the one hand and the impact of supervisory decisions on the stability of the financial markets, including preventing pro-cyclical effects, on the other hand,

EIOPA made the following assessments of the costs and benefits of the options considered.

### Undertakings

Additional costs for undertakings can be evaluated of a much minor scale with respect to those introduced by Directive 2009/138/EC:

- The guidelines do not diminish the opportunity of undertakings of being entitled to apply for an extension of the recovery period and being granted the duration of the recovery period needed, taking into account the exceptional adverse situation at stake.
- Possible additional costs are minimized by informing expectations of undertakings about the request for an extension of the recovery period, the duration of the recovery period, the possibility of a reduction or revocation of the recovery period and what has to be achieved in order prevent an extension of the recovery period being withdrawn.
- The Guidelines diminish uncertainty about (lack of) convergent supervisory decisions across Europe as regards the application of the power to extend the recovery period.

In front of minor additional costs arising from these EIOPA Guidelines undertakings would gain benefits:

- The Guidelines provide for a risk-based and proportionate application of the power to extend the recovery period, taking into account the relevant factors and criteria according to the Commission Delegated Regulation 2015/35;
- The Guidelines provide for clarity about the possibility to apply for a further extension of the recovery period within the overall maximum period of seven years;
- The Guidelines provide clarity about the supervisory expectations as regards the progress in re-establishing compliance of the SCR that needs to be achieved in order to prevent an extension of the recovery period being withdrawn.

### Supervisory authorities

The Guidelines do not add additional costs, from the perspective of supervisory decision making and monitoring supervisory decisions, compared to the provisions of Directive 2009/138/EC and the Commission Delegated Regulation 2015/35.

Also, the guidelines aim to prevent supervisory decisions being limited unnecessarily by too restrictive requirements as regards the weighing of factors or assessment of a significant progress to be achieved by undertakings with respect of the re-establishment of the SCR, thereby facilitating a proportionate application of the requirements.



On the other hand the guidelines provide supervisory authorities with guidance as regards the need at any stages of the supervisory decision making on the application of the power to extend the recovery period, to balance the interests of policy holders and beneficiaries on the one hand and preserving stability of the financial markets and considering the pro-cyclical impact of supervisory decisions on the other hand.

The Guidelines provide for clear expectations about sharing of information among supervisory authorities.

#### Policy holders

The Guidelines aim to limit additional costs of the power to extend the recovery period by aiming to prevent a too restrictive application of this power, where a too restrictive application could imply that an undertaking may be possibly unjustifiably obliged to sell no new policies or to withdraw from the market.

The Guidelines provide for clear guidance about the need to balance the interests of policy holders and beneficiaries on the one hand and preserving stability of the financial markets and considering the pro-cyclical impact of supervisory decisions on the other hand.

The Guidelines aim to provide for equal treatment of policy holders and beneficiaries across Europe as regards the impact of the application of the power to extend the recovery period on their interests.

Therefore, the preferred policy option for this policy issue is option 1.2: provide guidelines, when deciding on the duration of the recovery period, on the application of the maximum period of seven years. This option is preferable to option 1.1 (not providing guidance) to reach the objectives defined in section 3 of this report. It is also preferable to option 1.3 (weighing of the factors and criteria) since too prescriptive guidelines could unnecessarily limit the ability for supervisory authorities to apply their supervisory powers in a proportionate manner and that could be a disadvantage for the concerned undertakings.

#### **Policy issue 2: Review of the decision to extend the recovery period (further extension, reduction, revocation or withdrawal)**

The comparison of effects on the different stakeholders groups of the decision on the extension of the recovery period is applicable also to those decisions to be adopted by supervisory authorities concerning the recovery period already extended (further extension, reduction, revocation or withdrawal). Taking account of the effects on policy holders, supervisory authorities and policy holders, the preferred policy option for this policy issue is option 2.1: Provide guidelines on making the decision to extend the recovery period subject to the provision whereby the supervisory authority may revoke or reduce the extended recovery period. This option is preferable to option 2.2 (providing detailed milestones and thresholds), which was discarded since it could prevent supervisory authorities from applying this power in a proportionate manner and could be a disadvantage for the concerned undertakings.

### **Policy issue 3: Exchange of information between supervisory authorities.**

For this policy issue, only one option was originally considered (option 3.1): provide guidelines on the exchange of information between supervisory authorities regarding decisions to extend the recovery period. However, taking account that the General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union is to be revised to adapt it to the new Solvency II framework, this issue should be better considered in the scope of such revision. Therefore, the preferred policy option is option 3.2: Provide no guidelines on the exchange of information between supervisory authorities regarding decisions to extend the recovery period.

### **Policy issue 4: Consistency of decision in case of extension of recovery period in a group.**

The need for ensuring consistency as well as the need for consulting decisions on extension of recovery period at the level of the group and individual undertakings being part of this group is recognised. However, it is considered that the Directive as well as EIOPA guidelines on operational functioning of colleges and EIOPA guidelines on supervisory review process already provide the requirement regarding consultations and coordination of supervisory measures. Against this background, it is considered that the Directive and the above mentioned guidelines should ensure sufficient level of consistency between decisions taken by national supervisory authorities within particular colleges of supervisors, providing at the same time a necessary level of flexibility for supervisory authorities. Therefore, the preferred policy option is 4.2: Provide no guidelines with respect to decisions on the extension of the recovery period within a group.

## Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/046				
CP-14-046-GL on extension of recovery period				
EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), AMICE, Federation of European Accountants (FEE), GDV, Institute and Faculty of Actuaries, and Insurance Europe.				
The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/046.				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comment	<p>The IRSG welcomes the opportunity to comment on these guidelines on the extension of the recovery period in exceptional adverse situations.</p> <p><input type="checkbox"/> Guideline 2, where a conservative supervisory approach in deciding on a tight timeframe for the recovery period could trigger unintended financial outcomes for undertakings as it may result in decisions affecting the business in an adverse way (eg funding at an unfavourable borrowing rate, forced selling of assets in an unfavourable environment, buying reinsurance capacity in a hard market). It would therefore be better to rely on an ongoing dialogue between companies and supervisors such that realistic timelines can be agreed upon.</p> <p><input type="checkbox"/> 6 out of 15 GLs to delete:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Guidelines 3, 5, 6, 7, 8 do not add value as they state the obvious or simply repeat the Directive or the Delegated Acts – and so should be deleted.</li> <li><input type="checkbox"/> Guideline 4 should be deleted as it is covered by the draft RTS (CP-14-062). Only a reference to this draft RTS is necessary in this paper.</li> </ul> <p><input type="checkbox"/> Guideline 14 and 15 should be moved to “CP-14/050 guidelines on</p>	<p>Noted</p> <p>Partly agreed. Guideline 8 has been put upfront immediately after Guideline 1 and Guideline 2 (now 3) has been rephrased accordingly. See also the Feedback Statement.</p> <p>Partly accepted. Guideline 3 has been moved to Explanatory Text. For Guidelines 5,6, 7 please refer to feedback statement For</p>

			<p>exchange of information on a systematic basis within colleges”, because it concerns the exchange of information within colleges.</p> <p><input type="checkbox"/> Although reference is made in the Impact Assessment to the proportionality principle that needs to be applied by supervisors, there is no specific guideline that refers to this principle. It would be helpful if that could be added with some examples.</p>	<p>Guideline 8 please see resolution.</p> <p>Partially agree with comment on Guideline 4. Please see feedback statement.</p> <p>The Guidelines on groups have been deleted as the requirements are already covered by other papers.</p> <p>Proportionality principles apply across all the Guidelines. No need to provide examples.</p>
2.	AMICE	General Comment	<p>AMICE welcomes the opportunity to comment on the guidelines on the extension of the recovery period.</p> <p>We are concerned that these guidelines will not help develop convergent practices and a consistent approach to the extension of the recovery period during exceptional adverse situations.</p> <p>It is important to have further details on what the timeline for granting an extension on the recovery period would be. The supervisory decision on granting an extension of the recovery period should not take longer than two months.</p>	<p>Noted</p> <p>Noted. Please refer to Impact Assessment</p> <p>Disagree. The timeframe for the decision depends on the circumstances. However, it is in the interest of everybody that the decision should be taken without delays.</p>
3.	GDV	General Comment	<p>GDV welcomes the opportunity to comment on the proposal for guidelines on the extension of the recovery period in exceptional adverse situations.</p> <p>In its decision on the duration of the extension of the recovery period (guideline 2) the supervisory authority should take into account the</p>	<p>Noted</p> <p>Please see feedback</p>

			<p>economic circumstances for insurance undertakings. A "restrictive" approach could not only lead to unintended adverse economic consequences for insurance undertakings but also goes beyond Article 138 (4) of the Solvency II Directive. One goal of the guidelines on the extension of the recovery period in exceptional adverse situations is the minimization of pro-cyclical effects which, however, will be enhanced by short durations of possible extensions and several extensions of extensions. Therefore, GDV asks for a "reasonable approach".</p> <p>In general, guidelines that repeat the Solvency II Directive (guidelines 3 and 5) or go beyond the Solvency II Directive (guideline 2) should be deleted or confined, respectively.</p> <p>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.</p>	<p>statement.</p> <p>Please see feedback statement.</p> <p>Agree, the Explanatory Text is non-binding. Due to the amount of consultation papers in 2014/2015 EIOPA has focused on the comments with regard to Guidelines. Nevertheless, amendments have been introduced to the explanatory text where helpful and necessary.</p>
4.	Institute and Faculty of Actuaries	General Comment	We have just one comment with respect to this consultation; it is a relatively minor point of clarification (section 1.5 below).	Noted
5.	Insurance Europe	General Comment	<p>Insurance Europe welcomes the opportunity to comment on the guidelines on the extension of the recovery period in exceptional adverse situations. Insurance Europe have the following general concerns:</p> <p>Many guidelines state the obvious or repeat the Directive</p> <p>Several guidelines should be deleted (guidelines 3, 4, 5, 6, 7 and 8) as they either state the obvious, directly repeat the requirements or go beyond the Solvency II Directive or the Delegated Acts.</p>	<p>Noted</p> <p>Please see feedback statement.</p>

			<p>A restrictive supervisory approach in deciding on a timeframe for an extension could lead to unintended outcomes (guideline 2)</p> <p>In setting the extension timeframe supervisors need to consider the undertakings business context to avoid unintended outcomes, like pro-cyclical effects, when managing the business and the risks in order to re-establish an appropriate level of eligible own funds to cover the SCR. A restrictive approach in setting the extension timeframe could force undertakings into taking rushed decisions that could be unnecessarily costly due to the adverse situation or the lack of time to recover. It should be recognised that undertakings have a vested interest in staying in going concern and that pro-cyclical effects are kept at a minimum. Hence, Insurance Europe requests a reasonable approach by supervisors and EIOPA.</p>	Please see feedback statement.
6.	IRSG	1.2.	<p>Redrafting suggestion:</p> <p>p. 5: under 1.2. third line: "outmost" to be "utmost"</p>	Agreed and amended.
7.	Institute and Faculty of Actuaries	1.5.	<p>Article 138 of the Solvency II Directive explains that an exceptional adverse situation (as declared by EIOPA) will exist where one or more of the (specified) conditions apply: an unforeseen, sharp, steep fall in financial markets; persistent low interest rates; high impact catastrophic event. We have therefore assumed that the potential extension of the recovery period could only apply where at least one of these conditions apply - i.e. EIOPA would not declare that an exceptional adverse situation existed in other circumstances (nor would EIOPA have the legal power to do so). It would be helpful if EIOPA could confirm that our understanding is correct.</p>	Noted and confirmed.
8.	Insurance Europe	1.5.	<p>Insurance Europe is aware that an exhaustive list of what constitutes "high impact catastrophic event" as set out in Article 138(4)(c) is not possible, but it would however be welcome if some examples could be added in the introduction or in the explanatory text of these guidelines.</p>	Noted. These Guidelines are not the place to interpret "high impact catastrophic event", this is for EIOPA to decide. The Guidelines deal with what happens after EIOPA has declared an

				exceptional adverse situation to exist.
9.	IRSG	1.14.	<p>Guideline 1</p> <p>This guideline should be deleted since it repeats articles 288 and 289 of the Delegated Acts:</p> <p>Article 288(c) already asks to consider pro-cyclical effects.</p> <p>Article 289(a) already mentions the protection of policyholders.</p>	Disagreed. The aim of this Guideline is not to repeat the Commission Delegated Regulation but to provide a further weighting of these factors mentioned in Articles 288 and 289 of the Commission Delegated Regulation.
10.	Insurance Europe	1.14.	<p>Guideline 1</p> <p>This guideline should be deleted as it duplicates articles 288 and 289 of the Delegated Acts. In particular, article 288(c) already asks to consider pro-cyclical effects. Protection of policyholders is already mentioned in article 289(a).</p>	See resolution to comment 9.
11.	IRSG	1.15.	<p>Guideline 2</p> <p>Where a conservative supervisory approach in deciding on a tight timeframe for the recovery period could trigger unintended financial consequences for undertakings as it may result in decisions affecting the business in an adverse way (eg funding at an unfavourable borrowing rate, forced selling of assets in an unfavourable environment, buying reinsurance capacity in a hard market). It would therefore be better to rely on an ongoing dialogue between companies and supervisors such that realistic timelines can be agreed upon.</p>	Please see feedback statement.
12.	GDV	1.15.	<p>1. An extension of the recovery period could only be granted in exceptional adverse situations that exist -according to Art. 138 (4) Solvency II-Directive- where "a significant share of the market or the affected lines of business are seriously or adversely affected." A "restrictive" approach to deciding on the duration of the extension could not only lead to unintended adverse economic consequences for insurance undertakings that intend to comply with the solvency capital requirement despite exceptionally adverse situations, but also goes beyond Article 138 (4) of the Solvency II Directive. One goal of the guidelines on the extension of the recovery period in exceptional adverse</p>	Please see feedback statement.

			<p>situations is the minimization of pro-cyclical effects which, however, will be enhanced by short durations of possible extensions and several extensions of extensions.</p> <p>GDV asks for a "reasonable" approach to deciding on the duration of the extension of the recovery period taking into account the economic situation at hand of the insurance undertakings.</p>	
13.	Insurance Europe	1.15.	<p>Guideline 2</p> <p>This guideline should be rephrased. According to Article 138 (4) of the Directive, an extension of the recovery period could only be granted in exceptional adverse situations that exist where "a significant share of the market or the affected lines of business are seriously or adversely affected". Hence, a "restrictive" approach in deciding on the duration of an extension could trigger unintended adverse economic outcomes, such as pro-cyclical effects if assets are sold at an inopportune time or funding is needed at higher rates to show progress which is the opposite of what should be achieved. This approach would also be consistent with guideline 1.</p> <p>Redrafting proposal:</p> <p>The supervisory authority should aim to be realistic when deciding on the duration of the extension, taking into consideration the specificities of undertakings, the markets they operate in, and the level of exceptional adverse situation.</p> <p>The guideline also contradicts the requirements set out in guideline 9 by referring to a further extension on a later date, whereas guideline 9 requires materially worse conditions in order for the extension to be granted.</p>	<p>Please see feedback statement.</p> <p>Disagreed. Please see feedback statement.</p> <p>Guideline 9 is not a contradiction but the further extension is for those cases where the circumstances worsen further.</p>
14.	IRSG	1.16.	<p>Guideline 3</p> <p>This guideline should be deleted as it duplicates Article 138(4) in the Directive stating that "the supervisory authority may extend, for affected undertakings, the period set out in the second subparagraph of paragraph 3".</p>	<p>Noted. The Guideline has been moved to Explanatory Text. The message is that in case where the undertaking</p>



			The guideline states the obvious – it goes without saying that the undertaking should apply for an extension before the previous extension has expired.	already is not meeting the SCR and has submitted a recovery plan before EIOPA declares an exceptional adverse situation to exist, it would still be eligible for an extension of the recovery period. .
15.	GDV	1.16.	Guideline 3 should be deleted as it is already covered by Article 138 of the Solvency II Directive.	Noted. See resolution to comment 14.
16.	Insurance Europe	1.16.	Guideline 3 This guideline should be deleted as it goes without saying that the undertaking should apply for an extension before the previous extension has expired. Furthermore, it also duplicates article 138(4) of the Directive, stating that “the supervisory authority may extend, for affected undertakings, the period set out in the second subparagraph of paragraph 3”.	Noted. See resolution to comment 14.
17.	IRSG	1.17.	Guideline 4 We consider that this guideline is already covered in CP-14-062 as this draft RTS concerns the harmonisation of information in the recovery plan and the finance scheme. Therefore this guideline should be deleted from this paper and a cross reference to the CP-14-062 should be inserted in the introduction instead.	Please see feedback statement.
18.	AMICE	1.17.	Guideline 4 – Extension Recovery Period References to articles 279 and 280 should be replaced by articles 288 and 289. The content of the recovery plan is detailed in the EIOPA RTS on the Recovery Plan, so there is no need to have it here.	Please see feedback statement.
19.	Insurance Europe	1.17.	Guideline 4 This guideline should be deleted from this paper as it is covered by CP-14-062 on recovery plans and finance schemes.  Subsequently, the following comments apply:	Please see feedback statement.

			<p><input type="checkbox"/> Paragraphs (b), (c) and (d) of this guideline largely duplicate CP 14/062 "Content of the recovery plan and finance scheme". More specifically, paragraphs (1)(a) and (1)(d) of CP 14/062 are very similar to paragraphs (b), (c) and (d) of guideline 4. We recommend not duplicating requirements on the recovery plan in this guideline and instead referring to the requirements in the RTS on the recovery plan and financing scheme (CP-14-062).</p> <p><input type="checkbox"/> Please update the references to the Delegated Acts so the guideline refers to Articles 288 and 289 instead of Articles 279 and 280.</p> <p><input type="checkbox"/> The process in terms of information requested has to be clearly delineated and linked to the exceptional adverse situation and the determination to extend the recovery period so that the supervisor is not in a position to have unlimited leeway in its requests.</p> <p><input type="checkbox"/> In (a) please add "by the undertaking" in the following sentence: "a justification by the undertaking of the extension....." to ease the readability.</p> <p><input type="checkbox"/> In (c) reference is made to the objectives to be achieved every three months. We assume that these "three months" are derived from Article 138(4), last paragraph where the undertaking concerned shall submit a progress report every three months setting out the measures taken and the progress made. If this assumption is correct, please add a reference to the progress report in paragraph (c), to make the link to the three months' time intervals more evident. For an undertaking in recovery, focus should be on acting decisively and to be supported by their numbers, keeping in mind that these should not be too detailed as they can only be estimates.</p>	
20.	IRSG	1.18.	<p>Guideline 5</p> <p>This guideline should be deleted as it repeats the legal texts: Article 138(4)(a) in the Directive and Article 288(c) of the Delegated Acts.</p>	Disagreed. Please see feedback statement.
21.	AMICE	1.18.	<p>Guideline 5 – Extension on account of a fall in financial markets which is unforeseen, sharp and steep</p> <p>This guideline states that national supervisory authorities in deciding on the extension should pay particular attention to possible pro-cyclical</p>	Disagreed. Please see feedback statement.

			effects. This guideline seems to contradict article 288 Delegated Acts that states that EIOPA, and not NSAs, should take into account procyclicality when declaring the existence of an adverse situation affecting insurance firms.	
22.	GDV	1.18.	Guideline 5 should be deleted as it is already covered by Article 138 of the Solvency II Directive.	Disagreed. Please see feedback statement.
23.	Insurance Europe	1.18.	Guideline 5 This guideline should be deleted as it is already covered by Article 138(4)(a) in the Directive and Article 288(c) of the Delegated Acts.	Disagreed. Please see feedback statement.
24.	IRSG	1.19.	Guideline 6  This guideline should be deleted as it repeats the legal texts: Article 138(4)(b) in the Directive and Article 289(i) of the Delegated Acts.	Disagreed. Please see feedback statement.
25.	Insurance Europe	1.19.	Guideline 6 This guideline should be deleted as it is already covered by Article 138(4)(b) in the Directive and Article 289(i) of the Delegated Acts.	Disagreed. Please see feedback statement.
26.	IRSG	1.20.	Guideline 7  This guideline should be deleted as it repeats the legal texts: Article 138(4)(c) in the Directive and article 289(b) of the Delegated Acts.	Disagreed. Please see feedback statement.
27.	Insurance Europe	1.20.	Guideline 7 This guideline should be deleted as it is already covered by Article 138(4)(c) in the Directive and article 289(b) of the Delegated Acts.	Disagreed. Please see feedback statement.
28.	IRSG	1.21.	Guideline 8 This guideline should be deleted since it goes beyond the Directive and the Delegated Acts:	Disagreed. Please see feedback statement.  Disagree. It is not appropriate to take decisions which are in

			<p>It is imprudent to remove or reduce the recovery period due to one of the situations mentioned in Articles 138(4)(a)(b) and (c) of the Directive improving materially.</p> <p>In Article 138(4)(a) a recovery in financial markets is not enough of a reason to reduce or revoke an extended recovery period. For example, an undertaking may have rebalance its portfolio of assets following a fall in financial markets and may not benefit from a recovery in the financial markets. Unnecessary reductions in recovery periods may introduce pro-cyclical effects.</p> <p>In Article 138(4)(b) an increase in interest rates is not enough of a reason to reduce or revoke an extended recovery period. For instance, as part of a recovery plan, undertakings may have used extensively interest rate swaps in order to reduce interest rate risk and SCR. An increase in interest rates will not benefit such undertakings. Unnecessary reductions in recovery periods may introduce pro-cyclical effects.</p> <p>In Article 138(4)(c) it is unclear how an improvement of a high-impact catastrophic event may materialise. For example, a severe earthquake may reduce the solvency position of certain undertakings and it is not evident how the situation could improve materially, as stated under guideline 8.</p>	<p>place for a long time without reviewing the decision periodically and whenever there is indication that the reasons for taking the decisions do no longer apply.</p> <p>Not agreed. Any measure an undertaking takes as part of the recovery plan in case of Article 138 (4) has to take account of possibility that at some point in time EIOPA will declare the exceptional adverse situation no longer to exist.</p> <p>See above.</p>
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29.	AMICE	1.21.	<p>Guideline 8 – No extension without the provision that the extension may be reduced or revoked</p> <p>By this guideline, NSAs can revoke or reduce the extended recovery period when the situation has improved materially. “ A material improvement has taken place where EIOPA has declared the relevant exceptional adverse situation to no longer exist”. We strongly disagree with this guideline. This guideline should be deleted as it goes beyond the Directive and the Delegated Acts. No such provision has been mentioned in neither of the legal texts.</p>	Disagreed. Please see feedback statement.
30.	Insurance Europe	1.21.	<p>1. Guideline 8</p> <p>2. This guideline should be deleted as it goes beyond the Directive and the Delegated Acts. No such provision has been mentioned in neither of the legal texts. It is unsound to revoke or reduce the recovery period only because one of the situations mentioned in the second subparagraph of Article 138(4) of the Directive have improved materially.</p> <p>3.</p> <p><input type="checkbox"/> For Article 138(4)(a) a recovery in financial markets is not a sufficient reason to reduce or revoke an extended recovery period. Indeed, as part of its recovery plan, the undertaking may have rebalanced its asset portfolio following the fall in financial markets. Therefore, the undertaking may not benefit significantly from such a recovery in financial markets. Reducing or revoking the extended recovery period would not be appropriate in such cases. Such an unnecessary reduction in recovery periods may also induce pro-cyclical effects.</p> <p><input type="checkbox"/> For Article 138(4)(b) an increase in interest rates is not a sufficient reason to reduce or revoke an extended recovery period. As part of a recovery plan, certain undertakings may have, for instance, extensively use interest rate swaps in order to reduce their interest rate risk and SCR. A subsequent increase of interest rates will not benefit such undertakings. Therefore, reducing or revoking the extended recovery period is not appropriate in such cases. Such an unnecessary reduction in recovery periods may also induce pro-cyclical effects.</p>	<p>Disagreed. Please see feedback statement.</p> <p>See resolution to comment 28.</p>

			<p>□ For Article 138(4)(c) it is difficult to see how an improvement of a high-impact catastrophic event may materialize.. As an example, a severe earthquake may reduce the solvency position of certain undertakings and it is not evident how the situation could improve materially, as stated under guideline 8.</p>	
31.	IRSG	1.22.	<p>Guideline 9</p> <p>The sentence in this guideline “resulting overall extended recovery period does not exceed the maximum period of 7 years” should be redrafted to read “resulting overall extended recovery period does not exceed the maximum period of 7 years and 9 months”. The second subparagraph of Article 138(3) of the Directive already permits a 3 month extension to the base 6 month recovery period, and Article 138(4) permits this 9 months to be extended by a further 7 years.</p>	Partially agreed. Please see feedback statement.
32.	Federation of European Accountants (FEE)	1.23.	<p>The words ‘the resulting overall extended recovery period does not exceed the maximum period of 7 years’ should be changed to read ‘the resulting overall extended recovery period does not exceed the maximum period of 7 years and 9 months’. This is because the second subparagraph of Article 138(3) already permits a three month extension to the base six month recovery period and Article 138(4) permits this three month extension to be extended by up to a further seven years making a maximum extended recovery period of seven years and nine months.</p>	Partially agreed. Please see feedback statement.
33.	Insurance Europe	1.23.	<p>Guideline 9</p> <p>Please delete “material” as under adverse situations, even though the undertakings assumptions might be correct the actions taken might not have the initially expected impact, and hence might not constitute a material change. The important aspect should be that the undertaking shows they follow their recovery plan and take the necessary steps to recover, even if progress is not achieved.</p>	Disagreed. Nevertheless, please see new drafting of the Guideline 8, which clarifies the meaning of ‘materially’.
34.	Insurance Europe	1.25.	<p>Guideline 11</p> <p>The guideline needs some context as it is not clear when it applies and what the consequences are for the undertaking if the national supervisors consider them not to have made significant progress. In particular, (b)</p>	<p>Noted.</p> <p>The Guideline is amended to improve clarity, see new Guideline 10. The</p>

			refers to the “quantitative three months’ targets that were included in the recovery plan” which we assume is referring back to guideline 4(c). Accordingly, the same comment as provided for paragraph 1.17 applies, that clearer reference should be made to the progress report that needs to be submitted every three months. Additionally, the NSA should not overly rely on the quantitative targets, since as we said above this can only be estimates.	context is provided by the Directive. As Article 138(4) is perfectly clear the need to show significant progress and about the consequences of a failure to make such progress, there is no need to mention this in the Guideline.
35.	Insurance Europe	1.26.	Guideline 12 Please redraft the guideline to make it clear that the decision to withdraw the extension should be justified in writing: “...it should be justified in writing and the undertaking should be given the opportunity ....”	Noted. EIOPA acknowledges that the communication would be in writing. The Guideline text has not been changed however as this is a matter of course.
36.	AMICE	1.27.	Guideline 13 – Public disclosure withdrawal or revocation of an extension of the recovery period We strongly disagree with the public disclosure of a withdrawal as this would a negative effect on the undertaking’s financial situation.	Disagreed. This Guideline provides further guidance on the application of Article 54 (1) of the Directive. Guideline further clarified.
37.	IRSG	1.28.	Guideline 14 This guideline should be moved to “CP-14/050 guidelines on exchange of information on a systematic basis within colleges”, because it concerns the exchange of information within colleges.  Please redraft on p. 10: title of Guideline 14 : “Extension of the recovery period.....”	The Guidelines on groups have been deleted as the requirements are already covered by other papers.
38.	Insurance Europe	1.28.	Guideline 14 Please consider moving this guideline to the guidelines on exchange of information within colleges (CP-14/050).	The Guidelines on groups have been deleted as the requirements are already covered by other papers.

39.	IRSG	1.29.	<p>Guideline 15</p> <p>This guideline should be moved to “CP-14/050 guidelines on exchange of information on a systematic basis within colleges”, as it concerns discussions within the college of supervisors regarding extension of the recovery period for either an entity or the group itself.</p> <p>Redrafting suggestion for p. 10: title of Guideline 15: “Decision of an extension of the recovery period...” and p. 10: under 1.29 fourth and third last lines: “to restore their solvency in a timely manner.”</p>	The Guidelines on groups have been deleted as the requirements are already covered by other papers.
40.	Insurance Europe	1.29.	<p>Guideline 15</p> <p>Please consider moving this guideline to the guidelines on exchange of information within colleges (CP-14/050) as it concerns discussions within the college of supervisors regarding extension of the recovery period for either an entity or the group itself.</p>	The Guidelines on groups have been deleted as the requirements are already covered by other papers.
41.	Insurance Europe	2.2.	<p>The sentence “but the primary objective in granting an extension is the reduction or avoidance of pro-cyclical effects” should be added to the guideline itself, as it is one of the key objectives for granting an extension.</p>	Not agreed. EIOPA has chosen the broader concept of macroprudential considerations instead of the narrower concept of pro-cyclical effects. The decision on the extension of the recovery period and its duration should not refer to pro-cyclical effects only.
42.	Insurance Europe	2.11.	<p>This paragraph states “The closer to the minimum capital requirement the level of own funds has fallen, the more urgent the need for the undertaking to improve its solvency position and the shorter the possible extension of the recovery period”. We do not agree with this reasoning. Undertakings which are closer to the MCR should be given at least the same recovery period compared to undertakings which have a higher surplus above their MCR. Even when the recovery period would be the same for undertakings which are close or far from the MCR, the undertakings which are closer to the MCR will have to take significantly stronger recovery actions compared to undertakings which have a larger</p>	Partially agree. See amended Explanatory Text. The undertaking would still need to show a faster improvement of the solvency position the nearer it is to the MCR.



			buffer above the MCR. It is unlikely that undertakings which are close to the MCR are able to recover faster than undertakings with a higher surplus above their MCR.	
43.	Insurance Europe	2.14.	Please refer to financial risk mitigation techniques to be aligned with terminology used in the DAs.	Agreed.
44.	Insurance Europe	2.26.	The spirit of paragraph 15 of CP-14-062 under the "analysis" section, where reference is made to "...the information is as reliable and complete as can be expected of information that is collated outside the normal reporting cycle" should be included the explanatory text of these guidelines.	What applies in the RTS to a "normal" recovery period obviously will also apply in the extraordinary recovery period.
45.	Insurance Europe	2.27.	The guidelines refer to both projected SCR, prospective SCR, expected SCR and targeted SCR, but the difference between these terms and what they are actually trying to reflect are not evident. Please align the terms and only use different terms where needed. It would also be welcome if the terms could be further explained in the explanatory text to ensure a consistent understanding of them and how they are used. Furthermore, in CP-14/062 call for advice, reference is only made to the prospective SCR/MCR which is the target SCR/MCR for the re-establishment of compliance with these capital requirements (page 6).	Agreed. EIOPA will align the terminology to the terminology used in the draft RTS (Delegated Regulation)
46.	IRSG	2.35.	Redrafting suggestion: p. 19 under 2.35 third last line: delete the words "and to undertakings"	Not agreed.
47.	Insurance Europe	2.35.	This paragraph is unsound as undertakings may have implemented different recovery measures and therefore are exposed in a different way to the "material improvement of the situation". E.g. a fall in equity markets (i.e. unforeseen, sharp, and steep fall in financial markets) may trigger certain undertakings to sell equity portfolios or to apply different hedging techniques. A subsequent recovery of equity markets therefore does not necessarily improve all undertaking's solvency position. Even though the situation is not undertaking-specific, undertakings in the same situation can apply different methods to recover. Hence, this paragraph should be deleted. See also our comment to guideline 8 (paragraph1.21)	Please see feedback statement.
48.	IRSG	2.38.	Redrafting suggestion: p. 20 under 2.38 second line: "authorities to withdraw"	Agreed and amended.

49.	Insurance Europe	2.45.	The NSA should not overly rely on the quantitative targets, since as we said for guideline 11 this can only be estimates.	Noted.
50.	IRSG	2.50.	As suggested for guideline 14 we propose to move this guideline to the Guidelines on exchange of information within colleges. However, the following redrafting suggestions still apply: p. 23 under 2.50 fifth line: "undertakings of the group" p. 23 under 2.50 second line: "extension of the recovery period"	The Guidelines on groups have been deleted as the requirements are already covered by other papers.
51.	Insurance Europe	2.50.	The reference to a "national legal framework of the group" is unclear. We assume that the reference is supposed to be to the national legal framework where the group is headquartered.	The Guidelines on groups have been deleted as the requirements are already covered by other papers.
52.	IRSG	2.51.	Redrafting suggestion: p. 23 under 2.51 third line: "extension of the recovery period"	Agreed and amended.
53.	IRSG	2.52.	Redrafting suggestion: p. 23 under 2.52 second line: "of different economic situations"	Agreed and amended
54.	Insurance Europe	2.52.	Please align terms with the Directive and use "individual" instead of "solo" to be consistent.	Agreed and amended.
55.	IRSG	2.54.	As suggested for guideline 15 we propose to move this guideline to the Guidelines on exchange of information within colleges. However, the following redrafting suggestions still apply: p. 24 under 2.54 first line: "extension of the recovery period"	The Guidelines on groups have been deleted as the requirements are already covered by other papers.
56.	Insurance Europe	2.56.	The "authorities concerned" is usually a term used under group internal model and refers to the supervisory authorities who needs to cooperate in order decide whether or not to grant permission for using a group internal model. Hence, by referring the authority concerned in this paragraph it can cause confusion. It should be considered whether "relevant supervisory authority" would be a more appropriate reference.	The Guidelines on groups have been deleted as the requirements are already covered by other papers.