



EIOPA-Bos-15/117

30 June 2015

**Final report on public consultation No.
14/054 on the implementing
technical standards with regard to the
procedures for assessing external credit
assessments**

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1. Executive summary

Introduction

In accordance with Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation), EIOPA may develop implementing technical standards (ITS) by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2) of the EIOPA Regulation.

Before submitting the draft ITS to the European Commission, EIOPA shall 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 (IRSG) referred to in Article 37 of the EIOPA Regulation.

In accordance with paragraph 4a of Article 44 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), EIOPA shall develop implementing technical standards with regard to the procedures for assessing external credit assessments.

As a result of the above, on 2 December 2014, EIOPA launched a Public Consultation on the draft implementing technical standard with regard to the procedures for assessing external credit assessments.

The Consultation Paper is also published on EIOPA's website¹.

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/054) and the full package of the public consultation, including:

Annex I: Implementing Technical Standard

Annex II: Impact Assessment

Annex III: Resolution of comments

¹ [Consultation Paper](#)

Next steps

According to Article 15 of EIOPA Regulation, the draft ITS in Annex I will be submitted to the European Commission for endorsement by 30 June 2015.

According to Article 15 of the EIOPA Regulation, the European Commission shall forward it to the European Parliament and the Council.

Within 3 months of receipt of the draft ITS, the European Commission shall decide whether to endorse it in part or with amendments, where the Union's interests so require. The European Commission may extend that period by 1 month.

If the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall send it back to EIOPA explaining why it does not intend to endorse it, or, explaining the reasons for its amendments, as the case may be.

Within a period of 6 weeks, EIOPA may amend the ITS on the basis of the European Commission's proposed amendments and resubmit it in the form of a formal opinion to the European Commission. In this case EIOPA must send a copy of its formal opinion to the European Parliament and to the Council.

If on the expiry of the 6 weeks period, EIOPA has not submitted an amended draft ITS, or if it has submitted a draft ITS that is not amended in a way consistent with the European Commission's proposed amendments, the European Commission may adopt the implementing technical standard with the amendments it considers relevant or it may reject it.

Where the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall follow the process as set out in Article 15 of EIOPA Regulation.

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 ITS. The responses received have provided important guidance to EIOPA in preparing a final version of the ITS for submission to the European Commission. 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 below and a full list of all the comments provided and EIOPA's responses to them can be found in Annex III.

General comments

2.1. Scope of the additional assessments

- a. Stakeholders requested that the notion of 'wherever practicably possible', as referred to in Article 44(4a) of the Solvency II Directive, should be inserted in the ITS as well, e.g. as an Recital. This was based on the view that in practice only a few undertakings were expected to use additional assessments.
- b. Article 44(4a) is very clear in that those additional assessments only need to be performed wherever practicably possible. All undertakings are however required to have internal procedures in place to assess the appropriateness of the external credit assessment taking into account the nature, scale and complexity of the risks inherent in the business. "Wherever practicably possible" does not imply that there are undertakings that do not have to perform any kind of additional assessments.

2.2. Own credit assessments

- a. Stakeholders were concerned about Recital 3 implying that every undertaking has to perform its own (detailed) assessments of external credit ratings in order to comply with the requirement. They commented that Recital 3 was too burdensome for the majority of undertakings, as it requires undertakings to perform an internal assessment of credit ratings for all assets used. Stakeholders explained that such detailed assessments could only be performed with special expertise that is not an explicit regular fit requirement for functions within the insurance sector. The approach was considered to disregard the proportionality principle and to be impossible to implement, especially for smaller undertakings. Stakeholders suggested linking the level of such own assessments to the degree the undertaking uses credit ratings in their calculation of the technical provisions and SCR.
- b. EIOPA acknowledges that the term "own assessment" was used in error and, consequently, has redrafted the ITS using the terminology of the empowerment that requires "additional assessments". Further, EIOPA would like to point out that the term "additional assessments" does not

necessarily require the undertaking to duplicate the assessment performed by the rating agency. Undertakings decide for themselves what approach to additional assessments is appropriate considering their risk profile, subject to supervisory challenge.

2.3. Written policy on risk management

- a. Stakeholders are of the opinion that the requirement to include the approach to additional assessments of external credit assessments in the written policy on risk management goes beyond the empowerment of these ITS and asked for the deletion of Article 1.
- b. The empowerment is about the procedures for assessing external credit assessments, which are directly linked to the risk management of the undertaking ("shall assess the appropriateness of those external credit assessments as part of their risk management"). As procedures are generally to be set out in the written policy that covers the area concerned, the procedures for assessing external credit assessments consequently need to be described in the risk management policy.

The introduction to the ITS has been redrafted in order to clarify that the empowerment for the ITS follows from Article 44(4a); the reference to Article 41(3) has been deleted in the introduction as this Article only serves as the basis for the general requirement to have a risk management policy. However, Recital 2 still refers to Article 41(3) as setting out the requirement to have a written policy on risk management.

2.4. Documentation

- a. Stakeholders commented that the requirement to document the performance of additional assessments goes beyond the empowerment of Article 44(4a) of the Solvency II Directive.
- b. Risk management is included in the system of governance that requires proper documentation. Hence, Article 258(1)(i) of the Delegated Regulation 2015/35 obliges insurance and reinsurance undertakings to maintain adequate and orderly records of the undertaking's business and internal organisation. This covers documenting the performance of legally required additional assessments.

2.5. Outsourcing of additional assessments

- a. Stakeholders objected to the ITS defining the additional assessments as critical or important functions. They argue that it is the decision of the undertaking what functions are critical or important besides the four key functions.
- b. The Article on outsourcing has been removed from the ITS for legal reasons. However, the first Recital still stresses that as a rule the performance of the additional assessments are to be considered as critical and important activities within the risk management system of an undertaking. This is because the undertaking uses external credit ratings in the calculation of technical provisions and the SCR and the additional assessments have an important role as safeguards against overreliance

on the external credit ratings. There may be instances where additional assessments are not critical and important for a specific undertaking. However, an undertaking that wants to treat additional assessments as not critical and important would be expected to have to justify this approach to the supervisory authority.

General nature of participants to the public consultation

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

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

IRSG opinion

The particular comments from the IRSG on the ITS at hand can be consulted on EIOPA's website².

Comments on the Impact Assessment

One comment was received on the Impact Assessment, partially agreeing and partially disagreeing with the preferred policy options identified by EIOPA. Stakeholders objected to the IA with respect to the outsourcing of additional assessments. As mentioned above, the Article on outsourcing has been removed from the ITS for legal reasons and subsequently this policy issue has also been removed from the Impact Assessment.

² [IRSG opinion](#)

3. Annexes

Annex I: Implementing Technical Standard



Brussels, **XXX**
[...](2015) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

of **XXX**

on [...]

COMMISSION IMPLEMENTING REGULATION (EU) .../..

of xxx

laying down implementing technical standards on the procedures for assessing external credit assessments in accordance with Directive 2009/138/EC of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)³, and in particular the fourth subparagraph of Article 44(4a) thereof,

Whereas:

- (1) Additional assessments of the appropriateness of the external credit assessments referred to in Article 44(4a) of Directive 2009/138/EC should constitute a critical and important activity as part of the risk-management system as they mitigate risks related to the calculation of the technical provisions and the Solvency Capital Requirement.
- (2) The procedural aspects of additional assessments are to be reflected in the policy on risk management of the insurance and reinsurance undertakings referred to in Article 41(3) of Directive 2009/138/EC as additional assessments are part of the risk-management system.
- (3) The nature, scale and complexity of the business of insurance and reinsurance undertakings should be taken into account when these undertakings include the procedural aspects of additional assessments into their policy on risk management and document the results of the additional assessments and the way in which those assessments are carried out.
- (4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁴.

³ OJ L 335, 17.12.2009, p.1.

⁴ 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).

HAS ADOPTED THIS REGULATION:

Article 1

Policy on risk management

For the purpose of assessing the appropriateness of external credit assessments used in the calculation of technical provisions and the Solvency Capital Requirement by way of additional assessments referred to in Article 44(4a) of Directive 2009/138/EC, insurance and reinsurance undertakings shall include in their policy on risk management the following:

- (a) the scope and frequency of the additional assessments;
- (b) the manner in which the additional assessments are carried out, including the assumptions on which they are based;
- (c) the frequency of the regular review of the additional assessments and the conditions requiring an ad hoc review of the additional assessments.

Article 2

Tasks of the risk-management function

Insurance and reinsurance undertakings shall ensure that the risk-management function covers that:

- (a) the additional assessments are monitored and carried out in accordance with the risk management policy referred to in Article 1;
- (b) the results of the additional assessments are duly considered in the calculation of technical provisions and the Solvency Capital Requirement.

Article 3

Information used for the additional assessments

When carrying out the additional assessments the insurance and reinsurance undertakings shall use information that is derived from reliable sources that are up to date.

Article 4

Review of additional assessments

1. In accordance with Article 41(3) of Directive 2009/138/EC, insurance and reinsurance undertakings shall at least annually review their additional assessments.
2. Insurance and reinsurance undertakings shall also review the additional assessments on an *ad hoc* basis, whenever any of the conditions under Article 1(c) take place or if the assumptions on which those assessments are based are no longer valid.

Article 5
Documentation

Insurance and reinsurance undertakings shall document the following:

- (a) the manner in which the additional assessments are carried out and the results of those assessments;
- (b) the extent to which the results of the additional assessments are taken into account in the calculation of technical provisions and the Solvency Capital Requirement.

Article 6
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, []

[For the Commission
The President]

[On behalf of the President]
[Position]

Annex II: Impact Assessment

Section 1: Procedural issues and consultation of interested parties

According to article 15 of EIOPA Regulation No 1094/2010, EIOPA conducts analysis of costs and benefits when drafting implementing technical standards. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

The draft ITS and its Impact Assessment were subject to public consultation between 3 December 2014 and 2 March 2015. The comments received from the stakeholders were duly taken into account and served as a valuable input in order to improve the draft technical standards.

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

Section 2: Problem definition

To avoid overreliance on external credit assessment institutions (hereinafter ECAIs) when insurance and reinsurance undertakings use external credit assessments (hereinafter ECAs) in the calculation of technical provisions and Solvency Capital Requirement, they shall assess the appropriateness of these ECAs as part of their risk management by using additional assessments wherever practicably possible. EIOPA shall develop draft Implementing Technical Standards on the procedures when assessing ECAs.

The absence of implementing measures might result in the following undesirable effects:

- (a) Lack of knowledge amongst undertakings in how the appropriateness of ECAs should be assessed and challenged;
- (b) Uncertainty amongst undertakings as to the procedures under which additional assessments shall be performed;
- (c) Over-dependence on the results of ECAs and the ECAIs that perform them.

Baseline

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

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

In particular, the baseline will include:

- the content of Directive 2009/138/EC as amended by Directive 2014/51/EU and

- the Commission Delegated Regulation 2015/35.

Article 44 (4a) of the Solvency II Directive contains the legal requirement for EIOPA to develop draft implementing standards on the procedures for assessing the appropriateness external credit assessments.

Section 3: Objectives

Objective 1: To promote common understanding for undertakings on the need to assess ECAs in an objective and independent manner having regard to proportionality and other practical considerations.

Objective 2: To ensure that the procedures for assessing the appropriateness of ECAs become an integral part of undertakings' risk management commensurate with the nature, scale and complexity of the business.

These objectives correspond to the main objective of the Solvency II Directive to protect policyholders and beneficiaries and the implicit objective of enhancing risk management.

Section 4: Policy issues/options

With the intention to meet the objectives set out in the previous section, EIOPA has given consideration to the following issues:

- (1) how granular the procedures for additional assessments should be in articulating the methods by which ECAs shall be analysed, reviewed and updated;
- (2) the extent to which the procedures should be subject to a formalised internal governance process;
- (3) whether the outsourcing of additional assessments should be designated as a critical and important activity.

In this context, the following options have been analysed with respect to the first and second referred issues:

Policy issue 1: Granularity of additional assessments.

- **Option 1.1:** Highly detailed process;
- **Option 1.2:** Principles-based process.

Policy issue 2: Governance process.

- **Option 2.1:** Prescriptive solution;
- **Option 2.2:** Flexible solution.

With respect to the third issue (outsourcing of additional assessments), the appropriateness of designating these additional assessments as a critical and important activity was initially considered for the purpose of application of the outsourcing requirements in Article 49 of the Solvency II Directive. A critical and important activity is "essential to the operation of the undertaking as it would be unable to deliver its services to policyholders without the function or activity". As the

assessment of the appropriateness of ECAs could involve checking or re-validating data in the calculation of technical provisions and the SCR, it is of sufficient substance to justify it as a critical and important activity in the majority of cases.

However, in order not to override the empowerment for the ITS, which is clearly based on the procedural aspects for additional assessments, any reference to the outsourcing of these assessments has been omitted in the final draft ITS. Nevertheless, this does not change EIOPA's opinion that the outsourcing of this task as part of the risk management system should be regarded as a critical and important activity in most cases, which is expressed in Recital 1.

Section 5: Analysis of impacts

Policy issue 1. Granularity of additional assessments

Option 1.1 Highly detailed process

Making the procedure more granular by defining the components of additional assessments would help to harmonise the overall process and better inform undertakings on how the additional assessments should be conducted. This is an important consideration as the intention of the ITS is to ensure that undertakings do not over-rely on ECAs carried out by ECAIs. Thus undertakings would benefit by knowing how to test and assess the appropriateness of the current external credit assessments attached to their asset holdings in calculating technical provisions and the SCR, how frequently the data should be reviewed and, if necessary, updated. In turn, this would provide additional means by which supervisory authorities are able to check that undertakings are able to validate the data provided by ECAs in a determined and consistent manner.

Option 1.2 Principles-based process

On the other hand, inserting components in a legally binding procedure reduces the discretion available to undertakings to structure and organise their risk management processes as they see fit. Undertakings should be able to develop their own procedures to test and validate external credit ratings which otherwise may be constrained by having to comply with requirements not suited to their internal operations. However, any procedure aimed at how additional assessments should be carried out is as yet untested and only practical experience will reveal the extent to which undertakings adopt a principles-based approach and whether any issues that need to be addressed will arise from it.

Other stakeholders interests

Other industry stakeholders and policyholders would not be directly affected by the process to be adopted for additional assessments other than the expectation that it was being organised and carried out in an efficient manner without subsequent detriment to their interests. Supervisory authorities would benefit from having greater certainty that additional assessments were being carried out in a standardised manner but any monitoring will be proportionate as primarily supervisory authorities would be more interested in the end-results.

Costs/benefits impact

No evidence is available to suggest that the costs of adopting a more granular approach would be any higher than a principles-based approach and vice versa. However, it is likely that a principles-based approach would provide greater scope for on-going administrative savings by enabling undertakings to carry out procedures tailored to the nature, scale and complexity of its business and avoid having to comply with imposed procedures. Any accrued or derived benefit, to policyholders or the undertaking itself, in respect of either approach would be considered marginal in relation to the business as a whole.

Policy issue 2. Governance process

Option 2.1 Prescriptive solution

Establishing and defining a governance procedure for additional assessments within the ITS could be achieved by documenting and embedding the governance process within the risk management policy, either as a stand-alone feature or in combination with other integral operations such as stress testing of assets. A governance procedure should identify at least that the persons and methodology used in carrying out additional assessments were both identified and documented with appropriate levels of sign-off of the subsequent outcomes.

Option 2.2 Flexible solution

Prescribing a specific governance procedure would cut across the flexibility that undertakings have to organise their risk management system in the most efficient manner and best suited to their own internal structure and organisation. Consequently, undertakings should be free to determine how best to conduct additional assessments taking account of present practice and management protocols.

Other stakeholders' interests

Other industry stakeholders and policyholders would not be directly affected by the adoption of a set governance process for additional assessments other than the expectation that it functioned in an efficient manner such as to avoid any potential risk of consumer detriment. Supervisory authorities would benefit from knowledge of a defined governance process for additional assessments but would not normally, as part of regulatory supervision, expect to be intrusive in such areas expecting only that undertakings followed good risk management principles in line with the directive.

Costs/benefits impact

There would be small, incremental costs arising from the adoption of either solution but there would appear scope for greater administrative savings in allowing for a flexible form of governance, which is likely to be a more material factor than any marginal benefits that might accrue from either solution.

Financial stability

Neither the ITS nor the different considered options have any direct impact on financial stability considerations. However, allowing undertakings more freedom on how and whether to carry out additional assessments, in a way that contributed to

over reliance on ECAs, may pose an indirect and potential systemic risk if it resulted in capital requirements being generally and progressively under-stated.

Social impact

Neither the ITS nor the options have any major social impacts.

Section 6: Comparing the policy options

Although there is an inter-relationship between these two policy issues the options attached to each of them have been analysed independently.

- On policy issue 1 (granularity of additional assessments), it is considered that **Option 1.1** (highly detailed process) would render it more granular, and adherence to it more costly, beyond that strictly required by Article 44(4a) of the directive, making **Option 1.2** (principles-based approach) the preferred option;
- On policy issue 2 (governance process) **Option 2.1** (prescriptive solution) risks undermining the ability of each undertaking to organise its risk management system in a manner best suited to its business. Thus **Option 2.2** (flexible solution) is the preferred option.

Overall evaluation

As drafted, and after consideration of the various options, it is considered that the ITS sets out the procedure for carrying out additional assessments in a manner that should make compliance with it both effective and practicable. Further proof or validation must await the outcome of working experience at which point it might be appropriate to review the scope and content of the ITS.

Section 7: Monitoring and evaluation

The following indicators may be relevant in assessing whether the ITS has been effective and efficient in respect of the objectives specified above:

<p>Objective 1: To promote common understanding for undertakings on the need to assess ECAs in an objective and independent manner having regard to proportionality and other practical considerations.</p> <p>Objective 2: To ensure that the procedures for assessing the appropriateness of ECAs become an integral part of undertakings' risk management commensurate with the nature, scale and complexity of the business.</p>	<p>Possible indicators of progress towards meeting the objectives may be:</p> <ul style="list-style-type: none">• Availability of appropriate written policy;• Knowledge of staff members in the undertakings' risk management departments on credit ratings;• Quality of information used for the additional assessments (up to date and comprehensive);• Frequency of carried out assessments;• Frequency of revised TP and SCR calculation because of the additional assessments.
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Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/054 CP-14-054-ITS on procedures when assessing external credit assessments				
<p>EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), AMICE, Federation of European Accountants (FEE), GDV, Insurance Europe, and Nordea Life & Pensions.</p> <p>The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/054.</p>				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comment	<p>The ITS correctly sets only high level requirements on the need for companies to have an internal policy on assessing external credit assessments. However, Recital 3 of this ITS can be interpreted as requiring undertakings to perform their own credit assessments, rather than requiring an assessment of external credit assessments, thereby going against the Directive.</p> <p>The business model of credit risk assessment is a very complex one, requiring special expertise, It is very important that companies are able to determine appropriate approaches based on the proportionality principle.</p>	<p>EIOPA agrees with the point raised. Please see new drafting of the paper.</p> <p>See also the Feedback Statement.</p>
2.	AMICE	General Comment	<p>Article 4 (paragraph 4) of the Delegated Acts allows for the use of credit assessment or rating information of different ECAIs per asset class. In theory, different ECAIs other than the 3 largest can be used. However, the requirement to do this in a consistent and continuous way over time, and the fact that not a single ECAI registered in the EU is able to provide all the necessary data, results in the need to go for the larger ones (S&P, Moody's and Fitch) and firms are obliged to contract with more than one ECAI.</p>	Noted

		<p>Furthermore, their contracts do not allow for the supply of some securities with one provider (i.e S&P) and other securities with another provider (i.e Moody´s). Their contracts cover all of the securities and obtaining information about ratings is very costly (e.g the cost of an ECAI subscription amounts to 50,000-65,000 Euro per year for a small insurance undertaking whith less than 500 asset lines).</p> <p>To access the rating of the ECAIs, all firms reporting under Solvency will be required to buy licenses from the ECAIs; The process is as follows: the issuer pays to be rated, the client (an asset manager for example) pays to view the rating and the end user (insurance undertaking subject to SII) pays to to store and download the data.</p> <p>The Commission, in its Impact Assessment on the Delegated Act, writes that: "Given that their primary business is to underwrite insurance risk, insurers and reinsurers (particularly non-life insurers) do not have the same expertise and information to assess credit risk as banks do. Therefore, it would be disproportionate to require users of the standard formula to develop their own internal credit assessments for all their investment and reinsurance exposures, particularly since the standard formula users tend to be the smaller and less complex undertakings. Lastly, one of the goals of Solvency II is to ensure harmonisation of prudential regulation across the EU, which requires a uniform approach to measuring credit risk. Therefore, the Commission considers that the limited reliance on external credit ratings from CRAs that is embedded in the Delegated Acts in the areas described above is justified. In addition, a number of safeguard to aver mechanistic reliance on CRAs have been included, in the Directive and in the Delegated Acts."</p> <p>The European Commission is mistaken to think that the current legislation will limit insurance firms' reliance on credit ratings from ECAIs. It will have the opposite effect. Moreover, these subscriptions have a huge cost which raises the question of proportionality for the small and medium-sized insurance undertakings subject to Solvency II.</p>	<p>The proportionality principle is included, please see new drafting of Recital 3.</p>
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			Needless to say, only a few companies will be able to engage the necessary resources to perform an additional credit risk assessment. The principle of proportionality should be clearly included in the ITS.	
3.	Federation of European Accountants (FEE)	General Comment	<p>According to our understanding, the ITS should provide additional practical information in relation to their subject matter in order to achieve real convergence.</p> <p>Taking that into consideration, we believe that the issuance of this ITS offers the opportunity to articulate the fundamental principles of the processes to perform own credit assessments and evaluate the appropriateness of the assessments made by third parties and therefore it must provide detailed criteria with greater depth which are made in the present text of the Consultation Paper, especially where there is no detail in the Level 1 measures nor the level 2.</p> <p>Thus, we consider a positioning guidance regarding the following aspects would be useful:</p> <ol style="list-style-type: none"> 1. Deepening the criteria to be considered in assessing the suitability of third emitters rating. 2. Greater detail of the fundamental principles and elements that should contain the process of internal or own assessments. 3. To includes examples that may offer a clear view as: Examples of events likely to trigger changes in the additional assessments, update frequencies for the assessments, etc. 	The legal empowerment for these ITS relates to the procedures of the additional assessments and not on the appropriateness of these assessments. EIOPA therefore considers the proposals are outside the scope of the empowerment.
4.	GDV	General Comment	<p>GDV welcomes the opportunity to comment on the draft proposal for implementing technical standards on the procedures for assessing external credit assessments.</p> <p>Classification of activities</p> <p>The classification of additional assessments as critical or important operational activity contradicts the individual undertaking-specific assessment. According to recital 33 of the Solvency II-Directive only key functions are mandatory critical or important functions.</p>	<p>Noted</p> <p>EIOPA disagrees with the interpretation of Recital 33, However the Article has been delted for legal reasons. Please also see the Feedback Statement.</p>

5.	Insurance Europe	General Comment	<p>Insurance Europe welcomes the opportunity to provide comments on the draft ITS with regard to procedures for assessing external credit assessments.</p> <p>Over the past years Insurance Europe has had a keen interest and engaged in the policy debate on credit rating agencies (CRAs), notably because of the impact that such a debate could have on the ability of insurers to play their role in the financial markets as the largest institutional investors.</p> <p>Insurance Europe believes that it should be recognised that in practice it would neither be feasible nor desirable to refrain from any reference to external ratings.</p> <p>Our issues of primary concern related to this paper are the following:</p> <p>We believe that this ITS is open to misinterpretation. Article 44(4a) paragraph two of the Directive, requires EIOPA to “develop draft implementing technical standards on the procedures assessing external credit assessments.” Referring to Recital 3, the ITS can be read as requiring the undertaking to perform its own credit assessment, which is inconsistent with the Directive. However, the ITS is only required by the Directive for setting out a procedure for assessing external credit assessments. The ITS as written requires a policy to be established for this assessment, however, there is no requirement in the Directive for such a policy, but only a requirement for a procedure should be sufficient.</p> <p>The business model of CRAs is a very complex one, requiring special expertise, access to a wealth of internal information and ability to make use of economies of scale and scope. It is therefore very difficult to imagine how it could be replicated within every insurance company.</p> <p>A few, large insurance companies have over the past years developed</p>	<p>Noted</p> <p>Please see new wording of Recital 3 and resolution to comment 1.</p>
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			<p>internal risk assessment expertise, mainly following desire to invest in and need to assess unrated investment opportunities. However, most insurance companies have limited interest and ability to develop exhaustive credit risk assessment models.</p> <p>These ITSs should require "additional assessment...wherever this is practicably possible". However, we believe that more emphasis should be put in the recitals on the fact that, in practice, only a few companies will be able to engage the necessary resources and expertise to perform additional credit risk assessments. In addition, the proportionality argument should also be referred to in the articles of the ITSs, and not only in the recitals.</p>	
6.			This comment was submitted as confidential by the stakeholder.	
7.	Nordea Life & Pensions	General Comment	<p>1. We support a flexible solution regarding the Governance process where undertakings take into account present practice and management protocols. We support leaving the decision of whether or not outsourcing of assessments of ECAs are considered a critical activity to the system of governance of the undertaking i.e. the board. We support guidance on what is considered relevant components of additional assessments and how the additional assessments should be conducted. This to avoid the complexity and time consumption of having to employ an external solution.</p>	<p>Noted.</p> <p>Please see the feedback statement.</p> <p>Please see resolution to comment 3.</p>
8.	GDV	Recital 2	<p>Recital 2 requires "additional assessment...wherever this is practicably possible". In our view, more emphasis should be put on the fact that, in practice, only a few companies will be able to engage the necessary resources and expertise to perform additional credit risk assessments.</p> <p>In addition, the proportionality principle should also be referred to in the articles of the ITSs, and not only in the recitals.</p>	Noted, however, please see feedback statement.

9.	Insurance Europe	Recital 2	<p>We welcome recognition that credit risk assessment obligations should take into account the nature, scale and complexity of a business. In particular, undertakings should not be required to perform a further additional assessment when internal ratings are the same as the external ratings because this requirement does not add value. However, we believe there should be a clear distinction between 1) the requirement to have additional credit assessment, wherever possible, for risk management purposes and 2) the actual use of internal credit assessments in the standard formula calculation. For the latter, specific rules are defined as part of the Delegated Acts – Section 2 on external credit risk assessments.</p> <p>Furthermore, Article 44(4a) in the Directive requires insurance and reinsurance undertakings to use additional assessments wherever practicably possible. It does not require them to make additional adjustments. The word “make” should therefore be replaced by “use” in the first line of this recital.</p>	<p>Noted</p> <p>Please see new drafting.</p>
10.	Insurance Europe	Recital 3	<p>The recital should be amended, removing the reference “to perform own credit assessments”. Instead, the recital should refer to using additional assessments, in order to make consistent with the Directive to review the external assessments.</p>	<p>EIOPA agrees to this drafting suggestion, please see new drafting of the paper and also the feedback statement.</p>
11.	IRSG	Article 1	<p>Rewrite first sentence as follows: “In view of assessing the appropriateness of external credit assessments in their risk management policy, insurance.....”</p>	<p>Please see new drafting .</p>
12.	Insurance Europe	Article 1	<p>We believe that the article should include the proportionality caveat “wherever this is practicably possible”.</p> <p>For paragraph 1, we suggest to add the words “related documents” : In view of assessing the appropriateness of external credit assessments, in their risk management policy or related documents insurance and reinsurance undertakings [...]. In addition, the article should be amended, removing the reference to a policy and replaced with a reference to a procedure in line with the Directive. It should be clarified</p>	<p>Proportionality is now addressed in Recital 3.</p> <p>Disagree; this information shall be included in the policy on risk management itself and not in any ‘related</p>

			in the article that the requirement is to review the external credit assessment and not re-perform it.	document' or 'procedure'. Please see new wording of Article 1.
13.	IRSG	Article 2	Under b): "Solvency Capital Requirement"	Agree; please see new drafting of Article 2.
14.	Insurance Europe	Article 2	The results of additional assessments should be taken into account in the calculation of technical provisions and the SCR only to the extent that such calculation uses external credit rating assessment. We therefore suggest that (b) is amended to read: "the results of the additional assessments are taken into account, if appropriate, in the calculation of the technical provisions and the Solvency Capital Requirement."	Disagree. There is no need to amend the Article because the ITS only apply to undertakings when they use external credit rating assessments in the calculation of technical provisions and the Solvency Capital Requirement.
15.	GDV	Article 5	The documentation requirement goes beyond Art. 44 (2) Solvency II-Directive and Guideline 18 of EIOPA-CP-14/017 and should be deleted.	Disagree; Please see the feedback statement.
16.	Insurance Europe	Article 5	The documentation requirement goes beyond Article 44 (2) of the Directive, as well as Guideline 18 of CP-14/017 Governance, and should therefore be deleted.	Please see resolution to comment 15.
17.	GDV	Article 6	The classification of additional assessments as critical or important operational activity contradicts the individual undertaking-specific assessment. According to recital 33 of the Solvency II-Directive only key functions are mandatory critical or important functions. Guideline 65 of EIOPA-CP-14/017 clarifies "The undertaking should determine and document whether the outsourced function or activity is a critical or important function or activity..." If e.g. an undertaking has only a few externally rated assets (of low value), the outsourcing of the additional assessment for these assets is not mandatory critical or important. The assessment of whether the activity is critical or not should be left to undertakings and not EIOPA in accordance with guidelines 65 of CP-14/017.	Please see the feedback statement.

18.	Insurance Europe	Article 6	<p>The classification of additional assessments as a critical or an important operational activity contradicts the individual undertaking-specific assessment, which are subject to the proportionality assessment.</p> <p>According to Recital 33 of the Directive only key functions are critical and important functions. Furthermore, Guideline 65 of CP-14/017 Governance clarifies "The undertaking should determine and document whether the outsourced function or activity is a critical or important function or activity...". If for example an undertaking has only a few externally rated assets (of low value), the outsourcing of the additional assessment for these assets should not be considered mandatory, critical, or important. The assessment of whether the activity is critical or not should be left to undertakings and not EIOPA in accordance with guidelines 65 of CP-14/017.</p> <p>We therefore suggest that this Article be redrafted to read:</p> <p>"When outsourcing the performance of additional assessments, insurance and reinsurance undertakings shall determine and document whether the activity is a critical or important activity. If the undertaking concludes that the activity is critical or important, it shall comply with the requirements applicable to the outsourcing of critical or important operational activities.</p>	See resolution to comment 17.
19.	Insurance Europe	Annex I Section 5	<p>On policy issues 1 and 2, we agree with EIOPA's conclusions: that a principles-based approach and a flexible solution are the preferred options. These conclusions have implications for policy issue 3: whether outsourcing of additional assessments should be designated as critical or important. Such designation is not compatible with a principles-based or flexible approach. Nor is it compatible with other elements of the Solvency II legislative package, as we point out in our comments on Article 6.</p> <p>The first paragraph on Policy issue 3 includes the statement that: "...the process of assessing the appropriateness of ECAs...is of sufficient substance to justify it as a critical or important activity in safeguarding policy holder interests." This is open to challenge on two grounds:</p>	Please see feedback statement.

			<p>1. It is not the process of assessing the appropriateness of ECAs which is outsourced, it is the performance of additional assessments. Even if the wider process of ECA assessment is critical or important, this does not mean that the performance of each additional assessment will be. In line with EIOPA's Guidelines on System of Governance, the latter should be determined by the undertaking.</p> <p>2. It is not a question of whether a function is a critical or important activity in safeguarding policy holder interests, but whether it is essential to the operation of the undertaking, as it would be unable to deliver its services to policyholders without the function or activity.</p>	
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