

**Final report on public consultation No.
14/057 on the implementing
technical standards with regard to the
lists of regional governments
and
local authorities, exposures to whom are
to be treated as exposures to the central
government**

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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 2(a) of Article 109a of 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), EIOPA shall develop implementing technical standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government.

As a result of the above, on 2 December 2014, EIOPA launched a public consultation on the draft implementing technical standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government, which was adopted by the Board of Supervisors.

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

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/057) 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 the 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 the draft ITS 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 draft 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 the 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 draft 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. Restriction of the list to the EEA

- a. Some stakeholders recommended recognising also regional governments and local authorities outside of the EEA: at least regional governments and local authorities of relevant third countries should be included into the list. A restriction of the application to the EEA would not be risk-sensitive.
- b. Up to now there is no in-depth knowledge of the risks of exposures to non-EEA authorities. Furthermore, there are no indications that exposures to non-EEA regional and local authorities of users of the standard formula are material. Thus, for the purpose of the finalisation of the ITS in 2016 it is proposed to keep the current proceeding, namely to restrict the ITS to regional and local authorities of the EEA. A widening of the scope of the ITS with respect for example to regional and local authorities of relevant third countries may be considered in the future when further analysis has been performed.

2.2. Guarantees provided by regional governments and local authorities

- a. Some stakeholders argued that guarantees given by regional governments and local authorities should be treated as exposures guaranteed by the central government when all relevant requirements are fulfilled.
- b. In accordance with paragraph 2(a) of Article 109a of Directive 2009/138/EC EIOPA shall develop implementing technical standards with regard to the lists of regional governments and local authorities exposures to whom are to be treated as exposures to the central government. Directive 2009/138/EC does not foresee an empowerment to widen the scope of the application to exposures guaranteed by a central government or by a regional government or local authority.

General nature of participants to the public consultation

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

Respondents can be classified into four main categories: European trade, insurance, or actuarial associations; national insurance or actuarial associations; (re)insurance groups or undertakings; and other parties such as consultants and lawyers.

IRSG opinion

The comments from the IRSG on the ITS at hand can be consulted on EIOPA's website². The IRSG noted in particular that regional governments and local authorities in non-EEA countries should be treated consistently with those within the EEA.

Comments on the Impact Assessment

One comment was received from the stakeholders on the Impact Assessment, claiming that it should include more detailed information on the subcriteria considered for the inclusion of each of the regional governments and local authorities on the list. In this respect, the empowering provision establishes two commutative criteria for the compilation of the list – existence of revenue-raising powers and institutional arrangements. There is no reference to sub-criteria for the purpose of the creation of the RGLA list. Only minor revisions have been made to Impact Assessment to fully align it with the final drafting of the ITS.

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 with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government 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 point (a) of Article 109a(2) thereof,

Whereas:

- (1) The lists of regional governments and local authorities exposures to whom are to be treated as exposures to the central government in accordance with this Regulation is of relevance for the calculation of the market risk module and the counterparty default risk module of the standard formula.
- (2) Where relevant, the regional governments and local authorities included in these lists are categorised by type, taking into account the conditions laid down in Article 85 of Commission Delegated Regulation (EU) 2015/35⁴.
- (3) In order to produce the lists under this Regulation, supervisory authorities have provided relevant information on the specific revenue-raising powers and exiting institutional arrangements under national law in relation to the regional governments and local authorities in their jurisdiction and on the extent to which those governments and authorities comply with the requirements laid down in point (a) of Article 109a(2) of Directive 2009/138/EC.
- (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

³ OJ L 335, 17.12.2009, p.1.

⁴ 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).

Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁵.

HAS ADOPTED THIS REGULATION:

Article 1

Lists of regional governments and local authorities

The following regional governments and local authorities shall be considered as entities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established, as referred to in point (a) of Article 109a(2) of Directive 2009/138/EC:

- (1) in Austria: any 'Land' or 'Gemeinde';
- (2) in Belgium: any 'communauté' or 'gemeenschap', 'région or 'gewest', 'province' or 'provincie', or 'commune' or 'gemeente';
- (3) in Denmark: any 'region' or 'kommune';
- (4) in Finland: any 'kaupunki or 'stad', 'kunta or 'kommun', or the 'Ahvenanmaan maakunta' or the 'Landskapet Åland';
- (5) in France: any 'région', 'département' or 'commune';
- (6) in Germany: any 'Land', 'Gemeindeverband' or 'Gemeinde';
- (7) in Liechtenstein: any 'Gemeinde';
- (8) in Lithuania: any 'savivaldybė';
- (9) in Luxembourg: any 'commune';
- (10) in the Netherlands: any 'provincie', 'waterschap' or 'gemeente';
- (11) in Poland: any 'województwo', 'związek powiatów', 'powiat', 'związek międzygminny', 'gmina', or the 'miasto stołeczne Warszawa';
- (12) in Portugal: the 'Região Autónoma dos Açores' or the 'Região Autónoma da Madeira';
- (13) in Spain: any 'comunidad autónoma' or 'corporación local';
- (14) in Sweden: any 'region', 'landsting' or 'kommun';
- (15) in the United Kingdom: the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

⁵ 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).

Article 2

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]*

*[For the Commission
On behalf of the President]*

[Position]

Annex II: Impact Assessment

Section 1: Procedural issues and consultation of interested parties

According to Article 15 of Regulation 1094/2010, EIOPA conducts analysis of costs and benefits in the policy development process with regard to draft implementing technical standards. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

This Impact Assessment was developed by EIOPA during the drafting of the ITS with regard to regional governments and local authorities treated as exposures to the central government. It presents the key policy questions and associated policy options that were considered when developing the draft ITS.

The draft ITS and this 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

The Directive requires EIOPA to draft implementing technical standards on lists of regional governments and local authorities (hereinafter, RGLA), exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established. According to the Directive RGLA will be treated as exposures to central governments in the calculation of the Solvency Capital Requirement (hereinafter SCR) with the standard formula, provided that there is no difference in risk between such exposures because of the specific revenue-raising powers of the former and specific institutional arrangements exist, the effect of which is to reduce the risk of default.

The Commission Delegated Regulation requires for the categorisation that there should be no difference in risk between exposures to the regional government or local authority and exposures to the central government.

This technical standard proposes a list with categories of regional governments and local authorities and with individual entities that undertakings may take into consideration for equivalent treatment to their central governments.

The absence of a public list of RGLA could result in the following undesirable effects:

- Uncertainty for undertakings using the standard formula to calculate their SCR about the treatment of their concrete exposures to RGLA;
- Lack of harmonisation and consistency in supervisory practices across Member States;
- Inadequate reflection of risks arising from exposures to RGLA in the SCR calculation.

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;
- The Commission Delegated Regulation 2015/35.

It has to be noted that EIOPA is, according to point (a) of the second paragraph of Article 109a of the Directive, legally obliged to draft a list of RGLA to be treated as their central governments in the SCR calculation with the standard formula.

Section 3: Objective pursued

The objectives of the ITS are:

- Objective 1: To facilitate the calculation of the capital requirement of the market risk module and the counterparty default risk module for those undertakings using the standard formula;
- Objective 2: To achieve uniform conditions of the application of Articles 105 (5) and (6) of the Directive related to that calculation;
- Objective 3: To ascertain that between entries in the list of regional governments and local authorities in this ITS and central government in which they are established there is no difference in risk.

These objectives correspond to the specific Solvency II objectives "Advance supervisory convergence" and "Better allocation of capital" as well as to the Solvency II general objectives "Enhances policy holder protection" and "Deeper integration of EU insurance market".

Section 4: Policy Options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

The section below reflects the most relevant policy options that have been considered in relation to the criteria revenue-raising powers as well as institutional arrangements and the granularity of the list provided.

During the drafting process National Supervisory Authorities were consulted to provide feedback on the findings of EIOPA. The purpose of the investigation was to obtain specific technical confirmation on the following issues:

- which regional governments and local authorities have revenue-raising powers;
- which regional governments and local authorities have a reduced risk of default due to the existence of institutional arrangements.

It has to be noted that in the process of drafting this ITS, EIOPA was acting under a narrowly defined mandate. The criteria for the RGLA to be listed in the ITS are already defined in the Directive. EIOPA has however spelled out in greater detail the criteria. This Impact Assessment focuses for a large part on this aspect. In the drafting process, EIOPA also discussed about the granularity of the list. This impact assessment covers also the latter in a separate policy issue.

4.1 Policy issue 1: Sufficient criteria for revenue-raising powers

Policy option 1.1 (tax rate setting): to include RGLA that have the power to set at least one tax rate where the RGLA itself benefits from the payments of this tax (revenue-raising powers).

Policy option 1.2 (central government revenues): to include RGLA that receive revenues from the central government and it is not necessarily within the power of the RGLA to influence the level of their revenues.

4.2 Policy issue 2: Sufficient criteria for institutional arrangements

4.2.1 Policy option 2.1 (subset of criteria): to include RGLA that fulfil at least one of the following four criteria:

- i. the central government will provide financial support in case the RGLA will be in financial difficulties;
- ii. the RGLA is not allowed to have a budgetary deficit or to exceed a certain level of debt and institutional arrangements ensure that the RGLA complies with this requirement;
- iii. an authority that is considered of the same risk as the central government (either the central government or another RGLA in the ITS) supervises the budget of the RGLA;
- iv. the RGLA can be considered similar to a central government in their competences.

Policy option 2.2 (single criterion): to include only RGLA that receive financial support from their central government in case they are in financial difficulties.

4.3 Policy issue 3: Granularity of the list

Policy option 3.1 (list of categories): To list categories of regional governments and local authorities where possible.

Policy option 3.2 (list of entities): To list all entities that may be treated as the central government.

Both options have in common that certain entities would be listed. Option 3.1 however allows for 'groupings' of RGLA entities where this is feasible.

Section 5: Analysis of impacts

5.1 Policy issue 1 (Sufficient criteria for revenue-raising powers)

5.1.1 Policy option 1.1 (tax rate setting):

This policy option represents a stringent criterion regarding the revenue-raising powers of the RGLA. The approach ensures a high and uniform level of safety for investments in RGLA in all Member States. The RGLA will be able to manage their revenue situation as it can set tax rates. The RGLA have thus under this policy option similar competences as central governments with respect to their revenues.

However, under this approach it is also possible that entities with the same risk as the central government are not included in the list because it does not allow for a flexible interpretation of the criterion "revenue-raising power" for RGLA.

The following impacts on different stakeholders have been assessed:

- Impact on policyholder protection;

In this respect, this policy option has the positive on-going impact, that the approach ensures a uniform level of safety for investments in RGLA in all Member States.

On the other hand, this policy option may have the negative on-going impact that policyholder benefits may be lower than possible as the insurer foregoes attractive investments.

- Impact on the economic position of the insurer;

In this respect, this policy option has the positive on-going impact, that the SCR is not underestimated.

On the other hand, this policy option may have the negative on-going impact that the SCR is overestimated. RGLA that are of the same risk as central governments and do not fulfil the criterion will be treated in the same way as corporates instead of Member States' central governments. The capital charge for spread and concentration risk for these investments would be significantly higher, depending on rating and duration.

- Impact on risk management, governance and market behaviour;

In this respect, this policy option has the possible effect that insurers may be driven away from high quality investments in RGLA due to overstated regulatory capital requirements.

- Impact on National Supervisory Authorities (NSA) and EIOPA;

In this respect, this policy option has the positive on-going impact, that supervisors can be sure that the SCR for investments in RGLA is not understated. On the other hand, no negative impact is expected.

5.1.2 Policy option 1.2 (central government revenues):

This policy option represents a more flexible approach regarding the recognition of revenue sources. Many RGLA could fulfil the criterion under this option and there is a high degree of certainty that RGLA that are of the same risk as the central government are not excluded from the list. Insurers would not be prevented from attractive investments in high quality exposures to RGLA due to higher capital requirements.

However, this flexible criterion may also be fulfilled by RGLA that are not of the same risk as the central government. Investments in those RGLA would then not be of the same risks as exposures to central governments. Their risk may therefore not be appropriately reflected in the SCR calculation.

The following impacts on stakeholders have been assessed:

- Impact on policyholder protection;

In this respect, this policy option has the positive on-going impact that insurers will not miss low risk investments in high quality exposures to RGLA. Policy holders will therefore benefit from a wider diversification of investments in high-quality assets.

On the other hand, this policy option may have the negative on-going impact that the insurers might invest in exposures to RGLA those risks are not appropriately reflected in the SCR calculation. Resulting losses may reduce the benefits for policy holders.

- Impact on the economic position of insurers;

In this respect, this policy option has the positive on-going impact, that the criteria ensure that the capital requirement will not be overestimated for certain investments in RGLA.

On the other hand, this policy option may have the negative on-going impact that the SCR may be underestimated for certain other investments in RGLA.

- Impact on insurers risk management, governance and market behaviour;

In this respect, this policy option has the positive on-going impact, that insurers are not prevented from investments in RGLA of high credit quality. The insurers will therefore have a wider range of high quality assets available to diversify their portfolio while the capital charge for these assets reflects their high credit quality.

On the other direction, insurers may be incentivized to invest into securities with low capital charge that does not reflect the credit quality of the RGLA appropriately.

- Impact on National Supervisory Authorities (NSA) and EIOPA;

In this respect, risks associated with investments in RGLA may not be captured appropriately in the standard formula. Supervisors would have to monitor the investments carefully and decide whether supervisory actions are needed.

5.2 Policy issue 2 (Sufficient criteria for institutional arrangements)

5.2.1 Policy option 2.1 (subset of criteria):

This policy option represents a set of criteria regarding institutional arrangements with respect to RGLA. The approach takes into account the wide differences in the constitutions of Member States. Throughout their history Member States that grant a high level of responsibility and competence to their RGLA have developed a number of arrangements to avoid insolvencies. The policy option allows therefore for different criteria that cover various existing institutional arrangements. Member States will not be excluded from a preferential treatment of RGLA due to a diverging constitutional architecture. This policy option makes it though more difficult to assess whether the criteria are met than a set of narrower criteria.

With this policy option the following types of arrangements are admissible:

- (i) The central government will provide financial support in case the RGLA will be in financial difficulties. This can be considered as the most stringent and most transparent institutional arrangement ensuring that there is not difference in risk between the central government and the RGLA;
- (ii) The RGLA is not allowed to have a budgetary deficit or exceed a certain level of debt and institutional arrangements ensure that the RGLA complies with this requirement;
- (iii) An authority that is considered to have the same risk as the central government (either the central government or another RGLA in the ITS) supervises the budget of the RGLA;
- (iv) The RGLA can be considered similar to a central government in their competences. In some Member States, RGLA are assigned a high degree of competence and responsibility according to their constitutions. In this case, the Member States act in their sphere of competences and other tasks are fulfilled by the RGLA. While RGLA can often be seen as a form of decentralized territorial administration, this perspective is misleading in such cases. The RGLA act on the same level as central governments in their sphere of competence.

In its dialogue with NSAs, EIOPA was not made aware of other institutional arrangement that might qualify. This is either because no other institutional arrangements are common in the Union or because other institutional arrangements do not ensure a reduction of the risk of a default of the RGLA. This policy option represents therefore the most comprehensive set of criteria.

The following stakeholders and impacts have been assessed:

- Impact on policyholder protection;

This policy option has the positive on-going impact that no Member State is excluded from the preferential treatment of RGLA as a result of overly stringent and inflexible criteria that do not reflect the actual risk. The policy holders in affected Member States benefit from the investment opportunity in high quality assets for their insurers.

On the other hand, no negative impact is expected.

- Impact on the economic position of insurers;

This policy option has the positive on-going impact, that no Member State is excluded from the preferential treatment of RGLA as a result of overly stringent and inflexible criteria that do not reflect the actual risk. Insurers investing in RGLA of affected Member States benefit from the appropriate reflection of the risk associated to those investments in the SCR.

On the other hand, no negative impact is expected.

- Impact on insurers risk management, governance and market behaviour;

This policy option has the positive on-going impact, that no Member State is excluded from the preferential treatment of RGLA as a result of rigid and inflexible criteria that do not reflect the actual risk. Insurers investing in RGLA of affected Member States benefit from the appropriate reflection of the risk associated to those investments.

On the other direction, no negative impact is expected;

- No impact on National Supervisory Authorities (NSA) is expected;
- Impact on EIOPA;

This policy option has the on-going negative impact that it will be burdensome to assess whether the criteria are still fulfilled by the RGLA in the ITS.

5.2.2 Policy option 2.2 (single criterion):

This policy option provides a strict criterion regarding institutional arrangements with respect to the RGLA. Only RGLA that receive financial support from their central government in case of financial difficulties are included in the ITS. This provides a high degree of certainty that there is no difference in risk between the RGLA and the central government. Furthermore, the criterion can easily be verified in a transparent manner. It does however not take into account that Member States have developed more indirect institutional arrangements to avoid insolvencies of RGLA.

The following impacts on stakeholders have been assessed:

- Impact on policyholder protection;

This policy option has the positive on-going impact that only RGLA are included where a very strong institutional arrangement reduces the risk of default.

On the other hand, this policy option has the negative on-going impact, that Member States may be excluded from the preferential treatment of RGLA due to an overly stringent and inflexible criterion. The policy holders in affected Member States could not benefit from the investment opportunity in high quality assets for their insurers.

- Impact on the economic position of insurers;

No positive impact is expected.

On the other hand, this policy option has the negative on-going impact, that the SCR may be overestimated due to an inflexible criterion. The criterion might exclude highly credible RGLA from the ITS.

- Impact on risk management, governance and market behaviour;

In this respect, no positive impact is expected.

On the other hand, this policy option has the on-going negative impact, that Member States may be excluded from the preferential treatment of RGLA due to an overly rigid and inflexible criterion. Insurers investing in RGLA of affected Member States may therefore not benefit from an appropriate reflection of the risk associated to those investments or they may even be prevented from investing in high quality assets.

- No impact on National Supervisory Authorities (NSA) is expected;
- Impact on EIOPA;

This policy option has the on-going positive impact that monitoring the fulfilment of the criterion by RGLA will be easier.

5.3 Policy issue 3 (granularity of the list)

5.3.1 Policy option 3.1 (list of categories):

With respect to the option of including a list of categories of regional governments and local authorities where possible, the following impacts on stakeholders have been identified:

- Regarding policyholder protection, EIOPA does not expect any impact;
- Regarding the economic position of insurers, EIOPA does not expect any impact;
- Impact on risk management, governance and market behaviour;
 - This policy option has the positive on-going impact that undertakings will be able to work with a stable list in the ITS that does not change frequently;
 - On the other hand, this policy option may have the negative on-going impact that undertakings will need processes to decide whether their exposures belong to one of the categories in the list.
- Impact on National Supervisory Authorities and EIOPA;
 - This policy option has the positive on-going impact that neither National Supervisory Authorities nor EIOPA need to trigger a change to the Technical Standard as a result of administrative reforms in the Member States which do not affect the risk profile of the categories (e.g. a merging of two communities);
 - On the other hand, this policy option may have the negative impact that supervisors need to verify whether the exposures undertakings treat as exposures to a central government of a Member State actually belong to one of the categories listed in the Technical Standard.

5.3.2 Policy option 3.2 (list of entities):

With respect to the option of including a list with all entities that may be treated as the central government, the following impacts on stakeholders have been identified:

- Regarding policyholder protection, EIOPA does not expect any impact;
- Regarding the economic position of insurers, EIOPA does not expect any impact;
- Impact on insurers risk management, governance and market behaviour;
 - This policy option has the positive impact, that undertakings can easily check whether their exposures are included in the full list of entities;
 - On the other hand, this policy option may have the negative impact that undertakings cannot work with a stable list in the ITS. There are Member States where the number of RGLA with no difference of risk compared to their central government is very high. The RGLA in such Member States may therefore change frequently due to administrative reforms. As a consequence undertakings would need processes to follow the frequent regulatory changes due to administrative reforms.
- Impact on National Supervisory Authorities and EIOPA;
 - This policy option has the positive impact that National Supervisory Authorities can easily verify whether the exposures that undertakings treat as exposures to a central government of a member state are included in the ITS;
 - On the other hand, this policy option may have the negative impact that National Supervisory Authorities or EIOPA need to trigger a change to the whole Technical Standard every time a single entity ceases to qualify for inclusion or has to be added.

Section 6: Comparison of options

Policy issue 1 (sufficient criteria for revenue-raising powers)

The preferred option for this issue is the policy option 1.1 (tax rate setting). It provides a clear criterion that RGLA need to fulfil for inclusion in the Technical Standard. Although the criterion is strict EIOPA does not expect that RGLA that could for other reasons be considered of the same risk as the central government are excluded from the list. As a consequence of the strict criterion the SCR may be overstated. As mentioned above, EIOPA expects that this is not the case. Compared to policy option 1.2 (central government revenues) the preferred policy option ensures that the revenue-raising powers are comparable to those of a central government. Policy option 1.2 would allow for RGLA that have no influence on their revenue situation and have therefore a disadvantage compared to central governments. Due to the aforementioned, the policy option 1.2 has been discarded very early in the process of drafting this ITS.

The comparison of effects on different stakeholder groups may be summarised as follows:

Regarding policyholders, there is certainty for them that the SCR will not be underestimated with respect to RGLA, because it is within the power of the RGLA to manage its revenues and to react to changes.

Regarding undertakings, it may happen that because of the strict criterion their SCR is overstated. EIOPA expects however that this risk does not materialise.

Regarding NSAs and EIOPA there is more certainty for them as regards to the equivalence of risks between the identified RGLA and the Central Governments. Policy option 1.2 would mean that there is uncertainty whether the RGLA is really of the same risk as the central government. Supervisory actions may be required.

Regarding social impact there is the danger that due to the lack of flexibility some RGLA that are not different in risk compared to their central government are excluded from the list. The cost of financing for these RGLA might in such a case increase due to higher capital requirements for the lender. However, as pointed out above, EIOPA does not expect that this risk materialises.

Regarding financial stability, compared to the baseline scenario, there is a possibility that undertakings will focus their investments on the RGLA listed in this Technical Standard without making a proper risk-assessment. However, the pillar II requirements, especially the prudent person principle (Article 132 of the Directive) and the assessment of the deviation of the risk profile from the assumptions underlying the standard formula (Article 45 (1) (c) of the Directive), aim to avoid an overreliance on the capital requirements according to the standard formula. The preferred policy option allows undertakings to diversify their investment more widely while maintaining low capital charges compared to the alternative scenario.

The selection of the preferred option has required a consideration with respect to prudence and the principle-based approach under Solvency II. EIOPA is, as mentioned above, of the view that the principles-based approach is in substance not violated

under the preferred policy option. The alternative policy option might however undermine prudence.

Policy issue 2 (sufficient criteria for institutional arrangements)

The preferred option for this issue is the policy option 2.1 (subset of criteria). It provides a comprehensive set of criteria for institutional arrangements where RGLA need to fulfil at least one of them to be listed in the Technical Standard. Compared to policy option 2.2 (single criterion), the preferred policy option takes into account that different constitutional structures have evolved in the Union. Policy option 2.2 would only allow a significantly smaller subset of RGLA than policy option 2.1. Although policy option 2.2 provides a simple and transparent criterion, it would discard RGLA that are of the same risk as their central governments.

The comparison of effects on different stakeholder groups against the baseline scenario and the alternative option may be summarised as follows:

Regarding policyholders there is certainty for them that the SCR will not be understated with respect to RGLA, because the institutional arrangements reduce the risk of a default.

Regarding undertakings there is legal certainty for them on the treatment of RGLA and a risk-based capital charge for investments in RGLA. Under the alternative option their SCR might be overstated as a result of the strict criterion.

Regarding NSAs and EIOPA, they have legal certainty in the supervisory review process. Under the alternative policy option, the assessment whether a RGLA included in the ITS still fulfils the criteria would be simpler compared to the preferred option.

Regarding the social impact there would be a danger under the alternative policy option that some RGLA which are not different in risk compared to their central government are excluded from the list due to the lack of flexibility. The cost of financing for these RGLA might in such cases increase due to higher capital requirements for the lender. The chosen policy option provides risk-based capital charges for investments in RGLA and thus does not prevent an appropriate cost of borrowing for these entities.

Regarding financial stability, under the preferred option undertakings have a wider range of assets with low risk charge than under the alternative scenario. This should result in better diversification. Under the alternative option, undertakings may be prevented from investments in the non-included RGLA. The increased cost of borrowing might cause financial distress for the RGLA and in turn a fiscal downwards spiral for the affected RGLA.

The selection of the preferred option has required a trade-off between simplicity and the principle-based approach under Solvency II. More weight has been given to the principle-based approach. EIOPA is of the view that it should not matter how the equivalence in risk between RGLA and central government has been achieved. For undertakings preferred and alternative option both result in a transparent and simple list in the Technical Standard. The increased complexity will rather be on the side of supervisors and legislators in the review of the ITS. The advantages of the preferred approach outweigh therefore the advantages of the alternative option.

Policy issue 3 (granularity of the list)

The preferred policy option for this policy issue is option 3.1 (list of categories, where possible) because of the regulatory stability. Option 3.2 (list of entities) has been disregarded because it seems not feasible to maintain a complete list of entities in a European Regulation. The recital 41 of the Directive 2014/51/EU (often referred to as Omnibus II) also stipulates that the list of regional governments and local authorities should not be more granular than necessary. The comparison of effects on different stakeholder groups may be summarised as follows:

Regarding policyholders, there are no effects in either of the analysed options.

Regarding undertakings, under option 3.1 there is the burden of identifying entities that belong to the categories in the Technical Standard. However, it is expected that different administrative bodies in the member states maintain list of entities that belong into the categories listed in the Technical Standard. Option 3.2 would also require monitoring of frequently changing European regulations by undertakings.

Regarding NSAs and EIOPA, under option 3.1 there are costs for the identification of entities that belong to the categories in the Technical Standard for the supervisory review process. However, it is expected that different administrative bodies in the member states maintain lists of entities that belong into the categories listed in the Technical Standard. Option 3.2 would also require monitoring of frequently changing European regulations.

Regarding social impact there are no effects in either of the analysed options.

Regarding financial stability there are no effects in either of the analysed options.

The selection of the preferred option has required a trade-off between facilitating the calculation of the market and the counterparty default risk modules on the one side and stability of the regulatory environment on the other side. More weight has been given to the stability of the regulatory environment because the facilitation can be achieved by using other amending sources from administrative bodies.

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 objective specified above:

To ascertain that between entries in the list of RGLA in this ITS and central government in which they are established there is no difference in risk.	Possible indicators of progress towards meeting the objective may be: <ul style="list-style-type: none">• Failures of RGLA;• Spread of RGLA exposures over risk-free interest rates.
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Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/057 CP-14-057-ITS on list of regional governments and local authorities				EIOPA-WG-11-xx DD Month 20xx
<p>EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), AMICE, Finnish Patient Insurance Centre, GDV, Insurance Europe, Munich Reinsurance Company, and RiverStone Management Limited.</p> <p>The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/057.</p>				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comment	<p>In the footnote on page 5, The ITS does caveat that the “list of regional governments and local authorities will be finalised in due course depending on the timely provision of additional information from Member States” but it is not clear by when the final list will be made available.</p> <p>The IRSG notes that regional governments and local authorities in non-EEA countries should be treated consistently with those within the EEA. It would seem unlikely to be practicable to have an all-embracing list, but it may be necessary to specify explicitly the requirement for consistent treatment (probably not in this ITS).</p>	<p>According to point (a) of paragraph 2 of Article 109a of <i>Directive 2009/138/EC</i> EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.</p> <p>Up to now there is no in-depth knowledge of the risks of exposures to non-EEA authorities. Furthermore, there are no indications that exposures to non-EEA regional and local authorities of users of the standard formula are material.</p> <p>Thus, for the purpose of</p>

				the finalization of the ITS in 2016 it is proposed to stick to the current proceeding, namely to restrict the ITS to EEA regional government and local authorities.
2.	AMICE	General Comment	<p>AMICE welcomes the opportunity to comment on the EIOPA ITS with regards to the lists of regional governments and local authorities to be treated as central government exposures.</p> <p>We would like to emphasize the potential lack of level playing field between the insurance and banking legislation where the following is stated:</p> <p>According to Article 10(1e ii) of the Delegated Act of 10.10.2014 to supplement Regulation (EU) 575/2013, a promotional lender for the purpose of this article is defined as any credit institution whose purpose is to advance the public policy objectives of the Union or of the central or regional government or local authority in a Member State predominantly through the provision of promotional loans on a non-competitive, not for profit basis, provided that at least 90% of the loans that it grants are directly or indirectly guaranteed by the central or regional government or local authority and that any exposure to that regional government or local authority, as applicable, is treated as an exposure to the central government of the Member State in accordance with Article 115(2) of Regulation (EU) No 575/2013.</p>	<p>We do not see a lack of level playing field, since Article 10 of the <i>Delegated Regulation with regard to liquidity coverage requirement for Credit Institutions</i> regulates an issue (specification of level 1 assets) that is different from the lists of regional governments and local authorities.</p>
3.	GDV	General Comment	<p>GDV welcomes the opportunity to comment on the draft proposal for implementing technical standards with regard to the lists of regional governments and local authorities exposures to whom are to be treated as exposures to the central government.</p> <p>Relevant third countries</p> <p>We welcome the clarification which regional governments and local authorities are to be treated as exposures to the central government of</p>	<p>Up to now there is no in depth knowledge of the risks of exposures to non-EEA authorities. Furthermore, there are no indications that exposures to non-EEA regional and local authorities of users of the</p>

			<p>the jurisdiction in which they are established. However, neither Article 109a (2) (a) of the directive nor Article 85 of the delegated acts do restrict the application to Member States. Of course, such a restriction would not be risk-sensitive. Thus, in a second step the analysis should be extended to regional governments and local authorities in relevant third countries.</p> <p>Guarantees given by regional governments and local authorities</p> <p>If there is no difference in risk because of the specific revenue-raising powers of a regional government or a local authority and specific institutional arrangements exist which reduce the risk of default, then this has to be appropriately considered in the case of guarantees, too. Thus, it should be clarified that exposures that are guaranteed by a regional government or a local authority which qualifies for Article 109a (2) (a) are to be treated as exposures guaranteed by the central government, too. To ignore such guarantees would not be risk-sensitive. Moreover, the level playing field with banks would be violated because according to Regulation (EU) No 575/2013 of 26 June 2013, the recognition of guarantees is not restricted to central states but also possible for guarantees given by regional governments and local authorities.</p>	<p>standard formula are material.</p> <p>Thus, for the purpose of the finalization of the ITS in 2016 it is proposed to stick to the current proceeding, namely to restrict the ITS to EEA RGLAs.</p> <p>According to Article 109a(2)(a) of the Solvency II Directive, the ITS can set out lists of regional governments and lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established. The ITS cannot be used to clarify the treatment of exposures guaranteed by those regional governments or local authorities.</p>
4.	Insurance Europe	General Comment	<p>Insurance Europe welcomes the opportunity to comment on the ITS with regard to the lists of regional governments and local authorities exposures to whom are to be treated as exposures to the central government</p> <p>This is indeed a clarified list of which regional governments and local authorities are to be treated as exposures to the central governments of</p>	<p>Up to now there is no in-depth knowledge of the risks of exposures to non-EEA authorities. Furthermore, there are no indications that exposures to non-EEA regional and local</p>

			<p>the jurisdiction in which they are established.</p> <p>However, we have the following issues of primary concern:</p> <p>The analysis has to be extended to regional governments and local authorities in third countries. Neither Article 109a (2) (a) of the directive or Article 85 of the Delegated Acts do restrict the application to Member States or to the EEA. Of course, such a restriction would not be risk-sensitive.</p> <p>The list appears to be incomplete since the reference to a great deal of countries is missing eg Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Malta, Norway, Romania, Slovakia, Slovenia, Switzerland. Despite the caveat in the ITS as to the completion of the process still in progress, we urge EIOPA to complete and communicate the list as soon as possible and before the adoption of the ITS to avoid uncertainty for the undertakings and for the relevant institutions. When this is done, EIOPA should make the necessary provisions where applicable</p> <p>Furthermore, Government Sponsored Enterprises which are enterprises that grant directly or indirectly loans guaranteed by the central or regional government or local authority should be added to the list. This will ensure a level playing field with the banking sector (Article 115(2) of Regulation (EU) No 575/2013).</p>	<p>authorities of users of the standard formula are material.</p> <p>Thus, for the purpose of the finalization of the ITS in 2016 it is proposed to stick to the current proceeding, namely to restrict the ITS to EEA RGLAs.</p> <p>EIOPA has no indications that entities of those Member States meet the requirements to be included in the list.</p> <p>According to Article 109a(2)(a) of the Solvency II Directive, the ITS can set out lists of regional governments and lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established. The ITS cannot be used to change the treatment of government sponsored enterprises.</p>
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5.			This comment was submitted as confidential by the stakeholder.	
6.	Munich Reinsurance Company	General Comment	1. The list of regional governments and local authorities (RGLAs) is limited to Member States. Neither Article 190a (2)(a) of the Directive or Article 85 of the Delegated Acts refers to Member States only, but to "central government of the jurisdiction in which they are established". Therefore the list should include RGLAs of material third countries as well.	Up to now there is no in-depth knowledge of the risks of exposures to non-EEA authorities. Furthermore, there are no indications that exposures to non-EEA regional and local authorities of users of the standard formula are material. Thus, for the purpose of the finalization of the ITS in 2016 it is proposed to stick to the current proceeding, namely to restrict the ITS to EEA RGLAs.
7.	RiverStone Management Limited	General Comment	1) Article 85 of the Implementing Measures does not make it clear if regional governments and local authorities existing outside of EU Member States can be considered as equivalent to central governments and this ITS does not list any non-EU Member State regional governments or local authorities. Does this imply that outside of the EU that no equivalence can be assumed? 2) At what level should equivalence be considered to apply? The ultimate parent undertaking of Network Rail Limited is the UK Government as prescribed under ESA10/Regulation (EU) No 549/2013. Are state-owned entities also considered as equivalent in this way?	For regional government and local authorities not included in the list no equivalence should be assumed. The equivalence applies only to the listed regional governments and local authorities, but not to public entities.
8.	AMICE	Article 1	In Finland, the federation of municipalities is missing from the list. To provide some social and health services (e.g. special health care and in the special care of the mentally disabled) municipalities must belong to a federation of municipalities, which arranges these services among them.	The federation of municipalities has no revenue-raising powers which is an essential condition for inclusion in

			<p>The article should be amended as follows:</p> <p>(d) in the republic of Finland:</p> <p>(i) community (kunta/kommun)</p> <p>(ii) city (kaupunki/stad)</p> <p>(iii) province of Aland (Ahvenanmaan maakunta/Landskapet Aland)</p> <p>(iv) Kuntayhtymä</p>	<p>the list according to Article 109a(2)(a) of the Solvency II Directive.</p>
9.	Finnish Patient Insurance Centre	Article 1	<p>Article 1 (d) (also Impact Assessment, 4.1, 5.1.1., Section 6: Policy issue 1). The list of RGLA in the Republic of Finland should include joint municipal authorities (in Finnish kuntayhtymä) at least with respect to hospital districts (in Finnish sairaanhoitopiiri) as a RGLA category. Every local authority or municipality is required by law (Act on Specialized Medical Care Chapter 1 Section 3) to be a member of a joint municipal authority administering a hospital district (later entity). These entities are responsible for producing healthcare services provided by the public sector in Finland. They don't fall strictly under the policy option 1 of policy issue 1 concerning revenue-raising powers as the entities themselves don't have direct powers to set tax rates, but the entities are funded by the municipalities forming them by law (Local Government Act Chapter 10 Section 83), which on the other hand have revenue-raising powers.</p> <p>The decision to include/exclude these entities will affect all insurance companies writing statutory patient insurance in Finland. These insurance companies are holding 400 million euros in debt from these entities as assets covering technical provisions for the patient insurance liabilities of the entities. The exposures to the entities are at the moment treated as equivalent to central government exposures and have a fixed yield of 0% because of the revenue-raising powers of the municipalities forming the entities. The entities themselves don't have the power to set tax rates but municipalities forming the entities are responsible for all the liabilities of the entities (Local Government Act Chapter 10 Section 83). Therefore via the look-through principle the exposures to these entities should be treated in the same way as exposures to municipalities. These entities</p>	<p>To have revenue-raising powers is an essential condition for inclusion in the list according to Article 109a(2)(a) of the Solvency II Directive.</p>

			also fulfil the iii. criteria of policy option 2.1. If these entities would not be treated as exposures to central government the SCR of companies issuing patient insurance to Finnish public sector healthcare institutions would be overstated.	
10.	GDV	Article 1	<p>Germany</p> <p>We welcome that the list comprises state governments (Länder), local governments (Gemeinden) and local government associations (Gemeindeverbände) in Germany which unquestionable fulfill the criteria in Article 109a (2) (a) of the directive.</p> <p>Relevant third countries</p> <p>However, the enumeration has to be extended (see general comment). The list is confined to regional governments and local authorities of EU/EEA member states and should be expanded to include regional governments and local authorities from relevant third countries such as Australia, Canada and the US.</p>	<p>Noted.</p> <p>Up to now there is no in-depth knowledge of the risks of exposures to non-EEA authorities. Furthermore, there are no indications that exposures to non-EEA regional and local authorities of users of the standard formula are material.</p> <p>Thus, for the purpose of the finalization of the ITS in 2016 it is proposed to stick to the current proceeding, namely to restrict the ITS to EEA RGLAs.</p>
11.	Insurance Europe	Article 1	<p>For UK, the local authorities should also be included apart from regional governments (of Scotland, Wales and Northern Ireland) that make up the list.</p> <p>Local authorities in the UK already have debt raising powers – and use them. This is why we believe they should be included in this list.</p> <p>Even though currently a reference to Norway is missing, Norwegian local authorities (kommuner) and regional government (Fylker) should be</p>	<p>The UK local authorities do not have the same revenue raising or borrowing powers as the Central government.</p> <p>Norwegian local authorities (kommuner) and regional</p>

		<p>included just as what is laid down for Sweden and Denmark: Indeed, although Norwegian local authorities and regional governments rarely have an official rating, their financial sustainability is closely watched by the Central Government of Norway through budget supervision. Additionally, it is a fact that loans issued by Norwegian local authorities and regional governments have usually the same rating that for loans issued by the Central Government of Norway. Finally, the Norwegian Financial Supervisory Authority has recently recognized that the capital requirements under Solvency II for exposures to Norwegian local authorities and regional governments – should they not be considered equal to exposures to the Central Government of Norway – will be too high compared to the actual risk of such exposures.</p> <p>Even though currently a reference to Czech Republic is missing, Czech municipalities should be added.</p> <p>Even though currently a reference to Ireland is missing, the list should include “Instruments issued by the Housing Finance Agency”.</p> <p>The Housing Finance Agency is a company owned by the State. The HFA currently raises the majority of its funding via the NTMA using the HFA’s Guaranteed Notes (GN) programme (the NTMA, the National Treasury Management Agency, is the body responsible for managing the Governments debt). It has a capacity of €4.5 billion, which is more than sufficient to cover the HFA’s variable funding needs at present. An amount of €4.0 billion was drawn by the HFA under the GN programme</p>	<p>governments (fylker) cannot be included in the list because there is a difference in credit risk between the Norwegian central government and the Norwegian RGLAs, partly owing to limitations in the revenue raising powers of the RGLAs, partly due to the non-existence of specific institutional arrangements (i.e. no guarantees from the central government to the RGLAs).</p> <p>Czech municipalities are not on the list because they do not possess the specific revenue-raising power that would render the risk of exposures to them comparable to exposures to the Czech central government.</p> <p>The list can only include regional governments and local authorities, but not state-owned companies.</p>
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			at 31 December 2013, of which €3.7 billion was funded by NTMA Guaranteed Notes.	
12.			This comment was submitted as confidential by the stakeholder.	
13.	Munich Reinsurance Company	Impact Assessment	EIOPA uses the qualities "Sufficient criteria for revenue-raising power" and "Sufficient criteria for institutional arrangements" to establish the list of RGLAs. Although the list of RGLAs is primarily for the standard formula, it is crucial to understand which sub-criteria are met by the different RGLAs for the purpose of the ORSA, and to understand whether the risk profile of the insurance or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation. This information should thus be included in the impact assessment. Furthermore – missing this information – it is very difficult for anyone, including the Commission, to assess whether the list of RGLAs is compliant with the relevant requirements of the Level 1 or 2 texts.	<p>The lists of regional governments and local authorities (RGLA) exposures to whom are to be treated as exposures to the central government is exclusively of relevance for the calculation of the market risk module and the counterparty default risk module of the standard formula.</p> <p>In this respect, the empowering provision establishes two commutative criteria for the compilation of these lists – existence of revenue-raising powers and institutional arrangements.</p> <p>There is no reference to sub-criteria for the purpose of the creation of the RGLA lists.</p>