EIOPA-Bos-15/123
30 October 2015

Final report on public consultation No. 14/051 on the implementing technical standards with regard to procedures for the application of the transitional measure for the calculation of the equity risk sub-module

Table Contents

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 13 of Article 308(b) 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 procedures for the application of the transitional measure for the calculation of the equity risk sub-module.

As a result of the above, on 2 December 2014, EIOPA launched a public consultation on the draft implementing technical standards with regard to procedures for the application of the transitional measure for the calculation of the equity risk sub-module, which was adopted by the Board of Supervisors.

The Consultation Paper is also published on EIOPA's website[1].

The Solvency II Directive requested the submission of the draft ITS by end of June 2015. However, in anticipation of an amendment to the Commission Delegated Regulation (EU) 2015/35, which would affect the application of the equity transitional, the European Commission requested EIOPA to postpone the delivery of the draft ITS until completion of the modified Delegated Regulation. The amended Delegated Regulation was adopted by the European Commission on 30 September 2015, and will, when it enters into force, extend the application of the transitional measure for equity investments to all equities, including unlisted equities and introduce a simplification for the application of the equity transitional for equity held in collective investment undertakings or investments packaged as funds.

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/051) 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.

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 Insurance and Reinsurance Stakeholder Group (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

Stakeholders welcomed the fact that the provisions of the ITS clarify that no procedures are needed when undertakings decide against using the transitional measure set out in pragraph 13 of Article 308b Solvency II.

Particular comments were made on the following issue:

Use of simplifications

Stakeholders voiced the concern that it would be very difficult to identify the purchasing date for equities indirectly held through collective investment funds. They suggested therefore allowing simplifications. As mentioned, the amended Delegated Regulation will address this in its revised Article 173 where the undertaking can estimate the proportion of equities in accordance with the target underlying asset allocation on 1 January 2016. The proportion of the equities to which the transitional is applied shall each year be reduced in proportion to the asset turnover ratio of the fund.

General nature of participants to the public consultation

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

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

IRSG opinion

The particular comments from the IRSG on the ITS at hand can be consulted on EIOPA's website[2]. The IRSG commented in particular on the use of approximations (see above).

---

[2] IRSG opinion

Comments on the Impact Assessment

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

3. Annexes

Annex I: Implementing Technical Standard

EUROPEAN
COMMISSION

Brussels, XXX
[…](2015) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of XXX

on […]

COMMISSION IMPLEMENTING REGULATION (EU) …/... laying down implementing technical standards with regard to the procedures for the application of the transitional measure for the equity risk sub-module in accordance with Directive 2009/138/EC of the European Parliament and of the Council

of […]

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of 25 of 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 sixth subparagraph of Article 308b(13) thereof,

Whereas:

(1) Insurance and reinsurance undertakings should adopt procedures for the appropriate identification and documentation of the equities which are subject to the transitional measure.

(2) Each time insurance and reinsurance undertakings calculate the Solvency Capital Requirement in accordance with the standard formula they should be able to identify any changes affecting the amount of equities which are subject to the transitional measure.

(3) Where insurance and reinsurance undertakings sell equities referred to in Article 173 of the Commission Delegated Regulation 2015/35[4] and then buy back equities of the same kind after 1 January 2016, the amount of equities subject to the transitional measure will reduce from that initially recognised. The procedures should therefore ensure that equities subject to the transitional measure can be distinguished from all other equities.

(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 by Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[5].

HAS ADOPTED THIS REGULATION:

Article 1

(1) With regard to the equities referred to in Article 173 of Commission Delegated Regulation (EU) 2015/35, where the weight for the parameter expressed in point (b) of the first

[3] OJ L 335, 17.12.2009, p.1.

[4] Commission Delegated Regulation (EU) 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).

[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).

subparagraph of Article 308b(13) of Directive 2009/138/EC is lower than 100 %, insurance and reinsurance undertakings shall do all of the following:

(a) document those equities;

(b) identify those equities each time they calculate the Solvency Capital Requirement using the transitional measure laid down in Article 308b(13) of Directive 2009/138/EC;

(c) keep evidence for the date of purchase of those equities;

(d) upon request of the supervisory authority, provide all information necessary for the identification of those equities.

(2) The procedures set out in paragraph1 shall ensure that also where sales and purchases in the same equities occur after 1 January 2016 the equities bought on or before 1 January 2016 can be identified.

Article 2

Entry into force

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

(2) 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]

Annex II: Impact Assessment

Section 1: Procedural issues and consultation of interested parties

According to Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation), 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 2 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

During the first seven years of implementation of Solvency II, the application of a transitional measure for the calculation of the equity risk sub-module is provided for undertakings calculating their Solvency Capital Requirement using the standard formula.

The transitional measure for standard equity risk is to be applied to equities listed in regulated markets in the EEA/OECD that were purchased on or before 1 January 2016 and which are not subject to the duration-based equity risk pursuant to Article 304 of Directive 2009/138/EC.

During the transitional period, the standard parameters to be used for equities that are subject to transitional period shall be calculated as the weighted average of the standard parameter in accordance with Article 304 and the standard parameter in accordance without the option set out in Article 304.

In order to ensure uniform conditions of application, EIOPA is empowered to develop draft implementing technical standards on the procedures for the application of this transitional measure.

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.

• Commission Delegated Regulation 2015/35. It has to be noted that according to Article 308b (13) of the Directive, EIOPA is legally obliged to draft implementing technical standards on the procedures for the application of the transitional measure for the standard equity risk.

Article 173 of the Commission Delegated Regulation establishes the criteria for the use of this transitional measure.

Section 3: Objective pursued

The objectives of this ITS are:

- Objective 1: to facilitate the application of the transitional measure for equities; and
- Objective 2: to ensure a consistent implementation of such transitional measure across all insurance and reinsurance undertakings.

Section 4: Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options in relation to the policy issues described below.

Policy issue 1: EIOPA has considered whether to prescribe any specific procedures for managing equities subject to the transitional measure.

✓ Option1.1: Specific procedures for documenting and identifying equities subject to transitional period.

✓ Option 1.2: No specific procedures for transitional equities.

Option 1.2 was discarded at an early stage since the adoption of specific procedures for the identification and the documentation of equities subject to the transitional measure are considered to be the minimum requirement to ensure a correct application of such transitional measure, without introducing unnecessary costs for undertakings.

Policy issue 2: EIOPA has considered whether supervisory authorities shall put in place specific procedures for monitoring undertakings applying the transitional measure on equities.

✓ Option 2.1: Specific monitoring procedures for supervisors.

✓ Option 2.2: No specific monitoring procedures for supervisors.

Policy option 2.1 was discarded in an early stage since the general mechanisms in the supervisory review process under SII are deemed sufficient for monitoring the proper application of the transitional measure on equities.

Furthermore, EIOPA initially considered whether (re)insurance undertakings shall provide for an additional reporting with regard to equities subject to the transitional measure. However this possibility was discarded at an early stage; reporting requirements are not deemed relevant for the scope of this ITS.

Section 5: Analysis of impacts

As described in the previous section, EIOPA has considered from the very beginning of the policy development process that this ITS should focus its content on requiring specific procedures for undertakings for documenting and identifying equities subject to the transitional period. The impacts of this proposal for the different types of stakeholders are summarised in the table below:

	Costs (burdens, cons)	**Benefits** (pros)
Option 1.1	Industry: costs for putting in place regular procedures to document the purchasing date and to identify equities subject to the transitional measure. Supervisors: no additional costs Policyholders: no additional costs	Industry: more clarity about the expectations of supervisors. Supervisors: Lower costs as undertakings have more clarity on the requirements they have to meet. Policyholders: Indirect benefits (see benefits for industry and supervisors)

Undertakings would in any case have to introduce procedures for identifying the equities purchased until 1 January 2016 on each occasion they calculate their Solvency Capital Requirement. It is also obvious that they would have to properly document the purchasing date and keep the relevant information as long as they use the transitional. The ITS has nevertheless considerable benefits as it avoids uncertainties regarding the requirements that undertakings have to meet. On the other side there are no meaningful costs for undertakings. Supervisory authorities benefit as it is less likely that undertakings use the transitional without proper processes for its application in place. There is consequently less need for discussions between undertakings and supervisors. The policyholder benefits indirectly as unnecessary costs are avoided.

Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/061 CP-14-061-ITS on equity index for the symmetric adjustment of the equity capital charge				
EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), AMICE, GDV, Insurance Europe, and Munich Reinsurance Company. The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/061.				
No.	**Name**	**Reference**	**Comment**	**Resolution**
1.	IRSG	General Comment	The ITS should make clear that, as permitted under the Delegated Acts (Article 84(3)), Undertakings are allowed to use approximations, such as the asset allocation, to identify indirect Type 1 equity exposures in collective investment funds in order to meet the "look-through" requirements. The purchasing date of equities from third-party asset managers may not be readily available; as it may be that the equities were purchased far into the past, estimates should therefore be permitted.	The scope of this ITS is limited to the procedures for the application of the transitional measures on equities. The Commission has adopted an amendment to Article 173 of the Delegated Regulation to introduce a simplified methodology with regard to equities held within collective investments undertakings or investments packaged as funds.
2.	AMICE	General Comment	AMICE welcomes the opportunity to comment on the Draft proposal for Implementing Technical Standards on the procedures for the application of article 308b(13) of Directive 2009/138/EC.	See resolution comment 1.

			For equities through collective investment funds it would be very difficult to identify their purchasing date. Some simplifications should therefore be allowed.	
3.	GDV	General Comment	GDV welcomes the opportunity to comment on the draft proposal for implementing technical standards on the procedures for the application of article 308b(13) of Directive 2009/138/EC. Use of the standard risk factor right from the start We welcome that article 1 applies only to undertakings which do not increase the weight for the standard parameter to 100% during the year 2016. Thereby it is clarified that undertakings may – at their own discretion – increase the weight faster than the bottom line given by Article 308b(13) of the directive (at least linearly from 2016 to 2023). In particular, it is permitted to use the full standard risk factor right from the start.	Noted
4.	Insurance Europe	General Comment	Insurance Europe welcomes the ITS on the procedures for the application of the transitional measure for the calculation of the equity risk sub-module, and the opportunity to comment on them. Our issues of primary concern related to this paper are the following: The difficulty in identifying indirect Type 1 equity exposures through collective investment funds. Using the look-through approach for this purpose will prove to be difficult due to impracticality. The availability of the purchasing date of equities from third-party asset managers. The purchasing date of equities from third-party asset managers may not be readily available, as it may be that the Type 1 equities were purchased in the distant past. Also, the relevant data will not be stored on a single system, but with multiple asset managers and fund administrators, and so bringing all of this data together will be time consuming and burdensome.	See resolution comment 1.

5.	AMICE	Article 1	For equities through collective investment funds it would be very difficult to identify their purchasing date. Some simplifications should therefore be applied. The ITS should be redrafted to allow the use of simplifications: © keep relevant evidence to demonstrate the purchasing date at which of the equities were directly or indirectly purchased through collective investment funds.	See resolution comment 1.
6.	GDV	Article 1	Wording The wording has to be corrected: "Where insurance and reinsurance undertakings do not increase the weight for the parameter referred to in Article 308b(13)(b) of Directive 2009/138/EC to 100% during the year 2016…" Reporting before 2016 The article makes clear, that the application of the transitional measure is optional for undertakings starting from 2. January 2016. For consistency reasons, undertakings that do not intend to use the transitional measure from 2. January 2016 onwards should not be required to use it for any reporting before this date as well.	Agreed. The wording has been changed to improve clarity. Noted. The ITS does not set any reporting requirement. The wording has been improved to make it clear that the procedures are not required after the end of the transitional period and when the weight is equal to 100%.
7.	Insurance Europe	Article 1	We suggest redrafting the first paragraph of the article for further clarity to read: "where insurance and reinsurance undertakings do not increase the weight for the parameter referred to in Article 308b(13)(b) of Directive 2009/138/EC to 100% during the year 2016…" For indirect equity exposures, through collective investment funds, it will be burdensome and sometimes impossible to identify Type 1 and 2 equities via the look-through approach for practical reasons.	Agreed. The wording has been changed to improve clarity. The Commission has adopted an amendment to Article 173 of the

			Furthermore, a full look-through approach with the proposed procedures is difficult and too onerous. For this reason, we believe the guideline should leave more flexibility to undertakings to allow for approximations where possible, such as using the target asset allocation, as allowed under Article 84(3) of the Delegated Acts. The purchasing date of equities from third-party asset managers may not be readily available, as it may be that the Type 1 equities were purchased in the distant past. Also, due to the nature of servicing relationships; the relevant data will not be stored on a single system, but with multiple asset managers and fund administrators and so bringing all of this data together will be time consuming and burdensome. Therefore, here also some flexibility should be allowed.	Delegated Regulation to extend the scope of the transitional to type 2 equity. See resolution comment 1.
8.	Munich Reinsurance Company	Article 1	Beside stating the requirements for applying the transitional measure when calculating the equity risk sub-module, the article makes clear, that the application of the transitional measure is optional for undertakings starting from 02. January 2016. For consistency reasons, undertakings that do not intend to use the transitional measure from 02. January 2016 should not be required to use it for any reporting before this date as well.	Noted. The ITS does not set any reporting requirement. The wording has been improved to make it clear that the procedures are not required after the end of the transitional period and when the weight is equal to 100%.