

Final Report
on
public consultation No. 14/048 on
Guidelines on
the supervision of branches of third-
country insurance undertakings

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1. Executive summary

Reasons for publication

According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation), EIOPA may issue guidelines addressed to National Competent Authorities (NCAs) or financial institutions.

According to Article 16 of the EIOPA Regulation, EIOPA shall, where appropriate, conduct open public consultations and analyse the potential costs and benefits. In addition, EIOPA shall request the opinion of the Insurance and Reinsurance Stakeholder Group (IRSG) referred to in Article 37 of the EIOPA Regulation.

In the interests of promoting consistent and efficient supervision pursuant to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), EIOPA has chosen to develop guidelines for the supervision of branches of third-country insurance undertakings.

As a result of the above, on 3 December 2014 EIOPA launched a public consultation on the draft guidelines. The consultation paper is also published on EIOPA's website¹.

These guidelines are issued to NCAs to:

- Clarify the application of Solvency II to third-country branches;
- Facilitate the consistent reporting of information necessary to undertake effective supervision; and
- Enhance the cooperation between national supervisory authorities for insurance undertakings operating internationally through branches.

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/048) and the full package of the public consultation, including:

Annex I: Guidelines

Annex II: Impact Assessment

Annex III: Resolution of comments

¹ [Consultation Paper](#)

Next steps

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

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

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

2. Feedback Statement

Introduction

EIOPA would like to thank the Insurance and Reinsurance Stakeholder Group (IRSG) and all the participants to the Public Consultation for their comments on the draft guidelines. The responses received have provided important guidance to EIOPA in preparing a final version of these guidelines. All of the comments made were given careful consideration by EIOPA. A summary of the main comments received and EIOPA's response to them can be found in the sections below; a full list of all the comments provided and EIOPA's responses to them can be found in Annex III.

General comments

The general comments are supportive of the intention to protect policyholders and ensure a level playing field between EEA insurers subject to Solvency II requirements and third-country insurers branching into the EEA. Stakeholders also expressed support for the principle of proportionality with regard to reporting requirements.

Stakeholders also proposed that the principle of proportionality should apply beyond reporting requirements. A number of comments referred to the need to clarify how assessments on Equivalence would be taken into account when determining whether the third-country insurance undertaking is solvent. Several stakeholders also expressed concerns about the possibility of retaliation by third-country jurisdictions. A number of comments requested clarity on the meaning of "adequate" in reference to the solvency of a third-country insurance undertaking. One stakeholder also proposed that authorised third-country branches should benefit from a transitional period that would allow them to meet the new requirements over time.

Key topics raised during the public consultation were described in the section "Specific comments on the Guidelines and Impact Assessment". In addition, all comments received were given careful consideration by EIOPA in Annex II.

The following is a summary of the key topics raised during the public consultation and EIOPA's consideration of these issues:

2.1. Retaliation by third-country jurisdictions

- a. Stakeholders expressed concern that high standards placed on third-country branches may lead third-country jurisdictions to impose additional obligations on branches of EEA undertakings. For third-country firms, the high standard of supervision for any third-country branches in the EEA may discourage the use of branches and the development of insurance markets as a result.
- b. EIOPA agreed that there is a risk of retaliation by third country jurisdictions, but emphasised that high standards of supervision are imposed only to the extent needed for the protection of policyholders. For instance, ring-fencing would only apply where the third-country branch would otherwise grant a preferential treatment to third-country nationals over any EEA policyholders. The Guidelines aim to ensure that

policyholders who deal with branches of third-country insurance undertakings are given at least the same level of protection that they would have if they were dealing with an EEA insurance undertaking subject to Solvency II. Where high standards are placed on third-country branches it has been deemed necessary to do so in order to achieve this aim.

2.2. Proportionality

- a. Some stakeholders proposed that the principle of proportionality should apply beyond reporting requirements for third-country branches to Pillar 1 and 2 requirements. The inclusion of a specific guideline on proportionality or a 'cost-effective' implementation of the draft guidelines was also requested.
- b. EIOPA disagreed that a specific guideline on proportionality should be included, as the guidelines already apply the principle of proportionality across the three pillars. Proportionality is applied for Pillar 1 according to the risks for policy holders rather than the size of the branch. Pillar 2 proportionality is applied by allowing the head-office to organise the governance for the entire undertaking. Pillar 3 reporting is proportionate as the supervisor can decide to limit or exempt small branches from burdensome reporting.

2.3. Equivalence assessment

- a. A number of comments suggested that equivalence should play a larger role in defining the supervisory framework surrounding third-country branches. Some stakeholders proposed that a third-country should be considered as solvent when established in a jurisdiction declared equivalent. Others suggested that for an equivalent jurisdiction there should be no need to require a comparison of the home solvency rules with Solvency II. There were further comments that EEA supervisors should rely on the assessment of the third-country supervisor when assessing the solvency of the third-country insurer.
- b. EIOPA notes that there is no legal ground to apply equivalence to third-country branches; Solvency II provisions on equivalence apply only in the context of reinsurance undertakings (Article 172 of the Directive), or insurance groups (Article 227 and 260 of the Directive). However, equivalence decisions could be used to contextualise the assessment of the solvency of the undertaking. Automatically assuming a third-country insurance undertaking is solvent because it is established in an equivalent jurisdiction does not align with the aim of ensuring that policyholders receive an equal level of protection regardless of whether they transact with a third-country or EEA branch.

EIOPA has altered the explanatory text to better take into account how the equivalence of the home jurisdiction affects the considerations of a supervisor with regard to the proportionate application of the guidelines

to branches. In particular, the emphasis on equivalence decisions made under Solvency II in the explanatory text has been increased; the text now suggests that the supervisory authorities should take account of any equivalence decisions when assessing whether the whole undertaking has an adequate solvency margin.

2.4. The preparation of a legal opinion by the undertaking

- a. Stakeholders commented that the legal opinions concerning the distribution of branch assets upon winding-up was overly burdensome in terms of cost and may provide questionable utility. In particular, stakeholders expressed concern that there may be duplication of cost as an EEA supervisor may receive a comparison of home supervisory rules with Solvency II from several branches coming from the same jurisdiction.
- b. EIOPA has adjusted the requirements on legal opinions to provide for supervisory authorities to rely on opinions from other sources. Analyses on the legal and practical operation of the bankruptcy regime of a third country should be made available to EIOPA, who will make the analyses available to other national supervisory authorities. Therefore the burden requiring each undertaking to provide a legal opinion has been reduced significantly.

2.5. The reporting burden on third-country branches

- a. These Guidelines refer to the templates and log files laid down in the Implementing Technical Standards with regard to the templates for the submission of information to the supervisory authorities that can be found in CP-14-052. Stakeholders raised similar concerns to those expressed in the public consultation on CP-14-052 which are answered in the final report to CP-14-052 and can be consulted on the EIOPA website. References to the relevant answers in CP-14-052 are included in this final report.
- b. Where the reporting templates on branches are different from the templates provided in the Implementing Technical Standard on the Templates for the Submission of Information, a specific template and respective log file are referred to in Technical Annexes III and IV to these Guidelines.

Some stakeholders also expressed concern that the guidelines placed overly burdensome reporting requirements for third-country branches. Some stakeholders felt that the creation of a separate "Solvency II" balance sheet for the branch was redundant. In particular, for equivalent jurisdictions any reporting submitted to the third-country supervisory authority is subject to a regime at the same standard as Solvency II.

EIOPA agrees that equivalence decisions can be relevant for reporting purposes as any financial documents submitted by a third-country

insurance undertaking to an equivalent authority are already subject to a regime equivalent to that found in Solvency II.

2.6. Adequate solvency

- a. A few comments were made by stakeholders concerned that the reference to an “adequate” solvency for the third-country insurance undertaking is unclear.
- b. EIOPA clarified the explanatory text explaining how equivalence decisions impact the determination of ‘adequate’ solvency. Adequate is intended to mean what is adequate in the view of the relevant national supervisory authority.

2.7. Transitional period

- a. One stakeholder requested that authorised third-country branches might benefit from a transitional period which would allow them to adapt to the new requirements.
- b. EIOPA agreed that it is possible for a transitional period to apply depending on the approach to proportionality taken by each national supervisory authority. This may include an allowance for the time which will be required to obtain analyses of relevant bankruptcy regimes and therefore the eligibility of any branch assets to contribute towards branch own funds. During this period the undertaking could continue to report branch assets on the basis of existing allocation methods.

General nature of the participants to the public consultation

EIOPA received comments from Insurance and Reinsurance Stakeholder Group (IRSG) and ten 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 other parties such as consultants and lawyers.

IRSG opinion

The particular comments from the IRSG on the Guidelines at hand can be consulted on EIOPA’s website². The IRSG main comments are addressed below.

Comments on the Impact Assessment

Where the need for reviewing the Impact Assessment has arisen following comments on the guidelines, the Impact Assessment Report has been revised accordingly. No comments were received regarding the Impact Assessment Report itself.

² [IRSG opinion](#)

3. Annexes

Annex I: Guidelines

Guidelines on reporting for financial stability purposes

1. Introduction

- 1.1 In accordance with Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council³, the European Insurance and Occupational Pensions Authority (EIOPA) has issued these Guidelines on the supervision of branches of third-country insurance undertakings (the 'Guidelines').
- 1.2 These Guidelines relate to Articles 162 to 171 of Directive 2009/138/EC of the European Parliament and of the Council⁴.
- 1.3 The purpose of these Guidelines is to ensure a consistent, efficient and effective protection of policyholders within the European Union (the 'EU'). In particular, the Guidelines aim to ensure, as a minimum, the same level of protection of policyholders of a branch of a third-country insurance undertaking (the 'branch') as that they enjoy when they are dealing with an insurance undertaking situated in the EU whether in its home Member State or through a branch under Directive 2009/138/EC.
- 1.4 These Guidelines allow for alternatively proportionate supervision methods to protect policyholders of a branch in the context of valuation, own funds and submission of information under Directive 2009/138/EC.
- 1.5 In accordance with Article 162 of the Solvency II Directive, the scope of these Guidelines covers only branches of third-country insurance undertakings, which carry out direct life and non-life insurance business.
- 1.6 The scope of these Guidelines equally covers branches, which are subject to either equivalent or non-equivalent supervision, as provided for under Directive 2009/138/EC. Notwithstanding this, supervisory authorities may have regard to specific equivalence decisions, which are relevant to assessing the solvency of the whole third-country insurance undertaking, including its branch.
- 1.7 The scope of these Guidelines does not cover third-country insurance undertakings taking on, or authorised to take on, only reinsurance business through an EU branch even if the third-country insurance undertaking carries out direct insurance business through its head-office or branches outside of the EU.

³ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- 1.8 For reporting in relation to a branch, these Guidelines refer to the templates and log files laid down in the implementing technical standards with regard to the templates for the submission of information to the supervisory authorities in accordance with Directive 2009/138/EC of the European Parliament and of the Council, as endorsed by the European Commission (hereinafter the 'Implementing Technical Standard on the Templates for the Submission of Information').
- 1.9 Where the reporting templates on branches are different from the templates provided in the Implementing Technical Standard on the Templates for the Submission of Information, a specific template and respective instructions file are referred to in Technical Annexes III and IV to these Guidelines.
- 1.10 Unless otherwise indicated, all code references of templates and instructions refer to the templates or instructions with identical code references, as laid down in the Implementing Technical Standard on the Templates for the Submission of Information.
- 1.11 These Guidelines are addressed to the supervisory authorities under Directive 2009/138/EC.
- 1.12 These Guidelines apply from 1 January 2016.
- 1.13 The Guidelines on Reporting and Public Disclosure (EIOPA-BoS-15/109)⁵ issued by EIOPA are also applicable with respect to a branch as indicated in those Guidelines.
- 1.14 For the purpose of these Guidelines the following definitions apply:
- a) "branch operations" means operations effected by a branch pursuant to its authorisation under Directive 2009/138/EC.
 - b) "branch assets" means assets of the third-country insurance undertaking which are attributed to branch operations, excluding any notional book amount owing from the undertaking's non-branch operations to the undertaking's branch operations and which are available upon the winding-up of the undertaking to pay the insurance liabilities of branch policyholders in accordance with Guideline 26.
 - c) "branch liabilities" means the branch insurance claims, branch preferential claims and claims secured on branch assets.
 - d) "branch own funds" means the sum of branch basic own funds and branch ancillary own funds.
 - e) "branch basic own funds" means the excess of branch assets over branch liabilities.
 - f) "branch ancillary own funds" means items, which can be called up within winding-up proceedings with regard to the third-country insurance undertaking to pay the insurance liabilities vis-a-vis branch policyholders

⁵ <https://eiopa.europa.eu/Pages/Consultations/Public-consultation-on-the-Set-2-of-the-Solvency-II-Implementing-Technical-Standards-%28ITS%29-and-Guidelines.aspx>

in accordance with Guideline 26 and which meet the requirements of Articles 89 and 90 of Directive 2009/138/EC.

- g) "branch balance sheet" means a balance sheet showing branch assets and branch liabilities complying with the recognition and valuation principles under Article 75 of Directive 2009/138/EC.
- h) "branch *SCR*" means the Solvency Capital Requirement (SCR) based on the branch balance sheet and the volume measures as specified in Directive 2009/138/EC which relate to the branch balance sheet.
- i) "branch *MCR*" means the Minimum Capital Requirement (MCR) which is based on the branch balance sheet and the volume measures as specified in Directive 2009/138/EC which relate to the branch balance sheet.
- j) "branch policyholder" means a policyholder whose policy is effected by the branch. This definition includes, but is not limited to, policyholders and beneficiaries who have branch insurance claims.
- k) "insurance claim" means claims of branch policyholders within the meaning of Article 268(g) of Directive 2009/138/EC.
- l) "location of the insurance claim" means the location of either the beneficiary (including policyholders), the insured risk or the contract signed with the third-country insurance undertaking (including whether the business was transacted through the branch or through the head-office of the third-country insurance undertaking).
- m) "branch insurance claim" means insurance claim relating to branch policyholders.
- n) "branch preferential claims" means any claim which upon a winding-up of the third-country insurance undertaking ranks in priority to branch insurance claims which are:
 - claims of employees of branch operations arising from employment contracts and employment relations, claims by public bodies on taxes owed with respect to branch operations,
 - claims by social security systems with regard to branch operations, or
 - claims on branch assets subject to rights in rem.
- o) "host supervisory authority" means the supervisory authority of the Member State where the branch is established and its operations occur.
- p) "home supervisory authority" means the supervisory authority of the country, which has authorised the third-country insurance undertaking to take on insurance business and where the undertaking has its head office;
- q) "reporting currency" is the currency of the country of the supervisory authority receiving the reporting information, unless otherwise allowed by this supervisory authority;

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

Authorisation of branch of a third-country insurance undertaking

Guideline 1 - Conditions for authorisation or continuing authorisation

- 1.16 When authorising or continuing authorisation of a branch, host supervisory authorities should be satisfied that the relevant third-country insurance undertaking has an adequate solvency margin and commits to provide any information which the host supervisory authority may need for supervisory purposes and which demonstrates that the undertaking as a whole has an adequate solvency margin under the home jurisdiction rules and that the home supervisory authority confirms that those rules are met.
- 1.17 Host supervisory authorities should assess the adequacy of the solvency margin of the undertaking as a whole on the basis of the prudential requirements of the home supervisory authority, including seeking additional information where needed.

Guideline 2 – Scheme of operations and solvency margin

- 1.18 The host supervisory authority should ensure that the third-country insurance undertaking includes in the scheme of operations of its branch an analysis of the differences between the home country solvency rules and the rules of Directive 2009/138/EC, including an explanation on the reasons that justify such differences.

Guideline 3 –Distribution of branch assets

- 1.19 When determining whether a third-country insurance undertaking has an adequate solvency margin, the host supervisory authority should consider:
- a) the branch assets remaining after paying the insurance claims of branch policyholders which would be distributed to other claims of branch policyholders; and
 - b) the aggregate amount of claims which would rank in priority to, or equal with, claims of branch policyholders.

Guideline 4 – Analysis concerning the distribution of branch assets

- 1.20 For the purpose of Guideline 6, the host supervisory authority should procure an analysis concerning the legal and practical operation of the home jurisdiction bankruptcy regime; the priority given to policyholders of the branch and of other policyholders of the third-country insurance undertaking in winding-up proceedings; and how the assets of the third-country insurance undertaking are distributed to those policyholders.
- 1.21 The host supervisory authority should, to the extent to which applicable confidentiality requirements permit, make the procured analysis available to EIOPA. EIOPA may decide to make the analysis available to other

supervisory authorities in accordance with its confidentiality regime and on a need-to-know basis.

- 1.22 Where the home jurisdiction bankruptcy regime does not provide for at least the same level of protection of policyholders in winding-up proceedings as under Directive 2009/138/EC, the host supervisory authority should procure from the relevant third-country insurance undertaking an analysis concerning the distribution of branch assets under: the home jurisdiction bankruptcy regime in relation to that undertaking; the regime of the Member State where the branch is authorised (where separate proceedings can be opened in respect of the branch); or the distribution circumstances where winding-up proceedings are initiated in both the home jurisdiction and the host Member State where the branch is established.
- 1.23 The host supervisory authority should ensure that all analyses are provided by persons suitably qualified to advise in respect of the laws and practices of the jurisdiction concerned.

Guideline 5 - Determination of branch liabilities

- 1.24 The host supervisory authority should ensure that branch insurance claims included in branch liabilities comprise technical provisions, as defined in Article 77 of Directive 2009/138/EC, associated with only those branch insurance claims.

Guideline 6 – Determination of branch assets

- 1.25 The host supervisory authority should ensure that the third-country insurance undertaking only includes in the branch balance sheet the assets that are available according to the criteria below:
- a) assets which are distributed in accordance with Article 275(1)(a) or (b) of Directive 2009/138/EC on a basis which does not differentiate between claims according to the location of the claim;
 - b) assets which are distributed to pay branch preferential claims and insurance claims of branch policyholders in priority to all other claims.
- 1.26 The host supervisory authority should ensure that in submitting information concerning the branch balance sheet, own funds and branch SCR, the third-country insurance undertaking only includes assets which are available for distribution upon winding-up of the third-country insurance undertaking to pay the insurance claims of branch policyholders.
- 1.27 The host supervisory authority should ensure that in submitting the information on the branch balance sheet, the third-country insurance undertaking shows the available assets gross of branch preferential claims and any prior security interests and report the net amount of available branch assets and the deduction of branch preferential claims and prior security interests on the template S.02.03.07 specifying additional branch balance sheet information, as laid down in Annex III to these Guidelines.

Supervisory powers and communication with other supervisory authorities

Guideline 7 – General supervisory powers

- 1.28 For the supervision of branch operations, the host supervisory authority should exercise, where appropriate, the supervisory powers laid down in Directive 2009/138/EC, in particular Articles 34, 35, 36, 37, 84, 85, 110, 118 and 119 thereof, to the same extent as they exercise such powers for the supervision of insurance undertakings with head office within the Union.

Guideline 8 – Assessment of the branch financial position as part of the supervisory review process

- 1.29 When assessing the adequacy of the branch financial position as part of the supervisory review process, the host supervisory authority should consider the risk that branch policyholders' claims may be diluted by non-branch claims.

Guideline 9 – Granting advantages, including joint decisions under Article 167(3) of Directive 2009/138/EC

- 1.30 Where a third-country insurance undertaking authorised in more than one Member State has applied for the advantages set out in Article 167 of Directive 2009/138/EC, the host supervisory authorities concerned should discuss whether the conditions in Guideline 1 have been met before reaching a decision to grant such advantages to that undertaking.

Guideline 10 – Notifying EIOPA of joint decisions in relation to Article 167 of Directive 2009/138/EC

- 1.31 Where a third-country insurance undertaking authorised in more than one Member State applies for any of the advantages under Article 167 of Directive 2009/138/EC, the relevant supervisory authority should notify EIOPA of the decision taken under that article and whether it considers that the conditions in Guideline 1 are met.

Guideline 11 – Notification of the host supervisory authorities of branch locations

- 1.32 The host supervisory authority should ensure that a third-country insurance undertaking informs it on a continuous basis of the location of the branches which that undertaking has established or intends to establish in any other Member State.

Guideline 12 – Single balance sheet under Article 167 of Directive 2009/138/EC

- 1.33 Where any of the advantages set out in Article 167(1) of Directive 2009/138/EC is granted, the host supervisory authority who is to supervise all branches established within the Union should ensure that a single branch balance sheet is drawn up by the third-country insurance undertaking in relation to all branch operations pursued within the Union and which may, at the undertaking's discretion, eliminate any intra-branch transactions.

Guideline 13 – Withdrawal of advantages

- 1.34 Host supervisory authorities, which withdraw the advantages granted under Article 167(1) of Directive 2009/138/EC, should promptly inform the supervisory authorities of the other Member States in which the third-country insurance undertaking operates, of the withdrawal of the advantages.

Guideline 14 - Supervisory review process

- 1.35 The host supervisory authority should ensure that branch operations are subject to review and evaluation as part of the supervisory review process laid down in Article 36 of Directive 2009/138/EC.

Guideline 15 – Cooperation and communication between supervisory authorities under the supervisory review process

- 1.36 Where host supervisory authorities have granted the advantages referred to in Article 167(1) of Directive 2009/138/EC, they should establish a communication process in line with the one described in the Guidelines on Supervisory Review Process (EIOPA-BoS-14/179)⁶.
- 1.37 Where the third-country insurance undertaking has branches authorised in more than one Member State but has not applied for any of the advantages under Article 167(1) of Directive 2009/138/EC, the concerned supervisory authorities should agree how to cooperate and exchange information in line with the Guidelines on Supervisory Review Process (EIOPA-BoS-14/179).

Guideline 16 - Communication with other supervisory authorities

- 1.38 Where a host supervisory authority becomes aware of information that may undermine the position of branch insurance creditors or the availability of branch own funds, it should communicate that information to any other host supervisory authority where the third-country insurance undertaking has received authorisation to establish a branch and to EIOPA.
- 1.39 The host supervisory authority should consider if there are other relevant supervisory authorities with whom it should communicate, such as supervisory authorities of related insurance undertakings or branches of other members of the group to which the third-country insurance undertaking belongs.

Financial soundness of the branch

Guideline 17 - Branch accounting

- 1.40 The host supervisory authority should ensure that a third-country insurance undertaking establishes, maintains and documents the administrative and accounting procedures related to the operations of its branches in the Member States in which the branches operate.

⁶ Available at EIOPA's website: <https://eiopa.europa.eu/Pages/Guidelines/Guidelines-on-supervisory-review-process.aspx>.

- 1.41 The host supervisory authority should ensure that a third-country insurance undertaking keeps records: identifying the location of all branch assets; and providing sufficient information enabling any person charged with the winding-up of that undertaking to take control of those assets.
- 1.42 The host supervisory authority should ensure that a third-country insurance undertaking produces and keeps management accounts relating to the whole balance sheet of the branch – including available and non-available assets and all liabilities relating to branch operations.

Guideline 18 - Location of branch assets

- 1.43 The host supervisory authority should ensure that:
- a) the third-country insurance undertaking has sufficient assets covering the branch MCR and maintains them at any time within the host Member State;
 - b) the assets covering the branch SCR, in excess of the branch MCR, are located in the Union; and
 - c) the third-country insurance undertaking informs the host supervisory authority immediately if one of the abovementioned conditions are no longer complied with.

Guideline 19 – Quality requirements for the security deposits under Article 162(2)(e) of Directive 2009/138/EC

- 1.44 The host supervisory authority should ensure that deposits lodged as security by a third-country insurance undertaking are of low volatility under all market conditions having impact on the value of that deposit and thereby on the deposit's appropriateness as a security.
- 1.45 The host supervisory authority should ensure that a third-country insurance undertaking may only lodge a deposit with a credit institution authorised in the Union which has acknowledged that it has no rights of set-off or will not exercise any rights of set-off of any claims it may have against that undertaking against the deposit if the insurance undertaking fails or is subject to winding-up proceedings.

Guideline 20 – Assessment of the quality of a security deposit under Article 162(2)(e) of Directive 2009/138/EC

- 1.46 The host supervisory authority should ensure that a third-country insurance undertaking provides sufficient information to it so that it can assess the quality of the assets and determine if that undertaking needs to make changes to the deposit to ensure its ongoing appropriateness as security.

Guideline 21 - Valuation rules

- 1.47 The host supervisory authority should ensure that a third-country insurance undertaking calculates its branch assets, branch liabilities, branch MCR and branch SCR in accordance with the valuation rules laid down in Chapter VI of Title 1 of Directive 2009/138/EC.

Guideline 22 – Calculation of capital requirements for the branch

- 1.48 The host supervisory authority should ensure that the branch SCR and branch MCR are calculated based on the branch balance sheet as if the branch operations constituted a separate insurance undertaking.

Guideline 23 – Solvency Capital Requirement

- 1.49 The host supervisory authority should ensure that the branch own funds are at least equal to the branch SCR.

Guideline 24 – Minimum capital requirement

- 1.50 The host supervisory authority should ensure that the branch basic own funds are at least equal to the branch MCR.

Guideline 25 - Branch own funds

- 1.51 The host supervisory authority should ensure that the third-country insurance undertaking calculates its branch own funds, taking into account only assets which are available for distribution upon a winding-up of the undertaking to pay the insurance claims of branch policyholders and branch preferential claims. Such assets should only be treated as available if they would be distributed:
- a) in accordance with the provisions of Article 275(1)(a) or (b) of Directive 2009/138/EC and in a manner which does not differentiate between claims according to the location of the claim; or
 - b) to pay branch preferential claims and the insurance claims of branch policyholders in priority to all other claims.

Guideline 26 – Assessment of available branch assets

- 1.52 The host supervisory authority should ensure that the third-country insurance undertaking provides it with sufficient information allowing the host supervisory authority to assess all of the following:
- a) the steps which a liquidator needs to take to assume control of, and collect in the branch assets, and whether such steps would be effective where competing claims in relation to those assets are exercised by other creditors or another liquidator administering winding-up proceedings with regard to the third-country insurance undertaking;
 - b) the speed and simplicity with which branch assets could be transferred outside the jurisdiction of the host supervisory authority and the EU prior to the commencement of winding-up proceedings;
 - c) the degree to which the host supervisory authority could effectively prevent branch assets being transferred outside the EU prior to the commencement of any winding-up proceedings;
 - d) the degree to which branch assets could be used to settle liabilities other than branch insurance claims prior to or in the event of the third-country insurance undertaking's winding-up;

- e) the manner in which the third-country insurance undertaking exercises control over branch operations and whether this control is exerted by persons responsible for the branch operations as distinct from persons responsible for the other operations of the undertaking;
- f) the risk that branch liabilities are not related to the claims of policyholders within the EU such that they function as a mechanism for improperly or otherwise transferring branch assets to any other creditor of the undertaking, any member of the same group, or any third-party to the detriment of policyholders within the EU;
- g) whether the contractual relationships between the third-country insurance undertaking and third parties enable the use of branch assets for purposes other than satisfying branch liabilities;
- h) the effects of specific legal requirements to use branch assets for purposes other than satisfying branch liabilities;
- i) whether failing to use branch assets for purposes other than satisfying branch liabilities might prejudice the reputation of the third-country insurance undertaking;
- j) whether there are any tax disadvantages or advantages for the third-country insurance undertaking arising upon the use of branch assets for purposes other than satisfying branch liabilities; and
- k) whether there are any exchange controls that may have an impact on the use of branch assets for purposes other than the satisfying branch liabilities.

Governance and risk management

Guideline 27 - General governance requirements

- 1.53 The host supervisory authority should ensure that the third-country insurance undertaking complies with the system of governance requirements under Articles 41 to 50 of Directive 2009/138/EC, including with the prudent person principle with regard to branch operations.

Guideline 28 – Application of prudent person principle to branch assets

- 1.54 The host supervisory authority should ensure that the third-country insurance undertaking makes branch assets compliant with the prudent person principle under Article 132 of Directive 2009/138/EC.

Guideline 29 – Language and reporting of governance policies

- 1.55 The host supervisory authority should ensure that the third-country insurance undertaking has written policies covering the governance arrangements to comply with Guideline 7, available in a language agreed by the host supervisory authority, and include information in its regular supervisory reporting regarding how it satisfies those governance requirements.

Guideline 30 - Key functions

1.56 The host supervisory authority should ensure that the third-country insurance undertaking has put in place the risk management function, the compliance function, the internal audit function and the actuarial function with regard to branch operations regardless of whether these functions are specifically established for the branch operations or are applied by the undertaking's head-office to the branch operations.

Guideline 31 – Notification of fit and proper persons

1.57 The host supervisory authority should ensure that the third-country insurance undertaking notifies it of the identity of, and any changes to:

- a) the general representative of the branch;
- b) any persons who effectively run or who may influence branch operations; and
- c) the persons who are responsible for key functions with regard to branch operations.

Guideline 32 – Fit and proper requirements

1.58 The host supervisory authority should ensure that the third-country insurance undertaking provides it with all information needed to assess the fitness and propriety of the persons mentioned in Guideline 31.

Guideline 33 - Own risk and solvency assessment (ORSA)

1.59 The host supervisory authority should ensure that the third-country insurance undertaking performs, at least annually, an ORSA complying with Article 45 of Directive 2009/138/EC with regard to the branch operations.

Guideline 34 – Material risks to be included in the ORSA

1.60 The host supervisory authority should ensure that for the purposes of the ORSA a third-country insurance undertaking takes into account any material risk for branch operations, and any risk for other operations of the third-country insurance undertaking which may have effect on branch operations.

Guideline 35 – Assessment of branch assets in the ORSA

1.61 The host supervisory authority should ensure that the third-country insurance undertaking, as part of its ORSA, assesses the permanent availability of the branch assets and addresses in its assessment:

- a) the risks to the effectiveness of arrangements to ensure that branch assets are paid only to branch insurance creditors and branch preferential creditors; and
- b) the risks to the adequacy of branch assets to cover claims of such creditors by at least the amount of the branch SCR if subparagraph (a) of Guideline 25 is not met by the undertaking.

Disclosure

Guideline 36 - Public disclosure requirements in relation to branches

- 1.62 The host supervisory authority should ensure that the third-country insurance undertakings guarantee that branch policyholders can obtain any publicly disclosed information concerning the solvency and financial condition of the whole third-country insurance undertaking, if the rules and regulations of the third-country prescribe such disclosure.

Structure and form of the supervisory reporting

Guideline 37 – Elements of the regular supervisory reporting

- 1.63 The host supervisory authority should ensure that the third-country insurance undertaking submits to it the following information in respect of branch operations at predefined periods under Article 35(2)(a)(i) of Directive 2009/138/EC:
- a) a regular supervisory report comprising the information required under Article 35 of Directive 2009/138/EC and these Guidelines, in relation to branch operations, in narrative form and including quantitative data, where appropriate;
 - b) the ORSA supervisory report in respect of branch operations comprising the results of each regular ORSA performed by the undertaking in accordance with Article 45(6) of Directive 2009/138/EC and these Guidelines, and without delay following any significant change in its risk profile, in accordance with Article 45(5) of Directive 2009/138/EC;
 - c) completed annual and quarterly quantitative templates in respect of branch operations, as provided for in Guidelines 44, 45 and 47, specifying in greater detail and supplementing, where appropriate, the information presented in the regular supervisory report;
 - d) a copy of the supervisory reporting documentation of the whole third-country insurance undertaking;
 - e) a summary of any significant concerns which the home supervisory authority has raised with the third-country insurance undertaking, in the official language of the country where the branch is located.
- 1.64 The requirements set out in the first paragraph of this Guideline are without prejudice to the power of the host supervisory authority to require the third-country insurance undertaking to communicate on a regular basis any other information prepared under the responsibility of, or at the request of, the administrative, management or supervisory body of these undertakings, in relation to branch operations.
- 1.65 The host supervisory authority should ensure that the regular supervisory report issued by the third-country insurance undertaking in respect of branch operations follows the structure set out in Annex XX of the Commission

Delegated Regulation (EU) 2015/35⁷ and presents in a coherent and informative manner the information described in Technical Annex I to these Guidelines.

Guideline 38 – ORSA Supervisory Report

- 1.66 The host supervisory authority should ensure that the ORSA supervisory report issued by the third-country insurance undertaking in respect of branch operations covers:
- a) the qualitative and quantitative results of the ORSA and the conclusions drawn by the third-country insurance undertaking from those results;
 - b) the methods and main assumptions used in the ORSA;
 - c) information on the branch's overall solvency needs and a comparison between those solvency needs, the regulatory capital requirements and the branch's own funds;
 - d) qualitative information on the extent to which quantifiable risks of the branch are not reflected in the calculation of the branch SCR;
 - e) where significant deviations have been identified, the quantifiable risks of the branch not reflected in the branch SCR appropriately quantified.
- 1.67 The host supervisory authority should ensure that the ORSA supervisory report issued by the third-country insurance undertaking in respect of branch operations also covers any risks with regard to other operations of the third-country insurance undertaking which may have a material impact on the branch operations.

Guideline 39 – Currency

- 1.68 The host supervisory authority should ensure that the third-country insurance undertaking reports data points with the data type 'Monetary' are in the reporting currency, which requires conversion of other currencies into the reporting currency, unless otherwise stated in the instructions of Annex II of Implementing Technical Standard on the Templates for the Submission of Information or of Annex IV of these Guidelines.
- 1.69 The host supervisory authority should ensure that when the third-country insurance undertaking expresses the value of any branch asset or liability denominated in a currency other than the reporting currency, it converts that value into the reporting currency as if conversion had taken place at the closing rate on the last day for which the appropriate rate is available in the reporting period to which the branch asset or liability relates.
- 1.70 The host supervisory authority should ensure that when the third-country insurance undertaking expresses the value of any income or expense, it

⁷ 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, 17.1.2015, p. 1)

converts that value into the reporting currency by using such basis of conversion as used for accounting purposes.

- 1.71 The host supervisory authority should ensure that when the third-country insurance undertaking makes a conversion into the reporting currency, it applies the exchange rate from the same source as the one used for the undertaking's financial statements in case of individual reporting.

Guideline 40 – Materiality of information

- 1.72 The host supervisory authority should ensure that third-country insurance undertakings consider as material information, information which omission or misstatement could influence its decision-making or judgement.

Means of communication

Guideline 41 – Means of reporting

- 1.73 The host supervisory authority should ensure that the third-country insurance undertaking provides it with the regular supervisory report in respect of branch operations, the ORSA supervisory report in respect of branch operations and the relevant quantitative templates in electronic form.

Guideline 42 - Supervisory reporting formats

- 1.74 The host supervisory authority should ensure that the third-country insurance undertaking provides the information referred to in these Guidelines in the data exchange formats and representations determined by the host supervisory authority or by the group supervisor and respects the following specifications:
- a) data points with the data type 'Monetary' expressed in units with no decimals with the exception of templates S.06.02, S.08.01, S.08.02 or S.11.01, which are expressed in units with two decimals;
 - b) data points with the data type 'Percentage' expressed as per unit with four decimals;
 - c) data points with the data type 'Integer' expressed in units with no decimals.

Guideline 43 – Updates to reports

- 1.75 Where a significant development affects the information received from a third-country insurance undertaking, the host supervisory authority should ensure that the third-country insurance undertaking submits to it an update of this information as soon as possible following the occurrence of the significant development. Such an update can take the form of amendments to the initial report.
- 1.76 The host supervisory authority should ensure that third-country insurance undertakings consider as a significant development any significant change to the winding-up regime applicable to the branch.

Quantitative reporting requirements for third-country insurance undertakings in relation to branch operations

Guideline 44 – Annual quantitative templates for third-country insurance undertakings in relation to branch operations

1.77 Unless otherwise decided in accordance with Guideline 48, the host supervisory authority should ensure that the third-country insurance undertakings annually submits to it the following structured information regarding branch operations, where applicable:

- a) template S.01.01.07 of Annex III to these Guidelines, specifying the content of the submission, following the instructions set out in S.01.01 of Annex IV to these Guidelines;
- b) template S.01.02.07 of Annex III to these Guidelines, specifying basic information on the branch and the content of the reporting in general, following the instructions set out in S.01.02 Annex IV to these Guidelines;
- c) template S.01.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying basic information on ring fenced funds and matching portfolios, following the instructions set out in S.01.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- d) template S.02.01.07 of Annex III to these Guidelines, specifying balance sheet information using both the valuation in accordance with Article 75 of the Directive 2009/138/EC and the valuation according to the branch management accounts value for the branch operations, following the instructions set out in S.02.01 of Annex IV to these Guidelines;
- e) template S.02.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on branch assets and liabilities by currency, following the instructions set out in S.02.02 Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- f) template S.02.03.07 of Annex III to these Guidelines, specifying additional branch balance sheet information, following the instructions set out in S.02.03 Annex IV to these Guidelines;
- g) template S.03.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying general information on off-balance sheet items, following the instructions set out in S.03.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- h) template S.03.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing a list of off-balance sheet unlimited guarantees received, following the instructions set out in S.03.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;

- i) template S.03.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing a list of off-balance sheet unlimited guarantees provided, following the instructions set out in S.03.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- j) template S.05.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on premiums, claims, expenses following the valuation and recognition principles used in the branch management accounts value for the branch operations, following the instructions set out in S.05.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information for each line of business as defined in Annex I to Delegated Regulation (EU) 2015/35;
- k) template S.05.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on premiums, claims and expenses by country, applying the valuation and recognition principles used in the branch management accounts for the branch operations, following the instructions set out in S.05.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- l) template S.06.02.07 of Annex III to these Guidelines, providing an item-by-item list of assets, following the instructions set out in S.06.02 of Annex IV to these Guidelines;
- m) template S.06.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing information on the look-through of all collective investments held by the third-country branch, following the instructions set out in S.06.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- n) template S.07.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item-by-item list of structured products only when the amount of structured products is higher than 5%, measured as the assets classified as asset categories 5 (Structured notes) and 6 (Collateralised securities), as defined in Annex V to the Implementing Technical Standard on the Templates for the Submission of Information, divided by the sum of items C0010/R0070 and C0010/RC0220 of template S.02.01.01, following the instructions set out in S.07.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- o) template S.08.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item-by-item list of open positions list of derivatives, following the instructions set out in S.08.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;

- p) template S.08.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item-by-item list of derivatives closed during the reporting period, following the instructions set out in S.08.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- q) template S.09.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on income, gains and losses in the period following the instructions set out in S.09.01 in of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- r) template S.10.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item-by-item list of securities lending and repurchase agreements data on and off balance sheet, only when the value of the underlying securities, on and off balance sheet, involved in lending or repurchase agreements, for contracts with maturity date falling after the reporting reference date represent more than 5% of the total investments as reported in items C0010/R0070 and C0010/R0220 of template S.02.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, following the instructions set out in S.10.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- s) template S.11.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item-by-item list of assets held as collateral, consisting of all types of off-balance sheet asset categories held as collateral following the instructions set out in S.11.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- t) template S.12.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information specifying information on life and health SLT technical provisions, by lines of business as defined in Annex I of Delegated Regulation (EU) 2015/35, following the instructions set out in S.12.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- u) template S.12.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on life and health SLT technical provisions by country, following the instructions set out in S.12.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- v) template S.13.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, regarding projection of best estimate future cash flows of the life business, following the

instructions set out in S.13.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;

- w) template S.14.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, regarding life obligations analysis, including life insurance contracts and annuities stemming from non-life contracts, by product and by homogeneous risk group issued by the branch, following the instructions set out in S.14.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- x) template S.15.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on description of the guarantees of variable annuities by product issued by the branch under direct insurance business, following the instructions set out in S.15.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- y) template S.15.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the hedging of guarantees of variable annuities, by product issued by the branch under direct business, following the instructions set out in S.15.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- z) template S.16.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on annuities stemming from non-life insurance obligations issued by the branch under direct insurance business, following the instructions set out in S.16.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information, regarding all lines of business originating annuities as defined in Annex I to Delegated Regulation (EU) 2015/35 and additionally by currency only when the following applies:
 - i. If the best estimate for the annuity claims provisions on a discounted basis from one non-life line of business represents more than 3% of the total best estimate for all annuity claims provisions the information should be reported with the following split by currencies:
 - a) amounts for the reporting currency;
 - b) amounts for any currency that represents more than 25% of the best estimate for the annuity claims provisions on a discounted basis in the original currency from that non-life line of business; or
 - c) amounts for any currency that represents less than 25% of the best estimate for the annuity claims provisions (discounted basis) in the original currency from that non-

life line of business but more than 5% of total best estimate for all annuity claims provisions;

- aa) template S.17.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life technical provisions, following the instructions set out in S.17.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information, by lines of business as defined in Annex I to Delegated Regulation (EU) 2015/35;
- bb) template S.17.02.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life technical provisions referred to direct insurance business by country, following the instructions set out in S.17.02 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- cc) template S.18.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, regarding projection of future cash flows based on best estimate of the non-life business, following the instructions set out in S.18.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- dd) template S.19.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life insurance claims in the format of development triangles, following the instructions set out in S.19.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information, for the total of each non-life line of business as defined in Annex I to Delegated Regulation (EU) 2015/35 and additionally by currency, only when the following applies:
 - i. If the total gross best estimate for one non-life line of business represents more than 3% of the total gross best estimate of the claims provision the information should be reported with the following split by currencies:
 - a) amounts for the reporting currency;
 - b) amounts for any currency that represents more than 25% of the gross best estimate of the claims provisions in the original currency from that non-life line of business; or
 - c) amounts for any currency that represents less than 25% of the gross best estimate of the claims provisions in the original currency from that non-life line of business but more than 5% of total gross best estimate of the claims provisions in the original currency.
- ee) template S.20.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information

on the development of the distribution of the claims incurred at the end of the financial year, following the instructions set out in S.20.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information, for each line of business as defined in Annex I to Delegated Regulation (EU) 2015/35;

- ff) template S.21.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on loss distribution risk profile of non-life business, following the instructions set out in S.21.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information, for each line of business as defined in Annex I to Delegated Regulation (EU) 2015/35;
- gg) template S.21.02.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the underwriting risks non-life, following the instructions set out in S.21.02 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- hh) template S.21.03.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life underwriting by sum insured, following the instructions set out in S.21.03 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information, by line of business as defined in Annex I to Delegated Regulation (EU) 2015/35;
- ii) template S.22.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the impact of the long term guarantees and transitional measures, following the instructions set out in S.22.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- jj) template S.22.04.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the interest rate transitional, following the instructions set out in S.22.04 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- kk) template S.22.05.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the transitional on technical provisions following the instructions set out in S.22.05 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- ll) template S.22.06.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the transitional on technical provisions following the instructions set out in S.22.06 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;

- mm) template S.23.01.07 of Annex III to these Guidelines, specifying information on own funds, following the instructions set out in S.23.01 of Annex IV to these Guidelines;
- nn) template S.23.03.07 of Annex III to these Guidelines, specifying information on annual movements on own funds, following the instructions set out in S.23.03 of Annex IV of these Guidelines;
- oo) template S.24.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying information on participations held by the branch and an overview of the calculation for the deduction from own funds related to participations in financial and credit institutions, following the instructions set out in S.24.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information.
- pp) template S.25.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using the standard formula, following the instructions set out in S.25.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- qq) template S.25.02.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using the standard formula and a partial internal model, following the instructions set out in S.25.02 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- rr) template S.25.03.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using a full internal model, following the instructions set out in S.25.03 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- ss) template S.26.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on market risk, following the instructions set out in S.26.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considers the specifications described in paragraphs 1.78(a) to (c);
- tt) template S.26.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on counterparty default risk, following the instructions set out in S.26.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
- uu) template S.26.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on life underwriting risk, following the instructions set out in S.26.03 of Annex II to the Implementing Technical Standard on the

- Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
- vv) template S.26.04.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on health underwriting risk, following the instructions set out in S.26.04 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
 - ww) template S.26.05.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life underwriting risk, following the instructions set out in S.26.05 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
 - xx) template S.26.06.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on operational risk, following the instructions set out in S.26.06 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
 - yy) template S.26.07.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the simplifications used in the calculation of the SCR, following the instructions set out in S.26.07 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
 - zz) template S.27.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life catastrophe risk, following the instructions set out in S.27.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.78(a) to (c);
 - aaa) template S.28.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the MCR for branches engaged in only life or non-life insurance or reinsurance activity, following the instructions set out in S.28.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
 - bbb) template S.28.02.01 of Annex I, specifying the MCR for branches engaged in both life and non-life insurance activity, following the instructions set out in S.28.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;

- ccc) template S.29.01.07 of Annex III to these Guidelines, specifying information on the excess of assets over liabilities during the reporting year providing a summary of main sources of this variation, following the instructions set out in S.29.01 of Annex IV of these Guidelines;
- ddd) template S.29.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the part of variation of the excess of assets over liabilities during the reporting year explained by investments and financial liabilities, following the instructions set out in S.29.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- eee) templates S.29.03.01 and S.29.04.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the part of variation of the excess of assets over liabilities during the reporting year explained by technical provisions, following the instructions set out in S.29.03 and S.29.04 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- fff) template S.30.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on facultative covers in the next reporting year, covering information on the 10 most important risks in terms of reinsured exposure for each line of business as defined in Annex I of Delegated Regulation (EU) 2015/35 for which facultative reinsurance is used, following the instructions set out in S.30.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- ggg) template S.30.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on shares of reinsurers of facultative covers in the next reporting year covering information on the 10 most important risks in terms of reinsured exposure, for each line of business as defined in Annex I of Delegated Regulation (EU) 2015/35, following the instructions set out in S.30.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- hhh) template S.30.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the outgoing reinsurance program in the next reporting year, covering prospective information on reinsurance treaties whose period of validity includes or overlaps the next reporting year, following the instructions set out in S.30.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;

- iii) template S.30.04.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the outgoing reinsurance program in the next reporting year, covering prospective information on reinsurance treaties whose period of validity includes or overlaps the next reporting year, following the instructions set out in S.30.04 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
 - jjj) template S.31.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the share of reinsurers data, following the instructions set out in S.31.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
 - kkk) template S.31.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on special purpose vehicles from the perspective of the insurance or reinsurance undertaking transferring risk(s) to the special purpose vehicles, following the instructions set out in S.31.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information.
- 1.78 The host supervisory authority should ensure that when the third-country insurance undertaking submits the information regarding branch operations referred to in paragraphs 1.77 (ss) to (zz), the following specifications are applied:
- a) In case of existence of ring-fenced funds or matching adjustment portfolios information referred in those paragraphs should not be reported for the branch as a whole;
 - b) where a partial internal model is used the information referred in those paragraphs should only be reported in relation to the risks covered by the standard formula, unless otherwise decided on the basis of Guideline 49.
 - c) where a full internal model is used the information referred in those paragraphs should not be reported.
- 1.79 The host supervisory authority should ensure that when the third-country insurance undertaking submits the information required under this Guideline, the undertaking uses *mutatis mutandis* the templates and instructions laid down in the Implementing Technical Standard on the Templates for the Submission of Information unless a specific paragraph or sub-paragraph of this Guideline refers to the branch specific templates and instructions set out in Annexes III and IV to these Guidelines.

Guideline 45 – Quarterly templates for third-country insurance undertakings

- 1.80 Unless otherwise decided in accordance with Guideline 48, the host supervisory authority should ensure that the third-country insurance undertaking submits to it on a quarterly basis the following structured information regarding branch operations, where applicable:

- a) template S.01.01.08 of Annex III to these Guidelines, specifying the content of the submission detailing the information submitted at each reporting submission date, following the instructions set out in S.01.01 of Annex IV to these Guidelines;
- b) template S.01.02.07 of Annex III to these Guidelines, specifying basic information detailing information on the undertaking and the content of the reporting in general, following the instructions set out in S.01.02 of Annex IV to these Guidelines;
- c) template S.02.01.08 of Annex III to these Guidelines, specifying balance sheet information using the valuation of assets and liabilities in accordance with Article 75 of Directive 2009/138/EC, following the instructions set out in S.02.01 of Annex IV to these Guidelines;
- d) template S.05.01.02 of Annex I, specifying information on premiums, claims, expenses, using the valuation and recognition principles used in the branch management accounts for the branch operations, regarding each line of business as defined in Annex I to Delegated Regulation (EU) 2015/35, following the instructions set out S.05.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- e) template S.06.02.07 of Annex III to these Guidelines, specifying item-by-item list of assets, following the instructions set out in S.06.02 of Annex IV to these Guidelines;
- f) template S.06.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the look-through of all collective investments undertakings held, following the instructions set out in S.06.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information, only when the ratio of collective investments undertakings held by the branch of the third-country insurance undertaking to total investments is higher than 30%. This ratio is measured as item C0010/R0180 of template S.02.01.02, plus collective investments undertakings included in item C0010/R0220 of template S.02.01.02, plus collective investments undertakings included in item C0010/R0090 of template S.02.01.02, divided by the sum of items C0010/R0070 and C0010/RC0220 of template S.02.01.02;
- g) template S.08.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item by item list of open positions of derivatives, following the instructions set out in S.08.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- h) template S.08.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, providing an item-by-item list of derivatives closed during the reporting period, following the instructions set out in S.08.02 of Annex II to the Implementing Technical

Standard on the Templates for the Submission of Information and using the Complementary Identification codes as set out in Annex V to the Implementing Technical Standard on the Templates for the Submission of Information, and defined in Annex VI thereto;

- i) template S.12.01.02 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on life and health SLT technical provisions, following the instructions set out in S.12.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information for each line of business as defined in Annex I of Delegated Regulation (EU) 2015/35;
- j) template S.17.01.02 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life technical provisions, following the instructions in S.17.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information, for each line of business as defined in Annex I of Delegated Regulation (EU) 2015/35;
- k) template S.23.01.07 of Annex III to these Guidelines, specifying information on own funds, following the instructions in S.23.01 of Annex IV to these Guidelines;
- l) S.28.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the MCR for branch engaged in only life or non-life insurance or reinsurance activity, following the instructions set out in S.28.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- m) S.28.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the MCR for insurance undertakings engaged in both life and non-life insurance activity, following the instructions set out in S.28.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information.

1.81 The host supervisory authority should ensure that when the third-country insurance undertakings submits the information required under this Guidelines, the undertaking uses *mutatis mutandis* the templates and instructions laid down in the Implementing Technical Standard on the Templates for the Submission of Information unless a specific paragraph or sub-paragraph of this Guidelines refers to branch specific templates and instructions set out in Annexes III and IV to these Guidelines.

Guideline 46– Simplifications allowed on quarterly reporting for individual undertakings

1.82 With regard to the information referred to in paragraph 1.82(c) of Guideline 45, the host supervisory authority should allow the third-country insurance

undertaking to rely for quarterly measurements on estimates and estimation methods to a greater extent than measurements of annual financial data.

- 1.83 The host supervisory authority should ensure that the third-country insurance undertaking designs the measurement procedures for the quarterly reporting to ensure that the resulting information is reliable and complies with the standards of Directive 2009/138/EC and that all material information that is relevant for the understanding of the data is reported.
- 1.84 With regard to the information referred to in paragraphs 1.82(i) and (j) of Guideline 45, the host supervisory authority should allow the third-country insurance undertaking to apply simplified methods in the calculation of the technical provisions in respect of the branch operations. Third-country insurance undertakings may, in particular, derive the risk margin for calculations that need to be performed quarterly from the result of an earlier calculation of the risk margin without an explicit calculation of risk margin itself in each quarter.

Guideline 47 – Annual quantitative templates for third-country insurance undertakings - ring-fenced funds

- 1.85 Unless otherwise decided in accordance with Guideline 48, the host supervisory authority should ensure that the third-country insurance undertaking, annually submits to it, in respect of its branch operations, the following structured information in relation to material ring fenced funds, material matching portfolios and remaining part, where applicable:
- a) template SR.01.01.07 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the content of the submission detailing the information submitted, following the instructions set out in S.01.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
 - b) template SR.12.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the information on life and health SLT technical provisions, following the instructions set out in S.12.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information, for each line of business as defined in Annex I to Delegated Regulation (EU) 2015/35;
 - c) template SR.17.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the information on non-life technical provisions, following the instructions set out in S.17.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information, for each line of business as defined in Annex I of Delegated Regulation (EU) 2015/35;
 - d) template SR.25.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using the standard formula, following the instructions set out

- in S.25.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- e) template SR.25.02.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using the standard formula and a partial internal model, following the instructions set out in S.25.02 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
 - f) template SR.25.03.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using a full internal model, following the instructions set out in S.25.03 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
 - g) template SR.26.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on market risk, following the instructions set out in S.26.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;
 - h) template SR.26.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on counterparty default risk, following the instructions set out in S.26.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;
 - i) template SR.26.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on life underwriting risk, following the instructions set out in S.26.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;
 - j) template SR.26.04.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on health underwriting risk, following the instructions set out in S.26.04 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;
 - k) template SR.26.05.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life underwriting risk, following the instructions set out in S.26.05 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;
 - l) template SR.26.06.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying

information on operational risk, following the instructions set out in S.26.06 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;

m) template SR.26.07.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the simplifications used in the calculation of the SCR, following the instructions set out in S.26.07 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;

n) template SR.27.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on non-life catastrophe risk, following the instructions set out in S.27.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information and by considering the specifications described in paragraphs 1.87-1.88 of this Guideline;

1.86 The host supervisory authority should ensure that the third-country insurance undertaking, annually submits to it, in respect of its branch operations in relation to each material ring fenced funds and remaining part template SR.02.01.07 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying balance sheet information using both the valuation of assets and liabilities in accordance with Article 75 of Directive 2009/138/EC and the valuation according to branch management accounts, following the instructions set out in S.02.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information.

1.87 Where a partial internal model is used, the host supervisory authority should ensure that the information defined in paragraphs 1.87(g)-(n) of this Guideline is only reported in relation to the standard formula, unless otherwise decided on the basis of Guideline 49.

1.88 Where a full internal model is used, the host supervisory authority should ensure that the information defined in paragraphs 1.87(g)-(n) is not reported.

1.89 Unless otherwise decided in accordance with Guideline 48, the host supervisory authority should ensure that the third-country insurance undertakings annually submits to it, in respect of branch operations, in relation to each material matching portfolios the following information, where applicable:

a) template SR.22.02.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the projection of future cash flows for the best estimate calculation by matching adjustment portfolio, following the instructions set out in S.22.02 of Annex II to the Implementing

Technical Standard on the Templates for the Submission of Information;

- b) template SR.22.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying information on the matching portfolios by matching adjustment portfolio, following the instructions set out in S.22.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information.

Guideline 48 – Proportionality reporting

- 1.90 The host supervisory authority should consider to limit or to exempt a third-country insurance undertaking from any regular supervisory reporting requirement set out in Guideline 44, 45, or 47 where the submission of that information would be unduly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the branch.

Guideline 49 – Internal model

- 1.91 When the third-country insurance undertaking is using an internal model for the calculation of the SCR in respect of its branch operations, the host supervisory authority should ensure that the notional SCR for each material ring fenced fund, material matching portfolio and the remaining part, is taken into account by the third-country insurance undertaking when it submits the relevant information identified in templates S.25.02.01 and S.25.03.01, as agreed with the respective national competent authority.

Guideline 50 – Data checks

- 1.92 The host supervisory authority should ensure that the third-country insurance undertaking complies with the validations rules, as published by EIOPA on its website when submitting information and data in relation to its branch operations.

Frequency and Deadlines

Guideline 51 – Deadlines for the submission of regular supervisory report

- 1.93 The host supervisory authority should ensure that the third-country insurance undertaking submits the regular supervisory report in respect of branch operations referred to in Guideline 37 for the first time in relation to the financial year ending on, or after 30 June 2016 but before 1 January 2017 and no later than 14 weeks after the relevant undertaking's financial year end, and at least every 3 years thereafter.

Guideline 52 - Supervisory authority's request for submission of the regular supervisory report

- 1.94 The host supervisory authority should decide, considering Guideline 51, on the frequency for the submission by the third-country insurance undertaking of its regular supervisory report in respect of branch operations.

Guideline 53 - A summary regular supervisory report

- 1.95 Where the host supervisory authority does not require, in accordance with Guideline 51 and 52, a regular supervisory report in respect of branch operations to be submitted in relation to a financial year, it should ensure that the third-country insurance undertaking nevertheless submits to it a summary regular supervisory report which sets out all material changes that have occurred regarding business and performance, system of governance, risk profile, valuation for solvency purposes and capital management in respect of branch operations over the reporting period, and provides a concise explanation about the causes and effects of such changes. The host supervisory authority should ensure that the third-country insurance undertaking submits the summary regular supervisory report in relation to the financial years and within the periods referred to in Guideline 51.

Guideline 54 – Deadlines for submission of the ORSA supervisory report

- 1.96 The host supervisory authority should ensure that the third-country insurance undertaking submits to it the ORSA supervisory report in respect of its branch operations within 2 weeks after concluding the relevant own risk and solvency assessment.

Guideline 55 – Deadlines for submission of the annual quantitative templates

- 1.97 The host supervisory authority should ensure that the third-country insurance undertaking submits to it the relevant annual quantitative templates referred to in Guidelines 44 and 47 no later than 14 weeks after the relevant undertaking's financial year end.

Guideline 56 – Deadlines for submission of the quarterly quantitative templates

- 1.98 The host supervisory authority should ensure that the third-country insurance undertaking submits to it the relevant quarterly quantitative templates referred to in Guideline 45 no later than 5 weeks after the relevant quarter end.

Transitional arrangements

Guideline 57 – Transitional information requirements

- 1.99 In relation to the first year of application of Directive 2009/138/EC, the host supervisory authority should ensure that the third-country insurance undertaking submits to it the following information, the reference date for which should be the first day of the third-country insurance undertaking's financial year starting on, or after 1 January 2016 but before 1 July 2016:
- a) template S.01.01.09 of Annex III to these Guidelines, specifying the content of the submission detailing the information submitted at each submission date, following the instructions set out in S.01.01 of Annex IV to these Guidelines;

- b) template S.01.02.07 of Annex III to these Guidelines, specifying basic information on the branch and the content of the reporting in general, following the instructions set out in S.01.02 of Annex IV to these Guidelines;
- c) template S.01.03.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying basic information on the ring fenced funds and matching adjustment portfolios, following the instructions set out in S.01.03 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- d) template S.02.01.08 of Annex III to these Guidelines, specifying balance sheet information using both the valuation in accordance with article 75 of Directive 2009/138/EC and the valuation in the management accounts value of the branch for the branch operations, following the instructions set out in S.02.01 of Annex IV to these Guidelines;
- e) template S.23.01.07 of Annex III to these Guidelines, specifying information on own funds, following the instructions set out in S.23.01 of Annex IV to these Guidelines;
- f) template S.25.01.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using the standard formula, following the instructions set out in S.25.01 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- g) template S.25.02.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using the standard formula and a partial internal model, following the instructions set out in S.25.02 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- h) template S.25.03.01 of Annex I to Implementing Technical Standard on the Templates for the Submission of Information, specifying the SCR for branches using a full internal model, following the instructions set out in S.25.03 of Annex II to Implementing Technical Standard on the Templates for the Submission of Information;
- i) template S.28.01.01 of Annex I to the Implementing Technical Standard on the Templates for the Submission of Information, specifying the MCR for branches engaged in only life or non-life insurance or reinsurance activity, following the instructions set out in S.28.01 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;
- j) template S.28.02.01 of Annex I, specifying the MCR for branches engaged in both life and non-life insurance activity, following the instructions set out in S.28.02 of Annex II to the Implementing Technical Standard on the Templates for the Submission of Information;

1.100 In relation to the first year of application of Directive 2009/138/EC, the host supervisory authority should ensure that the third-country insurance undertaking also submits to it, separately for each material class of branch assets and branch liabilities, a qualitative explanation of the main differences between the figures reported in the opening valuation and those calculated according to the solvency regime previously in place.

Guideline 58 – Deadline for submission of the transitional information requirements

1.101 The host supervisory authority should ensure that the third-country insurance undertaking submits to it the information under Guideline 57 no later than 20 weeks following the reference date referred to in the Guideline.

Guideline 59 – Transitional deadline for submission of the regular supervisory report

1.102 Within the first three years of application of Directive 2009/138/EC, where the host supervisory authority requires, in accordance with Guideline 52, the submission of a regular supervisory report regarding the branch operations of a third-country insurance undertaking in a financial year, that authority should ensure that the third-country insurance undertaking submits that report within the following periods:

- a) for the regular supervisory report in respect of branch operations related to the financial year ending on, or after 1 January 2016 but before 1 January 2017, no later than 20 weeks after the undertaking's financial year end;
- b) for the regular supervisory report in respect of branch operations related to the financial year ending on, or after 1 January 2017 but before 1 January 2018, no later than 18 weeks after the undertaking's financial year end;
- c) for the regular supervisory report in respect of branch operations related to financial years ending on, or after 1 January 2017 but before 1 January 2018, no later than 16 weeks after the undertaking's financial year end.

Guideline 60 – Transitional deadline for the submission of the annual quantitative templates

1.103 Within the first three years of application of Directive 2009/138/EC, the host supervisory authority should ensure that the third-country insurance undertaking also submits to it, the relevant annual quantitative templates referred to in Guideline 44 within the following periods:

- a) for the annual quantitative templates related to the financial year of the undertaking ending on, or after 30 June 2016 but before 1 January 2017, no later than 20 weeks after the undertaking's financial year end;

- b) for the annual quantitative templates related to the financial year of the undertaking ending on, or after 1 January 2017 but before 1 January 2018, no later than 18 weeks after the undertaking's financial year end;
- c) for the annual quantitative templates related to the financial year of the undertaking ending on, or after 1 January 2018 but before 1 January 2019, no later than 16 weeks after the undertaking's financial year end.

Guideline 61 – Deadlines for the submission of the quarterly quantitative templates

1.104 Within the first three years of application of Directive 2009/138/EC, the host supervisory authority should ensure that the third-country insurance undertaking also submits to it, the relevant quarterly quantitative templates referred to in Guideline 45 within the following periods:

- a) for the quarterly quantitative templates related to any quarter ending on, or after 1 September 2016 but before 1 January 2017, no later than 8 weeks after the quarter end;
- b) for the quarterly quantitative templates related to any quarter ending on, or after 1 January 2017 but before 1 January 2018, no later than 7 weeks after the quarter end;
- c) for the quarterly quantitative templates related to any quarter ending on, or after 1 January 2018 but before 1 January 2019, no later than 6 weeks after the quarter end.

Compliance and reporting rules

1.105 This document contains Guidelines issued under Article 16 of Regulation (EU) No 1094/2010. In accordance with Article 16(3) of Regulation (EU) No 1094/2010, Competent Authorities and financial institutions should make every effort to comply with guidelines and recommendations.

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

1.107 Competent authorities should notify EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions of these Guidelines.

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

Final provision on reviews

1.109 The present Guidelines should be subject to a review by EIOPA.

Technical Annexes

Technical Annex I – Information to be included within the regular supervisory report

Summary

- (1) The regular supervisory report should include a summary which should in particular highlight any material changes that have occurred in the branch's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period, and provide a concise explanation about the causes and effects of such changes. The summary should include the information on the ORSA for the purpose of Article 45(6) of Directive 2009/138/EC.

Analysis of legal and practical issues

- (2) Third-country insurance undertakings should provide a numeric illustration of how the available branch assets would be distributed in a winding-up of the undertaking supported by a legal opinion and description of the applicable laws relating to winding-up in the relevant jurisdictions. The illustration should reflect the order of priorities of claims which would apply to the distribution of branch assets and take into account all arrangements which may be in place to provide certain policyholders or creditors security, protection or priority. The illustration should be in a format similar to that in Technical Annex II.
- (3) The qualifications of the person providing the analysis and their competency to be able to advise in respect of those laws should be stated.

Business and Performance

Business

- (4) The following information should be reported by third-country insurance undertakings:
 - (a) the main trends and factors that contribute to the development, performance and position of the (whole) undertaking over its business planning time horizon including the undertaking's competitive position and any significant legal or regulatory issues. That information should highlight both matters which are relevant to branch operations and issues which could affect the solvency of the undertaking as a whole;
 - (b) a description of the business objectives of the undertaking in relation to the branch operations, including the relevant strategies and time frames;
 - (c) the management accounts for the branch as described in Guideline 18.
- (5) Third-country insurance undertakings should also report, with regard to branch operations:
 - (a) the name of the branch;
 - (b) the name and location of the parent and of the ultimate parent entity;
 - (c) the name and contact details of the home supervisory authority responsible for financial supervision of the undertaking;
 - (d) a list of subsidiaries and branches of the parent undertaking;

- (e) a simplified group structure;
- (f) whether the undertaking has applied for the advantages in Article 167(1) of Directive 2009/138/EC and if so the location of branches which have been established in any Member State;
- (g) the name and contact details of the external auditor of the branch, where applicable;
- (h) number of full time equivalent employees;
- (i) information on internal structures;
- (j) the branch's material lines of business and material geographical areas where it writes business;
- (k) any significant business or other events that have occurred over the reporting period that have had a material impact on the branch operations.

Underwriting Performance

- (6) Third-country insurance undertakings should report the following in relation to their branch underwriting performance:
 - (a) qualitative and quantitative information on their branch underwriting performance, at an aggregate level and by material line of business and material geographical areas where it writes business over the reporting period, together with a comparison of the information with that reported on the previous reporting period as shown in the branch's specific accounts;
 - (b) information on the branch's underwriting performance by line of business during the reporting period against projections, and significant factors affecting deviations from these projections;
 - (c) projections of the branch's underwriting performance, with information on significant factors that might affect such underwriting performance, over its business planning time horizon;
 - (d) information on any material risk mitigation techniques purchased or entered into during the reporting period in respect of branch operations. This should include information on the effectiveness of these techniques and the impact on the performance of branch underwriting activities.

Investment performance

- (7) The following information should be reported by third-country insurance undertakings regarding the performance of their branch investments:
 - (a) information on the performance of their branch investments over the reporting period together with a comparison of the information with that reported in the previous reporting period and reasons for any material change.
 - (b) an analysis of the branch's overall investment performance during the reporting period and also by relevant asset class;
 - (c) information about any gains or losses;
 - (d) projections of the branch's expected investment performance, with information on significant factors that might affect such investment performance, over its business planning time period;

- (e) the key assumptions which the branch makes in its investment decisions with respect to the movement of interest rates, exchange rates, and other relevant market parameters, over its business planning time period as shown in that branch's specific accounts.;
- (f) information about any branch investments in tradable securities or other financial instruments based on repackaged loans, and the undertaking's risk management procedures in respect of such securities or instruments in respect of branch operations.

Performance of other activities

- (8) Third-country insurance undertakings should describe their other material income and expenses in respect of branch operations incurred over the reporting period together with a comparison of the information with that reported on the previous reporting period.
- (9) Third-country insurance undertakings should report information of any material income and expenses in respect of branch operations, other than underwriting or investment income and expenses, over the undertaking's business planning time period.

Any other information

- (10) Third-country insurance undertakings should report in a separate section any other material information regarding their branch business and performance.

System of Governance

General information on the system of governance

- (11) The following information should be reported by third-country insurance undertakings regarding the general governance requirement in respect of branch operations:
 - (a) information allowing the supervisory authority to gain a good understanding of the system of governance with regard to the branch operations and to assess its appropriateness to the branch's business strategy and operations;
 - (b) information on the structure of the administrative, management or supervisory bodies of the third-country insurance undertaking, providing a description of their main roles and responsibilities and a brief description in relation to the branch operations of the segregation of responsibilities within these bodies, in particular whether relevant committees exist within them, as well as a description of the main roles and responsibilities of the general representative of the branch, any person who effectively run or who may influence branch operations and persons responsible for key functions with regard to branch operations;
 - (c) information on the remuneration policy and practices in relation to the branch, including:
 - the main principles of the policy
 - how the undertaking's remuneration policies and practices in respect of the branch operations are consistent with and promote sound and effective risk management and do not encourage excessive risk taking.

- (12) Third-country insurance undertakings should report information on how risk management, internal audit, compliance and actuarial function are in place for the branch and whether these functions are dedicated exclusively to branch operations or whether they are exercised by the undertaking's head office and applied to branch operations.
- (13) The information referred to in the previous paragraph includes an explanation of how the functions have the necessary authority, resources, professional qualifications, knowledge, experience and operational independence or, in the case of the internal audit function, full independence, to carry out their tasks and how they report to and advise the administrative, management or supervisory body of the branch and how they are integrated into the decision making process for the branch operations.
- (14) Third-country insurance undertakings should provide information on the administrative and accounting procedures related to branch operations.
- (15) Third-country insurance undertakings should provide information on the records it maintains in order to identify the location of all branch assets and information to enable any person charged with the winding-up of the undertaking to take control of those assets.

Fit and proper requirements

- (16) The following information should be reported by third-country insurance undertakings regarding their compliance with the fit and proper requirements in respect of branch operations:
 - (a) the identity of the general representative of the branch;
 - (b) the identity of any persons who effectively run or who may influence branch operations;
 - (c) the identity of the persons in the undertaking, or external to the undertaking in the case that the undertaking has outsourced key functions that are responsible for key functions within the branch;
 - (d) information on the policies and processes established by the undertaking to ensure that those persons are fit and proper.
- (17) Third-country insurance undertakings should also provide:
 - (a) a description of the specific requirements concerning skills, knowledge and expertise applicable to the persons who effectively run the branch operations, the general representative of the branch and any other persons that have key functions relating to the branch; and
 - (b) a description of the undertaking's process for assessing the fitness and the propriety of the persons responsible for the branch operations, the general representative of the branch and any other persons that have key functions relating to the branch

Risk management system including the ORSA

- (18) The following information should be reported by third-country insurance undertakings regarding their risk management system of branch operations:
 - (a) information on the undertaking's risk management strategies, objectives, processes and reporting procedures in respect of branch operations for each category of risk;

- (b) information on how the undertaking is able to effectively identify, measure, monitor, manage and report, on a continuous basis, the risks on an individual and aggregated level, to which the branch is or could be exposed;
 - (c) information on how the undertaking fulfils its obligation to invest all its assets in accordance with the 'prudent person principle' set out in Article 132 of Directive 2009/138/EC;
 - (d) information on how the undertaking verifies the appropriateness of credit assessments from external credit assessments institutions including how and the extent to which credit assessments from external credit assessments institutions are used;
 - (e) results of the assessments regarding the extrapolation of the risk-free rate, the matching adjustment and the volatility adjustment, as referred to in Article 44(2a) of Directive 2009/138/EC.
 - (f) a description of how the risk management system including the risk management function is implemented and integrated into the organisational structure and decision-making processes of the undertaking in respect of branch operations.
 - (g) information on significant risks that the branch is exposed to over the life-time of its insurance and reinsurance obligations, and how these have been captured in its overall solvency needs;
 - (h) information on any material risks that the undertaking has identified and that are not fully included in the calculation of the branch SCR as set out in Article 101(4) of Directive 2009/138/EC;.
- (19) The following information should be reported by third-country insurance undertakings regarding their ORSAs in respect of the branch operations which were performed over the reporting period:
- (a) a description of how the ORSA in respect of branch operations is performed, internally documented and reviewed, and how it is integrated into the management process and into the decision-making process of the branch;
 - (b) in particular, information on assessment of permanent availability of branch assets, adequacy of those assets to cover SCR
 - (c) a statement explaining how the undertaking has determined its branch solvency needs given its branch risk profile and how its branch capital management activities and its branch risk management system interact with each other.

Internal control system

- (20) The following information should be reported by third-country insurance undertakings regarding their internal control system in respect of branch operations:
- (a) a description of the undertaking's internal control system for branch operations;
 - (b) information on the key procedures that the internal control system, in respect of branch operations, includes;
 - (c) a description of how the compliance function with regard to the branch operations is implemented, including information on the activities

performed in accordance with Article 46(2) of Directive 2009/138/EC in respect of branch operations during the reporting period;

- (d) information on the undertaking's compliance policy for branch operations;
- (e) the process for reviewing this compliance policy, the frequency of review and any significant changes to policy during the reporting period.

Internal audit function

- (21) The following information should be reported by third-country insurance undertakings regarding their internal audit function in respect of branch operations
- (a) a description of how the undertaking's internal audit function for the branch is implemented;
 - (b) a description of internal audits for the branch performed during the reporting period, with a summary of the material findings and recommendations reported to the undertaking's administrative, management or supervisory body, and any action taken with respect to these findings and recommendations;
 - (c) a description of the undertaking's internal audit policy in respect of branch operations, the process for reviewing that policy, the frequency of review and any significant changes to that policy during the reporting period;
 - (d) a description of the undertaking's internal audit plan in respect of branch operations, including future internal audits and the rationale for these future audits.

Actuarial function

- (22) Third-country insurance undertakings should disclose a description of how their actuarial function in respect of branch operations is implemented.
- (23) With regard to the actuarial function in respect of the branch operations third-country insurance undertakings should report an overview of the activities undertaken by the actuarial function in respect of branch operations in each of its areas of responsibility during the reporting period, describing how the actuarial function contributes to the effective implementation of the risk management system of branch operations.

Outsourcing

- (24) The following information should be reported by third-country insurance undertakings regarding outsourcing in respect of branch operations:
- (a) a description of their outsourcing policy in respect of branch operations, the outsourcing of any critical or important operational functions or activities in respect of branch operations and the jurisdiction in which the service providers of such functions or activities are located;
 - (b) where the undertaking outsources any critical or important operational functions or activities of the branch, the rationale for the outsourcing and evidence that appropriate oversight and safeguards are in place;
 - (c) a list of the persons responsible for the outsourced key functions in the service provider.

Any other information

- (25) Third-country insurance undertakings should report any other material information regarding their system of governance in relation to branch operations

Risk profile

- (26) Third-country insurance undertakings should report qualitative and quantitative information regarding the branch risk profile, in accordance with paragraphs 27 to 31, separately for the following categories of risk:
- (a) underwriting risk;
 - (b) market risk;
 - (c) credit risk;
 - (d) liquidity risk;
 - (e) operational risk;
 - (f) other material risks.
- (27) The following information should be reported by third-country insurance undertakings regarding the risk exposure of the branch, including the exposure arising from off-balance sheet positions and the transfer of risk in a securitisation using a legal entity including special purpose vehicles:
- (a) a description of the measures used to assess these risks within the branch, including any material changes over the reporting period;
 - (b) a description of the material risks that the branch is exposed to, including any material changes over the reporting period.
 - (c) an overview of any material risk exposures anticipated over the business planning time period given the undertaking's business strategy for the branch, and how these risk exposures will be managed;
 - (d) where the undertaking has entered into securities lending agreements or securities repurchase agreements in respect of branch operations, information on its characteristics;
 - (e) where the undertaking sells variable annuities through the branch, information on guarantee riders and hedging of the guarantees;
 - (f) a complete list of branch assets and how those assets have been invested in accordance with the 'prudent person principle' set out in Article 132 of Directive 2009/138/EC so risks are properly managed;
- (28) With respect to risk concentration third-country insurance undertakings should report information on the material risk concentrations to which the branch is exposed to and an overview of any future risk concentrations anticipated over the business planning time horizon given the undertaking's business strategy for the branch, and how these risk concentrations will be managed.
- (29) The following information should be reported by third-country insurance undertakings regarding their risk-mitigation techniques in respect of branch operations:
- (a) a description of the techniques used for mitigating risks in relation to branch operations, and the processes for monitoring the continued effectiveness of these risk-mitigation techniques;

- (b) a description of any material risk-mitigation techniques in respect of branch operations that the undertaking is considering purchasing or entering over the business planning time horizon given the undertaking's business strategy for the branch, and the rationale for and effect of such risk mitigation techniques;
 - (c) With regard to their liquidity risk, third-country insurance undertakings should report the expected profit included in future premiums in respect of branch operations as calculated in accordance with Article 260(2) of the Commission Delegated Regulation (EU) 2015/35 for each line of business, the result of the qualitative assessment referred to in Article 260(1)(d)(ii) of the Commission Delegated Regulation (EU) 2015/35 and a description of the methods and main assumptions used to calculate the expected profit included in future premiums;
- (30) The following information should be reported by third-country insurance undertakings regarding their risk sensitivity in respect of branch operations:
- (a) a description of the relevant stress tests and scenario analysis referred to in Article 259 (3) of the Commission Delegated Regulation (EU) 2015/35 carried out by the undertaking in relation to branch operations including their outcome;
 - (b) a description of the methods used and the main assumptions underlying those stress tests and scenario analysis.
- (31) Within the information reported with regard to branch risk exposure, third-country insurance undertakings should explain how they ensure that derivatives contribute to the reduction of risks or facilitate efficient portfolio management in respect of branch operations.
- (32) Third-country insurance undertakings should report quantitative data which is necessary for determining dependencies between the risks covered by the risk modules and sub-modules of the branch Basic SCR.
- (33) In relation to the use of Special Purpose Vehicles (SPV) in respect of branch operations, third-country insurance undertakings should reported at least information on whether the SPV is authorized under Article 211 of Directive 2009/138/EC, what risks are transferred to the SPV and how the fully funded principle is implemented.

Any other information

- (34) Third-country insurance undertakings should report any other material information regarding the risk profile of the branch.

Valuation for Solvency Purposes

Assets

- (35) Third-country insurance undertakings should report, separately for each material class of assets, the value of the assets, as well as a description of the bases, methods and main assumptions used for valuation for solvency purposes.
- (36) Separately for each material class of assets, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for its valuation in the branch's specific accounts.

Technical provisions

- (37) The following information should be reported by third-country insurance undertakings regarding the valuation of the technical provisions in respect of branch operations for branch solvency purposes:
- (a) separately for each material line of business the value of technical provisions, including the amount of the best estimate and the risk margin, as well as a description of the bases, methods and main assumptions used for their valuation for solvency purposes;
 - (b) separately for each material line of business, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for their valuation in the branch's specific accounts;
 - (c) a description of the level of uncertainty associated with the amount of technical provisions in respect of branch operations;
 - (d) where the matching adjustment referred to in Article 77b of Directive 2009/138/EC is applied, a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on that undertaking's financial position related to branch operations, including on the amount of technical provisions, the SCR, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the SCR;
 - (e) a statement on whether the volatility adjustment referred to in Article 77d of Directive 2009/138/EC is used by the undertaking and quantification of the impact of a change to zero of the volatility adjustment on that undertaking's financial position related to branch operations, including on the amount of technical provisions, the SCR, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the SCR;
 - (f) a statement on whether the transitional risk-free interest rate-term structure referred to Article 308c of Directive 2009/138/EC is applied and a quantification of the impact of not applying the transitional measure on the undertaking's financial position related to branch operations, including on the amount of technical provisions, the SCR, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the SCR;
 - (g) a statement on whether the transitional deduction referred to in Article 308d of Directive 2009/138/EC is applied and a quantification of the impact of not applying the deduction measure on the undertaking's financial position related to branch operations, including on the amount of technical provisions, the SCR, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the SCR.
- (a) a description of the following:

- (i) the recoverables from reinsurance contracts and special purpose vehicles in relation to branch operations,
- (ii) any material changes in the relevant assumptions made in the calculation of technical provisions in relation to branch operations compared to the previous reporting period.

Valuation of the other liabilities (than technical provisions)

- (38) The following information should be reported by third-country insurance undertakings regarding the valuation of other assets and other liabilities in respect of the branch operations for branch solvency purposes:
- (a) separately for each material class of other liabilities the value of other liabilities as well as a description of the bases, methods and main assumptions used for their valuation for solvency purposes;
 - (b) separately for each material class of other liabilities, a quantitative and qualitative explanation of any material differences with the valuation bases, methods and main assumptions used by the undertaking in relation to the branch operations for the valuation for solvency purposes and those used for their valuation in the branch's specific accounts.

Alternative valuation methods

- (39) Where an alternative valuation method is used, third-country insurance undertakings should report information on:
- (a) the branch assets and branch liabilities to which that valuation approach applies;
 - (b) a justification of the use of that valuation approach for the assets and liabilities referred to in point (a);
 - (c) the assumptions underlying that valuation approach;
 - (d) an assessment of the valuation uncertainty of the assets and liabilities referred to in point (a);
 - (e) a comparison of the adequacy of the valuation of the assets and liabilities referred to in point (a) against experience.

Any other information

- (40) Third-country insurance undertakings should provide, in respect of the branch operations, a description of:
- (a) the relevant assumptions about future management actions;
 - (b) the relevant assumptions about policy holder behaviour.
- (41) Third-country insurance undertakings should report in a separate section any other material information regarding the valuation of branch assets and branch liabilities for branch solvency purposes.

Capital management

Own funds

- (42) Third-country insurance undertakings should report to the supervisory authority the following information in respect of branch own funds:

- (a) information on the objectives, policies and processes employed by the undertaking for managing branch own funds, including information on the time horizon used for business planning and on any material changes over the reporting period;
 - (b) the expected developments of the branch own funds over its business planning time period given the undertaking's business strategy, and appropriately stressed capital plans
 - (c) the eligible amount of own funds to cover the branch SCR;
 - (d) the eligible amount of basic own funds to cover the branch Minimum Capital Requirement;
 - (e) an explanation addressing the key elements of the reconciliation reserve.
 - (f) for each material item of ancillary own funds, a description of the item, the amount of the ancillary own fund item, where a method by which to determine the amount of the ancillary own fund item has been approved, that method as well as the nature and the names of the counterparty or group of counterparties for the items referred to in points (b) to (c) of Article 89(1) of Directive 2009/138/EC.
 - (g) a description of any item deducted from own funds and a brief description of any significant restriction affecting the availability and transferability of own funds within the undertaking and the branch.
 - (h) the undertaking's plans on how to replace basic own-fund items that are subject to the transitional arrangements referred to in Article 308b(9) and (10) of Directive 2009/138/EC over the timeframe referred to in that Article.
- (43) Third-country insurance undertakings should confirm in their regular supervisory reporting that the assets covering the branch MCR are located within the Member State where the activities are pursued and that the assets covering the branch SCR in excess of the branch MCR are located within the European Union.
- (44) Third-country insurance undertakings should provide information on the assets lodged as deposit in accordance with Article 162 (2)(e) to allow the supervisory authority to assess the appropriateness of the deposit, including;
- (a) The name and location of the credit institution that the deposit is lodged with;
 - (b) Confirmation that that credit institution has, or will exercise, no right of set off of any claims it may have against the undertaking against the deposits should the undertaking fail or be subject to winding-up proceedings.
 - (c) Details of the quality of the assets lodged as part of the deposit, including details of the volatility of the asset over time, in order to demonstrate that the asset is of sufficient quality and stable value to fulfil the role of the deposit.
- (45) Third-country insurance undertakings should report to the supervisory authority the following information regarding their solvency position calculated in accordance with the home jurisdiction rules on branch own funds:
- (i) the eligible amount of own funds to cover the branch SCR;

- (j) the eligible amount of basic own funds to cover the branch Minimum Capital Requirement;

SCR and Minimum Capital Requirement

- (46) The following information should be reported by third-country insurance undertakings regarding the branch SCR and the branch Minimum Capital Requirement:
 - (a) the amounts of the branch's SCR and the branch Minimum Capital Requirement at the end of the reporting period, accompanied, where applicable, by an indication that the final amount of the branch SCR is still subject to supervisory assessment;
 - (b) quantitative information on the branch's SCR split by risk modules where the undertaking applies the standard formula, and by risk categories where the undertaking applies an internal model;
 - (c) the expected developments of the undertaking's anticipated branch SCR and branch Minimum Capital Requirement over its business planning time period given the undertaking's business strategy for the branch;
 - (d) information on whether and for which risk modules and sub-modules of the standard formula the undertaking is using simplified calculations in respect of branch operations;
 - (e) information on whether and for which parameters of the standard formula the undertaking is using undertaking-specific parameters pursuant to Article 104(7) of Directive 2009/138/EC in respect of branch operations;
 - (f) the impact of any undertaking-specific parameters the undertaking is required to use in accordance with Article 110 of Directive 2009/138/EC and the amount of any capital add-on applied to the branch SCR;
 - (g) information on the inputs used by the undertaking to calculate the branch Minimum Capital Requirement;
 - (h) any material change to the branch SCR and to the branch Minimum Capital Requirement over the reporting period, and the reasons for any such change.
- (47) Third-country insurance undertakings should report the amount of their solvency requirement for the whole undertaking, calculated in accordance with home jurisdiction rules, which is equivalent to the SCR and the Minimum Capital Requirement.
- (48) Where simplifications have been used for the calculation of branch SCR, third-country insurance undertakings should provide information on the justification that these simplifications are proportionate to the nature, scale and complexity of the risk in respect of branch operations.
- (49) Within the information reported with regard to the branch's SCR, third-country insurance undertakings should include details of any allowance for reinsurance and financial mitigation techniques and future management actions in respect of branch operations used in the branch SCR calculation and how these have met the criteria for recognition.

- (50) Where an internal model is used to calculate the branch SCR, the following information should also be reported by third-country insurance undertakings:
- (a) a description of the various purposes for which the undertaking is using its internal model for branch operations;
 - (b) a description of the scope of the internal model covering branch operations in terms of business units and risk categories;
 - (c) where a partial internal model covering branch operations is used, a description of the technique which has been used to integrate any partial internal model into the standard formula including, where relevant, a description of alternative techniques used;
 - (d) a description of the methods used in the internal model covering branch operations for the calculation of the probability distribution forecast and the branch SCR;
 - (e) the results of the review of the causes and sources of profits and losses, required by Article 123 of Directive 2009/138/EC, for each major business unit and how the categorisation of risk chosen in the internal model explains those causes and sources of profits and losses;
 - (f) an explanation, by risk module, of the main differences in the methodologies and underlying assumptions used in the standard formula and in the internal model covering branch operations;
 - (g) information on whether, and if so to what extent, the risk profile of the branch deviates from the assumptions underlying the branch's internal model;
 - (h) the risk measure and time period used in the internal model, and where they are not the same as those set out in Article 101(3) of Directive 2009/138/EC, an explanation of why the branch SCR calculated using the internal model covering branch operations provides branch policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101 of Directive 2009/138/EC;
 - (i) information about future management actions used in the calculation of the branch SCR.
- (51) Where undertaking-specific parameters are used to calculate the SCR, or a matching adjustment is applied to the relevant risk-free interest term structure, the regular supervisory report should include information regarding whether there have been changes to the information included in the application for approval of the undertaking-specific parameters or matching adjustment that are relevant for the supervisory assessment of the application.
- (52) Third-country insurance undertakings should at least report a high level description of the operational performance of the internal model in respect of branch operations, in particular security, contingency planning and recovery plans, as well as computational capabilities and efficiency of the model.
- (53) Third-country insurance undertakings should provide a description of the nature and appropriateness of the key data used in the internal model in respect of branch operations and a description of the process in place for checking data quality
- (54) Third-country insurance undertakings should provide an estimate of the branch SCR determined in accordance with the standard formula, where the undertaking is using an internal model to calculate its branch SCR and where

the supervisory authority requires the undertaking to provide that estimate pursuant to Article 112(7) of Directive 2009/138/EC.

Use of the duration-based equity risk sub-module in the calculation of the SCR

- (55) The following information should be reported by third-country insurance undertakings regarding the option set out in Article 304 of Directive 2009/138/EC in respect of branch operations:
- (a) an indication that the undertaking is using the duration-based equity risk sub-module set out in that Article for the calculation of the branch SCR, after approval from its supervisory authority;
 - (b) the amount of the branch capital requirement for the duration-based equity risk sub-module resulting from such use.

Differences between the standard formula and any internal model used

- (56) Third-country insurance undertakings should consider, when reporting the main differences in methodologies and underlying assumptions used in the standard formula and in the internal model in respect of branch operations, at least the following:
- (a) Structure of the model,
 - (b) Risk categories concerned and not concerned by internal models,
 - (c) Aggregation methodologies and diversification effects,
 - (d) Risk not covered in the standard formula but covered by the internal model.

Non-compliance with the Minimum Capital Requirement and non-compliance with the SCR

- (57) Third-country insurance undertakings should report information on any reasonably foreseeable risk of non-compliance with the branch's Minimum Capital Requirement or the branch's SCR, and the undertaking's plans for ensuring that compliance with each is maintained
- (58) Regarding any non-compliance with the branch's Minimum Capital Requirement third-country insurance undertakings should report:
- (a) the period and maximum amount of each non-compliance during the reporting period;
 - (b) an explanation of its origin and consequences;
 - (c) any remedial measures taken and an explanation of the effects of such remedial measures;
 - (d) where non-compliance with the branch's Minimum Capital Requirement has not been subsequently resolved: the amount of the non-compliance at the reporting date;
- (59) Regarding any significant non-compliance with the branch's SCR) third-country insurance undertakings should report:
- (a) the period and maximum amount of each significant non-compliance and, in addition to the explanation of its origin and consequences as well as

any remedial measures taken, an explanation of the effects of such remedial measures;

- (b) where a significant non-compliance with the branch's SCR has not been subsequently resolved: the amount of the non-compliance at the reporting date.

Any other information

- (60) Third-country insurance undertakings should report any other material information regarding their capital management in respect of branch operations.

Technical Annex II – Format of statement illustrating availability of assets

<i>Branch assets</i> subject to rights of non-branch creditors' claims	Currency	Currency
Non-branch creditors' secured claims	a	
	(b)	
Surplus secured assets available to pay <i>branch insurance claims</i>	<hr/>	c = a-b
<i>Branch assets</i> subject to rights of branch creditors' claims	d	
Branch creditors' secured claims	(e)	
Surplus secured assets available to pay <i>branch insurance claims</i>	<hr/>	f = d-e
Assets <i>branch assets</i> subject to trust/security/collateral arrangements in favour of creditors with <i>branch insurance claims</i>	g	
<i>branch preferential claims</i> (if such claims have preference according to the applicable winding-up regime):		
employee claims	(h)	
tax claims	(i)	
social security claims	(j)	
	<hr/>	(k)=h+i+j
Net <i>branch assets</i>		l = c+f+g-k
<i>Branch insurance claims</i>		(m)
<i>Branch own funds</i>		n = l-m (note 1)
Other <i>branch policyholders</i> (eg branch reinsurance creditors)	(o)	
Other branch creditors (ranking equally with <i>branch policyholders</i>)	(p)	
Non- <i>branch policyholders</i> (ranking equally with <i>branch policyholders</i>)	(q)	
Non-branch creditors (ranking equally with <i>branch policyholders</i>)	(r)	
Total claims sharing in surplus <i>branch assets</i>	<hr/>	(s) = o+p+q+r
Surplus or (deficit)		t = n-s (note 2)
		<hr/>

Notes

1. This amount must be more than the *branch SCR*.
2. Any deficit represents the extent to which *branch policyholders* who do not have *branch insurance claims* are dependent upon the non-*branch assets* of the undertaking to pay their claims.

Technical Annex III – Specific templates for branches

The technical annex is provided in the accompanying Excel file ("GL_3CB_Annex III_Specific Templates.xlsx").

Technical Annex IV – Instructions for specific information to be submitted by branches

The technical annexes are provided in an accompanying ZIP file.

2. Explanatory text

Introduction

Directive 2009/138/EC allows some discretion in how to interpret the applicable provisions in the case of such undertakings and the desired outcomes of the Directive 2009/138/EC, the protection of policyholders in the EU, will be more consistent, efficient and effective if national competent authorities exercise their powers of supervision according to these guidelines.

For clarification, the definition of “insurance claim” provided in the introduction of the Guidelines, includes obligations arising under direct insurance contracts but not reinsurance.

Any policyholders of a branch with a reinsurance policy do not benefit from priority given to branch assets which are available to meet the claims of branch policyholders whose policy is a direct contract of insurance and claims of branch preferential creditors. Rather, they must rely on any surplus of assets available to non-branch creditors and rank alongside all claims to those surplus assets and non-branch assets according to the priorities given to such claims under the winding-up regime of the undertaking’s home jurisdiction.

In limiting branch liabilities to (amongst other things) insurance claims, the intention is that the branch balance sheet includes estimates of the liabilities which arise from policies under which insurance claims may arise. These estimates include both the best estimate of such insurance liabilities and a risk margin.

Authorisation of a branch

Guideline 1 - Conditions for authorisation or continuing authorisation

When authorising or continuing authorisation of a branch, host supervisory authorities should be satisfied that the relevant third-country insurance undertaking has an adequate solvency margin and commits to provide any information which the host supervisory authority may need for supervisory purposes and which demonstrates that the undertaking as a whole has an adequate solvency margin under the home jurisdiction rules and that the home supervisory authority confirms that those rules are met.

Host supervisory authorities should assess the adequacy of the solvency margin of the undertaking as a whole on the basis of the prudential requirements of the home supervisory authority, including seeking additional information where needed.

- 2.1. Since Article 162 of Directive 2009/138/EC provides a minimum set of conditions to be met before a national supervisory authority authorises a branch, these Guidelines can be supplemented by additional requirements applied by each Member State or national supervisory authority provided they do not conflict European law which applies directly such as any relevant Implementing Technical Standards.
- 2.2. In most circumstances the national supervisory authority would regard the solvency of the whole undertaking to be adequate where the undertaking is in

compliance with the home solvency regime and a positive determination of equivalence has been made under Articles 227 or 260, in so far as an assessment for the purpose of group supervision is relevant to the solvency of an individual undertaking.

Guideline 2 – Scheme of operations and solvency margin

The host supervisory authority should ensure that the third-country insurance undertaking includes in the scheme of operations of its branch an analysis of the differences between the home country solvency rules and the rules of Directive 2009/138/EC, including an explanation on the reasons that justify such differences.

- 2.3. This guideline facilitates the host supervisory authority's assessment of the adequacy of the third-country insurance undertaking's solvency margin under the prudential requirements of the home supervisory authority, including an assessment of the appropriateness of the home jurisdiction rules for the *branch operations*.
- 2.4. It is possible that the nature of insurance business written in a non-EEA country is different from the nature of insurance business written in the EEA. The home supervisory rules which are used to calculate a solvency margin for the whole undertaking may therefore not be sufficiently risk sensitive to capture all the risks arising from the *branch operations*.
- 2.5. It is also possible that the home supervisory authority's rules are designed to achieve a different standard of solvency compared with that demanded by Directive 2009/138/EC. The solvency margin demanded by the home supervisory authority may therefore be inadequate to protect branch policyholders to the standard required by Directive 2009/138/EC.
- 2.6. The third-country insurance undertaking could, for example, explain whether the differences between the two regimes are due to the nature of the insurance products in the home and host jurisdictions or for other reasons.

Guideline 3 –Distribution of branch assets

When determining whether a third-country insurance undertaking has an adequate solvency margin, the host supervisory authority should consider:

- a) the branch assets remaining after paying the insurance claims of branch policyholders which would be distributed to other claims of branch policyholders; and
- b) the aggregate amount of claims which would rank in priority to, or equal with, claims of branch policyholders.

- 2.7. The third-country insurance undertaking may have little or no ability to alter the priorities of creditors (which would apply if the undertaking were wound up under the home state regime) in order to ensure similar winding-up conditions as under the Directive 2009/138/EC.
- 2.8. If the winding-up proceedings which would apply to the whole undertaking (which are likely to also apply to the branch since it is difficult to sustain separate winding-up proceedings for the realisation and distribution of the

branch assets) are not in accordance with Article 275 (1) (a) or (b) of the Directive 2009/138/EC – in particular that insurance claims are not afforded the degree of priority required in the Union or if non-branch policyholders have priority over branch policyholders – then it is necessary to ensure that the branch assets are hypothecated in some manner to meet the claims of branch policyholders in a way which is effective and does not dilute branch policyholders' claims.

- 2.9. In particular, branch policyholders' claims include claims of reinsurance creditors of the undertaking whose claims arise from *branch operations*. These reinsurance creditors may need to rely, in whole or in part, on the assets of the undertaking not hypothecated to pay the direct insurance claims of branch policyholders. Their claims may compete with other non-preferential and non-insurance claims against the undertaking and therefore upon a winding-up, the assets available to meet their claims may be diluted by other creditors.
- 2.10. These amounts need to be reported as part of the regular supervisory report, possibly as part of the numeric illustration of how the available branch assets would be distributed in a winding-up of the undertaking, as well as in the reporting templates set out in these guidelines (see paragraph (2) of Technical Annex II).
- 2.11. There is no provision in Directive 2009/138/EC which permits Article 227 or Article 260 determinations to be used to determine solo capital requirements or own funds: these articles relate only to the calculation of group solvency requirements or the exercise of group supervision.
- 2.12. The criteria for equivalence determinations under Art 227 of Directive 2009/138/EC concern whether the third-country imposes on the undertaking a solvency regime at least equivalent to that laid down in Title 1, Chapter VI of Directive 2009/138/EC (rules relating to the valuation of assets and liabilities, technical provisions, own funds, SCR, minimum capital requirement and investment rules), not Title IV of Directive 2009/138/EC (reorganisation and winding-up of insurance undertakings). Protection of branch policyholders requires consideration of the equivalence of winding-up regimes.
- 2.13. However, when assessing the adequacy of the margin of solvency of the undertaking, the supervisor may consider relevant equivalence determinations or advice made pursuant to Article 227 of Directive 2009/138/EC as useful information.

Guideline 4 – Analysis concerning the distribution of branch assets

For the purpose of Guideline 6, the host supervisory authority should procure an analysis concerning the legal and practical operation of the home jurisdiction bankruptcy regime; the priority given to policyholders of the branch and of other policyholders of the third-country insurance undertaking in winding-up proceedings; and how the assets of the third-country insurance undertaking are distributed to those policyholders.

The host supervisory authority should, to the extent to which applicable confidentiality requirements permit, make the procured analysis available to EIOPA. EIOPA may

decide to make the analysis available to other supervisory authorities in accordance with its confidentiality regime and on a need-to-know basis.

Where the home jurisdiction bankruptcy regime does not provide for at least the same level of protection of policyholders in winding-up proceedings as under Directive 2009/138/EC, the host supervisory authority should procure from the relevant third-country insurance undertaking an analysis concerning the distribution of branch assets under: the home jurisdiction bankruptcy regime in relation to that undertaking; the regime of the Member State where the branch is authorised (where separate proceedings can be opened in respect of the branch); or the distribution circumstances where winding-up proceedings are initiated in both the home jurisdiction and the host Member State where the branch is established.

The host supervisory authority should ensure that all analyses are provided by persons suitably qualified to advise in respect of the laws and practices of the jurisdiction concerned.

Explanation of the need to obtain legal advice in respect of the winding-up regime of the home jurisdiction

- 2.14. The winding-up of a branch is particularly complicated since it is possible that different persons will be appointed to take control of the assets under the control of the branch or located in the country where the branch is situated and assets of the undertaking located in other jurisdictions.
- 2.15. The question of which jurisdiction's winding-up proceedings will dominate or how they will be coordinated is intrinsically uncertain since there are few examples of how these questions would be decided and it is likely to be a question that is determined by court proceedings in the respective jurisdictions.
- 2.16. Whilst it is possible that the branch assets would be distributed according to the priorities required under Article 275 of Directive 2009/138/EC since Member States will have transposed this into their national law, that does not ensure that the branch assets would not be remitted (with the consent of the courts of the relevant member state) to the control of the foreign winding-up proceeding. Neither does it ensure that foreign creditors would rank equally with branch creditors in that foreign proceeding.
- 2.17. The most prudent basis therefore on which to assess the availability of assets to meet branch liabilities is to assume that the foreign proceedings will dominate. However, provided a national supervisory authority is satisfied that any secondary proceedings in its Member State would not be disturbed by foreign proceedings then it may conclude that the secondary proceedings provide sufficient protection for branch policyholders. An understanding of how such proceedings would operate and interact is therefore necessary for which advice from those experts in their operation is necessary.
- 2.18. Supervisory authorities are expected to apply a proportionate approach by allowing third-country insurance undertakings with relatively simple *branch operations* to demonstrate compliance by providing less information than that

which would be required for third-country insurance undertakings with more complex *branch operations*.

Guideline 5 - Determination of branch liabilities

The host supervisory authority should ensure that branch insurance claims included in branch liabilities comprise technical provisions, as defined in Article 77 of Directive 2009/138/EC, associated with only those branch insurance claims.

2.19. Branch insurance claims comprise only those liabilities which have priority upon winding-up, whether that be by virtue of the priority accorded to policyholders' insurance claims in the creditor hierarchy or to other types of preferential claims (such as employee claims) or because the liability is secured on certain assets. The winding-up rules applicable may prescribe certain methods for valuing claims to be paid from assets available in a winding-up proceeding. They may prescribe certain valuation principles and they may prescribe certain treatments for setting off amounts owing to the undertaking against amounts owed by the undertaking to the creditor proving in the winding-up proceeding. This guideline seeks to ensure that for the purposes of this guideline the value attributed to branch insurance claims is calculated net of all the inward and outward cashflows used to estimate technical provisions, including the best estimate and risk margins. The items included in this calculation may therefore differ from the items which would be admissible to claim (or off-set) in a winding-up. Guideline 21 deals with the valuation methodology for branch insurance claims, such as the principle that liabilities need to be valued at the amount for which they could be transferred or settled between knowledgeable willing parties in an arms-length transaction. This may also be a different valuation basis compared to the basis used under applicable winding-up regimes.

Supervisory powers and communication with other supervisory authorities

Guideline 7 – General supervisory powers

For the supervision of *branch operations*, the host supervisory authority should exercise, where appropriate, the supervisory powers laid down in Directive 2009/138/EC, in particular Articles 34, 35, 36, 37, 84, 85, 110, 118 and 119 thereof, to the same extent as they exercise such powers for the supervision of insurance undertakings with head office within the Union.

Explanation of the authority for supervisory powers over the branch operations

2.20. Article 168 of the Directive 2009/138/EC applies Article 34 of Directive 2009/138/EC to supervisory authorities supervising third-country insurance undertakings with *branch operations* occurring in the Union. Article 34 of Directive 2009/138/EC confers upon supervisory authorities general supervisory powers and accordingly all supervisory powers available to supervisory

authorities pursuant to Directive 2009/138/EC are available for the supervision of *branch operations*.

Guideline 8 – Assessment of the branch financial position as part of the supervisory review process

When assessing the adequacy of the branch financial position as part of the supervisory review process, the host supervisory authority should consider the risk that branch policyholders' claims may be diluted by non-branch claims.

- 2.21. Where appropriate, the host supervisory authority needs to consider imposing a capital add-on which would have the effect of increasing the protection of branch policyholders relative to non-branch creditors.

Guideline 10 – Notifying EIOPA of joint decisions in relation to Article 167 of Directive 2009/138/EC

Where a third-country insurance undertaking authorised in more than one Member State applies for any of the advantages under Article 167 of Directive 2009/138/EC, the relevant supervisory authority should notify EIOPA of the decision taken under that article and whether it considers that the conditions in Guideline 1 are met.

- 2.22. The notification referred to in the guideline is made in order to enable EIOPA to facilitate an exchange of information between all the host supervisory authorities who may have authorised the opening of a branch of the same undertaking and their views on whether Guideline 1 is met.

Guideline 15 – Cooperation and communication between supervisory authorities under the supervisory review process

Where host supervisory authorities have granted the advantages referred to in Article 167(1) of Directive 2009/138/EC, they should establish a communication process in line with the one described in the Guidelines on Supervisory Review Process (EIOPA-BoS-14/179) .

Where the third-country insurance undertaking has branches authorised in more than one Member State but has not applied for any of the advantages under Article 167(1) of Directive 2009/138/EC, the concerned supervisory authorities should agree how to cooperate and exchange information in line with the Guidelines on Supervisory Review Process (EIOPA-BoS-14/179).

Explanation of how supervisory review processes in respect of the undertaking with a branch may be coordinated

- 2.23. If a third-country insurance undertaking requests or obtains from two or more host supervisory authorities authorisation to obtain the advantages described in Article 167(1) of Directive 2009/138/EC , the host supervisory authorities concerned could consider cooperating in the exchange of information and otherwise assisting each other with their respective supervision of the third-country insurance undertaking.
- 2.24. Host supervisory authorities will only cooperate at their discretion.

- 2.25. Supervisory authorities may cooperate by exchanging of information in situations where there are supervisory issues which could have implications for the supervision of branches or related insurance undertakings of the same third-country insurance undertaking in other EEA member states. For example, concerns about governance, fitness and propriety of management, portfolio transfers of the third-country insurance undertaking, or where they believe the third-country insurance undertaking is entering financial difficulties.

Financial Soundness of the branch

Guideline 17 - Branch accounting

The host supervisory authority should ensure that a third-country insurance undertaking establishes, maintains and documents the administrative and accounting procedures related to the operations of its branches in the Member States in which the branches operate.

The host supervisory authority should ensure that a third-country insurance undertaking keeps records: identifying the location of all branch assets; and providing sufficient information enabling any person charged with the winding-up of that undertaking to take control of those assets.

The host supervisory authority should ensure that a third-country insurance undertaking produces and keeps management accounts relating to the whole balance sheet of the branch – including available and non-available assets and all liabilities relating to *branch operations*.

- 2.26. The procedures need to include the basis on which the third-country insurance undertaking determines which income, expenses, assets and liabilities arise out of operations effected by the branch and are allocated to the *branch operations* as opposed to the other activities of the third-country insurance undertaking.
- 2.27. Information which would be relevant to taking control of branch assets could include details of:
- a) custodians appointed;
 - b) the location of assets;
 - c) in the case of stocks and shares, the exchanges and registries involved in dealing in those assets;
 - d) the contractual arrangements under which assets are held; and
 - e) in the case of recoveries under reinsurance contracts, the extent to which those contracts protect branch policyholders as opposed to non-branch policyholders.
- 2.28. Since a branch is an integral part of the legal entity which is the insurance or reinsurance undertaking, the soundness of the branch depends upon the soundness of the whole undertaking. Directive 2009/138/EC requires that supervisory authorities take a proportionate approach and therefore they must strike a balance between inquiring into the business operations of the whole undertaking, which would provide greater protection for policyholders, and

inquiring into only the *branch operations*, which would be less burdensome, but which may be less effective.

- 2.29. One of the aspects of the financial soundness of the branch which are necessary for the effective protection of policyholders of the branch is the manner in which available assets are distributed to policyholders should the undertaking fail. The way to ensure the same protection for policyholders of the branch is to ensure that the manner in which assets available in a winding-up are distributed to policyholders includes giving priority to insurance claims over non-insurance claims, as provided for by Title IV (Articles 267-296) of Directive 2009/138/EC.

Guideline 18 - Location of branch assets

The host supervisory authority should ensure that:

- a) the third-country insurance undertaking has sufficient assets covering the branch MCR and maintains them at any time within the host Member State;
- b) the assets covering the branch SCR, in excess of the branch MCR, are located in the Union; and
- c) the third-country insurance undertaking informs the host supervisory authority immediately if one of the abovementioned conditions are no longer complied with.

- 2.30. The amount of assets to be located within the Union or the relevant Member State is based on the branch SCR and branch MCR, rather than capital requirements of the third-country insurance undertaking as a whole.

- 2.31. The amount of the deposit lodged as security is based on the branch MCR rather than capital requirements of the third-country insurance undertaking as a whole.

Guideline 19 – Quality requirements for the security deposits under Article 162(2)(e) of Directive 2009/138/EC

The host supervisory authority should ensure that deposits lodged as security by a third-country insurance undertaking are of low volatility under all market conditions having impact on the value of that deposit and thereby on the deposit's appropriateness as a security.

The host supervisory authority should ensure that a third-country insurance undertaking may only lodge a deposit with a credit institution authorised in the Union which has acknowledged that it has no rights of set-off or will not exercise any rights of set-off of any claims it may have against that undertaking against the deposit if the insurance undertaking fails or is subject to winding-up proceedings.

- 2.32. An example of an asset of sufficiently high quality to be lodged as security would be cash or cash equivalents.

Guideline 22 – Calculation of capital requirements for the branch

The host supervisory authority should ensure that the branch SCR and branch MCR are calculated based on the branch balance sheet as if the *branch operations* constituted a separate insurance undertaking.

- 2.33. The requirement that the branch SCR and branch MCR have to be calculated using the branch balance sheet as if the *branch operations* were a separate insurance undertaking means that there will be no allowance made for any diversification effects between the head-office and any branch of the undertaking. It also means that there will be no capital charge in the SCR or MCR for notional credit exposures between the head-office and any branch.

Guideline 23 – Solvency Capital Requirement

The host supervisory authority should ensure that the branch own funds are at least equal to the branch SCR.

- 2.34. One of the aspects of the financial soundness of the branch which are necessary for the effective protection of policyholders of the branch is the solvency of the third-country insurance undertaking as a whole. The way to ensure the same protection for policyholders of the branch is to ensure that the whole third-country insurance undertaking is held to a solvency standard which is at least as effective as that provided for by Directive 2009/138/EC for undertakings situated in the EU.
- 2.35. If, when reporting the branch balance sheet and branch SCR, the report shows that the branch basic own funds are less than the branch SCR, then the undertaking needs to inform the host supervisory authority immediately and provide an explanation.

Guideline 25 - Branch own funds

The host supervisory authority should ensure that the third-country insurance undertaking calculates its branch own funds, taking into account only assets which are available for distribution upon a winding-up of the undertaking to pay the insurance claims of branch policyholders and branch preferential claims. Such assets should only be treated as available if they would be distributed:

- a) in accordance with the provisions of Article 275(1)(a) or (b) of Directive 2009/138/EC and in a manner which does not differentiate between claims according to the location of the claim; or
- b) to pay branch preferential claims and the insurance claims of branch policyholders in priority to all other claims.

- 2.36. Any allocation of an undertaking's common equity, or debt issued to finance the undertaking's activities to a branch for accounting or regulatory purposes is arbitrary and of no practical effect when considering the protection afforded to policyholders. Article 166(1) of Directive 2009/138/EC requires that branch own funds fall within the amounts of eligible own funds consisting of the items referred to in Article 98(3) of Directive 2009/138/EC, namely the aggregate of tier 1, 2, and 3 own funds subject to various limits. The only item which is of practical meaning for a branch's own funds is therefore that which comprises the reconciliation reserve component of tier 1 own funds. So the own funds of a branch are only the excess of branch assets over branch liabilities.

- 2.37. In particular, it is necessary that all own funds for a branch comply with the characteristics set out in Article 93 (1) (a) and (b) of Directive 2009/138/EC: that the item is available to absorb losses on both a going concern basis as well as in the case of winding-up; and in the case of winding-up, that the item is subordinated to the claims of policyholders and beneficiaries of insurance and reinsurance contracts. Branch own funds therefore exclude amounts representing assets which are not available as set out in Guideline 26 since for a branch, its own funds comprise only the difference between branch assets and branch liabilities, being the reconciliation reserve for the branch. Whilst the calculation of the excess of assets over liabilities for the branch is done with availability of assets considered on a going concern basis, the branch reconciliation reserve is classified as tier 1 and is assumed to absorb losses on a going concern basis, as is the case for the reconciliation reserve for undertakings under Directive 2009/138/EC. Undertakings still need to consider whether the branch reconciliation reserve is free from encumbrances.
- 2.38. Supervisory authorities cannot require that the insolvency regime in the third country that would apply to the undertaking (and consequently, the branch) contains the same creditor priorities required of Member States under the Directive 2009/138/EC. However, as an alternative, when assessing the permanent availability of the branch own funds, supervisory authorities need to take into account situations where creditor priorities do not provide sufficient policyholder protection, for example if:
- a) non-branch insurance creditors had priority over branch insurance creditors with respect to any of the assets of the undertaking available to branch insurance creditors; or
 - b) arrangements under which branch insurance creditors ranked equally with non-branch insurance creditors if neither had priority over other ordinary creditors.
- 2.39. Where the home regime does not provide adequate protection the undertaking will have to ensure that branch assets are available to pay branch liabilities. However, to be an effective alternative, the supervisory authority must be satisfied that it can identify in advance which assets would be available, which creditors would have a claim on those assets and that some margin of such assets over such liabilities was likely to be maintained, and lastly, that in the event that the undertaking were wound up, those assets would be distributed to creditors under a system where insurance creditors had priority over non-insurance creditors with respect to those assets. These assets are the only assets that can meet the definition of available branch assets.

Examples of possible ways in which assets could meet the definition of branch assets

- 2.40. Where the undertaking cannot procure changes to the winding-up regime which would apply in the home jurisdiction of the undertaking, it is necessary that sufficient assets are hypothecated to pay branch insurance claims.

2.41. The following methods may be considered by undertakings and host supervisory authorities:

The provision of collateral

2.42. Where the assets of an undertaking which has a branch in the EEA are secured by collateral or a letter of credit provided by a third party (for instance a reinsurance undertaking or credit institution) then that collateral may be hypothecated for the benefit of policyholders of the branch. This could make assets available for the branch policyholders without directly encumbering the assets of the undertaking.

Contractual agreement which is recognised in foreign proceedings

2.43. The third-country insurance undertaking might enter into legally enforceable arrangements that have the effect of legally segregating the branch portfolio from the third-country insurance undertaking's other assets and liabilities and granting title or other preferential interest over branch assets to the policyholders of *branch operations*, a relevant compensation scheme, or other suitable party.

2.44. To be effective the arrangements would need to be capable of being recognised in winding-up proceedings in the jurisdiction where the branch is based, and where the undertaking has its head office, and where the assets in question are located.

2.45. Possible ways in which this could be done (which may not be available in all jurisdictions) would be:

- Establishing a trust comprising the branch assets to be available to pay branch insurance claims where the trustees had legal ownership of the assets and the beneficiaries of the trust were the persons with branch insurance claims. The undertaking would need to put in place acceptable arrangements which allowed those assets to be dealt with in the normal course of business and ensure that the tax status and accounting status of the assets was clear. Supervisory authorities would need to decide whether to allow the assets and associated claims to be reported as part of the insurance business of the undertaking.
- Granting a security interest over the branch assets where the branch insurance creditors were the beneficiaries of such a security interest. This may be done by way of a fixed or floating charge over the assets. Such a charge may need to be registered or other formalities completed in order to be valid.
- Subjecting branch assets to any national legislation which in respect of certain designated assets grants a priority for branch insurance claims over the insurance claims arising from non-branch operations.

2.46. Some methods designed to protect branch policyholders which are likely to not be sufficiently effective to meet the requirements of these guidelines without further safeguards are:

Contractual agreement has the effect of ensuring branch policyholders rank equally with non-branch policyholders

2.47. Some jurisdictions operate winding-up regimes where the claims of national creditors rank before the claims of foreign creditors. It is possible in some circumstances that a branch could include contractual terms in its dealings with branch policyholders which have the effect of treating branch policyholders as if they were creditors of the home jurisdiction. This would have the effect of ensuring that branch policyholders were treated no less favourably than policyholders of the home jurisdiction. However, it would not ensure that policyholders, and in particular policyholders with insurance claims, were treated with the priority required by Directive 2009/138/EC.

Notification at point of sale

2.48. Whilst it may be helpful to notify persons dealing with the branch that their claims may be subject to resolution under a foreign winding-up proceeding with different priorities from those required by Directive 2009/138/EC for insurance undertakings, this does not provide any actual protection. Neither is it the purpose of prudential regulation such as Directive 2009/138/EC to introduce requirements concerning conduct of business standards.

Reliance on national compensation schemes

2.49. Whilst arrangements which compensate policyholders for some or all of the loss they might suffer upon the failure of an insurance undertaking are helpful, they are not of the nature of protection which Directive 2009/138/EC envisages and therefore will not be taken into account in any assessment of the adequacy of arrangements made to protect branch policyholders. Essentially the costs fall on those who fund such compensation schemes whereas the protections required under Directive 2009/138/EC would protect those compensation schemes and their funders from loss also.

Segregation of and restrictions on dealing with branch assets

2.50. Arrangement can be envisaged whereby branch assets are segregated from other assets of the undertaking (such as being held in separately designated bank or custodian account) and restrictions are imposed on the undertaking dealing with such segregated assets (for example being unable to transfer those assets for the benefit or under the control of a third party without consent from the host supervisory authority). Such arrangements do not provide an adequate degree of protection for branch policyholders since ultimately the beneficial interest in those assets remains with the undertaking and any custodian and any host supervisory authority would have to succumb to court orders requiring the control of those assets to be transferred to a person properly appointed to deal with the winding-up of the undertaking. Any arrangement which is to provide effective protection for branch policyholders must include the transfer of beneficial (and possibly also legal) interests in the branch assets in favour of branch policyholders.

Governance and risk management

Guideline 27 - General governance requirements

The host supervisory authority should ensure that the third-country insurance undertaking complies with the system of governance requirements under Articles 41 to 50 of Directive 2009/138/EC, including with the prudent person principle with regard to *branch operations*.

- 2.51. Generally all requirements concerning the system of governance apply to the branch of the third-country insurance undertaking which in many respects is treated like a separate undertaking. However, the fact that from the point of view of the third-country insurance undertaking the *branch operations* are part of the undertaking's operations and not treated as if the branch were a separate entity, has to be taken into account.
- 2.52. The third-country insurance undertaking has to provide an effective system of governance for the *branch operations* which ensures the sound and prudent management of the *branch operations* and is proportionate to its nature, scale and complexity. It has to comply with all requirements concerning organisational structure, allocation and separation of responsibilities, written policies, continuity plans, remuneration requirements and all specific governance requirements as set out in Articles 42 and 44 to 49 of Directive 2009/138/EC and relevant provisions of the Commission Delegated Regulation (EU) 2015/35, concerning these articles.
- 2.53. These guidelines avoid undue costs being imposed on branches by permitting governance and key functions to be exercised from the head office or from the branch. If exercised from the head office then those functions will be subject to the home supervisory authority's rules and where those rules comply with international standards similar results will be achieved without any material additional cost. Only if the home jurisdiction is not equivalent or does not adopt internationally agreed standards will additional costs be incurred.

Guideline 29 – Language and reporting of governance policies

The host supervisory authority should ensure that the third-country insurance undertaking has written policies covering the governance arrangements to comply with Guideline 7, available in a language agreed by the host supervisory authority, and include information in its regular supervisory reporting regarding how it satisfies those governance requirements.

- 2.54. Generally, the requirements only apply with regard to *branch operations*. The third-country insurance undertaking can however demonstrate compliance with requirements also by meeting those requirements at the level of the undertaking, e.g. by establishing key functions for the undertaking including the branch or implementing a risk management or internal control system for the undertaking which covers the *branch operations*.
- 2.55. In case of non-compliance with the governance requirements where the third-country insurance undertaking does not apply requirements to the *branch*

operations specifically, the supervisory authority can only demand that the necessary corrective actions are taken with regard to the *branch operations*. For example, where a key function holder who also performs those key functions for the branch but is not only employed at the branch is found not to be fit and proper, the supervisory authority cannot demand that this person no longer performs the key function for the third-country insurance undertaking but only that a fully qualified key function holder is appointed for the branch. If the risk managements system of the third-country insurance undertaking is not up to the standards required by the Directive, the supervisory authority can only require that corrective actions are taken to ensure that the risk management system works properly with regard to *branch operations*.

- 2.56. A third-county insurance undertaking needs to evidence the degree to which interests of policyholders and beneficiaries within the EU might be prejudiced by its activities which are not part of *branch operations*, and to manage potential diverting interests appropriately in order to ensure non-discrimination of policyholders and beneficiaries within the EU.
- 2.57. The third-country insurance undertaking would be expected to have a branch specific business strategy and branch internal reporting procedures where this proportionate to the nature, scale and complexity of the *branch operations*.
- 2.58. Written policies do not necessarily have to be branch-specific – unless this is appropriate on account of specificities of the branch business – but could be written policies at the level of the third-country undertaking covering *branch operations*. However, it is important that they are accessible by the host supervisory authority.
- 2.59. In general, information concerning the *branch operations* has to be provided in the language(s) of the host supervisory authority or any other language that the supervisory authority agrees to. The third-country insurance undertaking is expected to make available information the supervisory authority is likely to want to see, such as written policies, even before there is a specific request to provide this information.
- 2.60. Continuity requirements, including contingency plans, apply at the level of the branch specifically, so as to ensure that not only the third-country insurance undertaking as a whole but the branch in particular can perform its operations adequately and continuously without major interruptions.
- 2.61. Remuneration requirements apply to the persons who are “risk-takers” with regard to *branch operations* regardless of whether they are employed in the branch specifically or in the third-country insurance undertaking. A remuneration committee may be appropriate at the level of the branch if there is no such committee in the third-country insurance undertaking which also covers *branch operations*.

Guideline 30 - Key functions

The host supervisory authority should ensure that the third-country insurance undertaking has put in place the risk management function, the compliance function, the internal audit function and the actuarial function with regard to *branch operations* regardless of whether these functions are specifically established for the *branch operations* or are applied by the undertaking's head-office to the *branch operations*.

- 2.62. The system of governance may be exercised by the undertaking's head office or devolved to the branch. Whether governance is exercised along geographical lines or whether it is exercised along business lines as well as geographical lines (i.e. a matrix-management approach) is a choice for the undertaking. What is required for effective supervision of the branch activities is that it is evident to the supervisory authority for the branch that the risk profile of the branch's activities is being monitored and controlled. The governance structure needs therefore be transparent and if exercised by the undertaking's head office then the supervisory authority for the branch needs to have adequate access to those exercising that function.
- 2.63. There are four areas for which it is important that the branch supervisory authority is able to assess: the investment strategy followed for assets which are available to meet branch insurance claims needs to conform to the prudent person principle separately from the assets of the whole undertaking; the full extent of insurance liabilities incurred by the undertaking which may be attributed by policyholders to the branch (i.e. booking and fronting practices) is known and adequate records exist in the branch; and the information which a liquidator would require to take control of branch assets is available at short notice in the branch's records.
- 2.64. The risk management function, compliance function, actuarial function and internal audit function do not necessarily need be performed at the level of the branch unless this is proportionate in view of the nature, scale and complexity of the *branch operations*. However, it has to be considered that the performance of the compliance function and the actuarial function for the *branch operations* requires specific knowledge of the laws, regulations and administrative provisions adopted pursuant to Directive 2009/138/EC and the requirements on technical provisions set out in Directive 2009/138/EC respectively and specified in relevant provisions of the Commission Delegated Regulation (EU) 2015/35 and in Guidelines.
- 2.65. The investment activities for the branch are subject to the prudent person principle. Specific requirements of the principle, e.g. with regard to risk concentration or diversification have to be complied with for the assets of the branch not for the undertaking as a whole.
- 2.66. The requirement to have an internal control system does not imply that there should be an internal control system that would be independent from that established in the undertaking but can be covered by the control system of the third-country insurance undertaking. The same applies to the requirement on the requirement of the risk management system.

- 2.67. The performance of functions and activities for the branch at the level of the third-country insurance undertaking does not constitute outsourcing, since *branch operations* are not really separate from the rest of the third-country insurance undertakings business.
- 2.68. Where any branch activities or functions are outsourced, the outsourcing requirements of Article 38 of Directive 2009/138/EC and – where critical or important activities or functions are concerned – Article 49 of Directive 2009/138/EC and the relevant provisions of the Commission Delegated Regulation (EU) 2015/35 apply. Hence, the third-country insurance undertaking may be subject to notification requirements with regard to outsourcing arrangements which are not limited to branch activities and functions but also cover activities or functions of the third-country insurance undertaking as a whole. As a consequence the outsourcing arrangements have to comply with the requirements set out in the Commission Delegated Regulation (EU) 2015/35 (or exclude branch activities and functions). If however, the service provider does not satisfy Solvency II requirements, the supervisory authority can only demand that the service provider selected does not perform any activities or functions with regard to *branch operations*.

Guideline 31 – Notification of fit and proper persons

The host supervisory authority should ensure that the third-country insurance undertaking notifies it of the identity of, and any changes to:

- a) the general representative of the branch;
- b) any persons who effectively run or who may influence *branch operations*; and
- c) the persons who are responsible for key functions with regard to *branch operations*.

- 2.69. Fit and proper requirements apply to all persons who effectively run the branch or have other key functions with regard to the *branch operations* irrespective of whether the person concerned is employed at the level of the third-country insurance undertaking or only at the level of the branch. For the notification requirements it makes no difference whether the persons concerned are employed in the third-country insurance undertaking or in the branch in particular as long as they are key function holders with regard to *branch operations*. Equivalence of the third-country supervisory regime may be a consideration where the person subject to notification requirements has already been subject to a fit and proper assessment by the supervisory authority of the third-country insurance undertaking.

Guideline 33 - Own risk and solvency assessment (ORSA)

The host supervisory authority should ensure that the third-country insurance undertaking performs, at least annually, an ORSA complying with Article 45 of Directive 2009/138/EC with regard to the *branch operations*.

- 2.70. A third-country insurance undertaking may fulfil its obligations under Article 45 of Directive 2009/138/EC by performing an assessment substantially equivalent

to an ORSA in respect of the entirety of its operations, prepared in accordance with the requirements of a jurisdiction deemed to be equivalent for purposes of Directive 2009/138/EC. If the third-country insurance undertaking performs such an ORSA equivalent assessment, the third-country insurance undertaking needs to take into account appropriately any risks with regard to the third-country insurance undertaking's non-branch activities which may have an impact on *branch operations*. If relevant, the third-country insurance undertaking also needs to prepare a translation of the part of the ORSA equivalent assessment concerning *branch operations* in a language agreed by the host supervisory authority.

Structure and form of the supervisory reporting

Guideline 37 – Elements of the regular supervisory reporting

The host supervisory authority should ensure that the third-country insurance undertaking submits to it the following information in respect of *branch operations* at predefined periods under Article 35(2)(a)(i) of Directive 2009/138/EC:

- a) a regular supervisory report comprising the information required under Article 35 of Directive 2009/138/EC and these Guidelines, in relation to *branch operations*, in narrative form and including quantitative data, where appropriate;
- b) the ORSA supervisory report in respect of *branch operations* comprising the results of each regular ORSA performed by the undertaking in accordance with Article 45(6) of Directive 2009/138/EC and these Guidelines, and without delay following any significant change in its risk profile, in accordance with Article 45(5) of Directive 2009/138/EC;
- c) completed annual and quarterly quantitative templates in respect of *branch operations*, as provided for in Guidelines 44, 45 and 47, specifying in greater detail and supplementing, where appropriate, the information presented in the regular supervisory report;
- d) a copy of the supervisory reporting documentation of the whole third-country insurance undertaking;
- e) a summary of any significant concerns which the home supervisory authority has raised with the third-country insurance undertaking, in the official language of the country where the branch is located.

The requirements set out in the first paragraph of this Guideline are without prejudice to the power of the host supervisory authority to require the third-country insurance undertaking to communicate on a regular basis any other information prepared under the responsibility of, or at the request of, the administrative, management or supervisory body of these undertakings, in relation to *branch operations*.

The host supervisory authority should ensure that the regular supervisory report issued by the third-country insurance undertaking in respect of *branch operations*

follows the structure set out in Annex XX of the Commission Delegated Regulation (EU) 2015/35⁸ and presents in a coherent and informative manner the information described in Technical Annex I to these Guidelines.

- 2.71. In submitting information in quantitative reporting templates which contributes to the calculation of the branch SCR, MCR or own funds the third-country insurance undertakings only includes assets which are available for distribution upon winding-up of the undertaking to pay the insurance claims of branch policyholders (in accordance with Guidelines 3, 6 and 26).
- 2.72. In submitting information concerning the branch balance sheet, branch own funds and the branch SCR, the third-country insurance undertakings includes only:
- a) assets which are available for distribution upon winding-up of the undertaking to pay the insurance claims of branch policyholders (in accordance with Guidelines 3, 6 and 26), and
 - b) Liabilities which comprise the insurance claims of branch policyholders or branch preferential claims.
- 2.73. Branch available assets are to be shown net of branch preferential claims and any prior security interests and the gross amount of available branch assets and the deduction of branch preferential claims and prior security interests from that amount will be shown on form S.02.03.07, specifying additional branch balance sheet information.

Guideline 48 – Proportionality reporting

The host supervisory authority should consider to limit or to exempt a third-country insurance undertaking from any regular supervisory reporting requirement set out in Guideline 44, 45, or 47 where the submission of that information would be unduly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the branch.

- 2.74. In assessing whether the branches undertakings in respect of the *branch operations* should be exempted from any regular supervisory reporting requirement, the host supervisory authority could regard whether a positive determination of equivalence has been made under Articles 227 and 260 of Directive 2009/138/EC, in so far as such assessment for the purpose of group supervision is relevant to assess such exemption at an individual undertaking level.

⁸ 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, 17.1.2015, p. 1)

Annex II: Impact Assessment and cost benefit analysis

Procedural issues and consultation of interested parties

1. According to Article 16 of the EIOPA Regulation, EIOPA conducts analysis of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.
2. The content of this impact assessment document was developed by the EIOPA work-stream on branches of third-country insurance undertakings and considered by EIOPA's Insurance Groups and Supervision Committee. It includes information provided during an informal consultation process conducted during the summer of 2014 in which 12 bodies representing consumers or insurers either within Europe or outside of the Europe were invited to participate.
3. A public consultation of the guidelines, its annexes and its impact assessment was carried out between 30 November 2014 and 20 February 2015. Stakeholders' responses to public consultation were duly analysed and served as a valuable input in order to revise the guidelines.
4. A detailed overview of the stakeholders' comments and EIOPA's feedback on each of them are provided in the previous section "Feedback Statement".

Problem definition

5. On 11 August 2011, the European Commission Services invited EIOPA to prepare guidelines to clarify how Directive 2009/138/EC should be applied to branches since the text of the Directive was unclear and no provision was made for any Commission Delegated Regulation 2015/35.
6. Directive 2009/138/EC provides a minimum set of criteria to be met before national supervisory authorities (NSAs) authorise a non-EEA insurance undertaking to open a branch in a Member State, but the way in which additional requirements are applied could vary considerably between Member States and NSAs. Guidelines are therefore an appropriate way to seek to ensure that a degree of consistency is applied towards the treatment non-EEA undertakings wishing to operate insurance branches in the EEA.
7. The Commission Services expressed the view that Directive 2009/138/EC was not intended to be applied extraterritorially but that policyholders of the branch should nonetheless expect the same standard of protection as they would if they were dealing with an EEA insurance undertaking. The Commission Services' intention was not to subject non-EEA undertakings to the full weight of Solvency II if adequate protection could be achieved by subjecting only the branch operations to Solvency II requirements.
8. EIOPA considers it essential that branches only operate if the whole undertaking is solvent and if assets would be distributed to branch policyholders in a fair way consistent with the creditor hierarchy required under Directive 2009/138/EC. It is therefore necessary to consider guidelines which meet both these objectives in a way which achieved efficient and consistent supervision.

Objective pursued

9. The purpose of these Guidelines is to ensure a consistent, efficient and effective protection of policyholders within the EU. The Guidelines aim at ensuring that policyholders dealing with branches of third-country insurance undertakings enjoy at least the same level of protection that they would have were they are dealing with an insurance undertaking situated in the EU, where both the financial soundness, the risk management and the governance arrangements of the branch would be subject to the standards of Solvency II Directive.
10. These Guidelines allow alternative methods to protect policyholders of the branch in order to ensure a proportionate approach to supervision, especially in what regards certain aspects of Solvency II, such as valuation, own funds and submission of information.
11. The objectives pursued in developing these guidelines are provided for in the EIOPA Regulation within the constraints of Solvency II Directive's objectives:
 - The main objective of insurance and reinsurance regulation and supervision, which is the adequate protection of policyholders and beneficiaries;
 - Establishing consistent, efficient and effective supervisory practices, especially to provide a common approach amongst NSAs when deciding whether to authorise or continue to authorise non-EEA insurance undertaking's operating in their Member State.
12. That approach is intended to be proportionate, avoiding duplication of supervisory effort and expense for undertakings, where they are subject to both EEA and non-EEA prudential regimes, and yet to achieve the main objective of Directive 2009/138/EC namely the adequate protection of policyholders and beneficiaries.

Policy options

13. EIOPA has identified four main policy issues which were considered and debated during the development of this paper, with the respective policy options:

Policy Issue 1: Risk of failure through inadequate own funds

Option 1: Each NSA relies on the prudential regime and supervisory practices of the authority where the undertaking has its head office.

Option 2: Each NSA makes enquiries into the solvency position of the whole undertaking.

Option 3: Solvency II solvency standards are applied by each NSA to the whole undertaking's business.

Policy Issue 2: Consequences of failure through the way assets are distributed

Option 1: Assets of a branch must always be segregated and subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.

Option 2: Only branches which are subject to Solvency II-compliant winding-up regimes in the jurisdiction where their head office is located are authorised to open branches in the EEA.

Option 3: An assessment is made of the compliance with Solvency II winding-up requirements by relevant NSA's and only branches which are not subject to a Solvency II-compliant winding-up regime are required to ensure that their assets are subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.

Policy Issue 3: Risk of failure through poor governance and controls

Option 1: Each NSA relies on the home supervisory authority wherever the management and control functions are located.

Option 2: The undertaking is required to establish management and control systems for the branch exclusively in the branch which each NSA monitors.

Option 3: The undertaking can establish management and control functions either in the branch or head office, but the NSA and home supervisory authority both exercise a degree of monitoring of those functions.

Policy Issue 4: Regular reporting requirements that are effective yet proportionate

Option 1: NSAs to exercise their own judgement as to the extent of the regular reporting requirements necessary for each third-country insurance undertaking according to its circumstances.

Option 2: The regular reporting requirements for third-country insurance undertakings should follow criteria equivalent to those set out in Articles 35 (6) and (7) of Directive 2009/138/EC for insurance and reinsurance undertakings.

Analysis of Impacts

14. This chapter describes the analysis of impact conducted by EIOPA in order to identify the best options. For each policy issue and policy option, the expected impact on policyholders, the industry (comprising both regulated insurance undertakings and non-EEA insurers with EEA branches), and NSAs are described.

Policy Issue 1: Risk of failure through inadequate own funds

15. In general it is not possible to wind up a branch in isolation from the legal entity of which it forms part. A branch therefore fails if the whole undertaking fails. To mitigate this risk most regimes impose a minimum solvency margin on insurance undertakings which they authorise. Before authorising a branch a NSA should consider whether that solvency margin is adequate and respected.
16. A different degree of comfort as to the solvency of the whole undertaking can be taken from the home regime depending upon whether it is assessed as equivalent under Article 227 of Directive 2009/138/EC, provisionally equivalent, or no assessment has been made.

Option 1: Each NSA relies on the prudential regime and supervisory practices of the authority where the undertaking has its head office.

- 17. Policyholders: There is a risk that the home regime is not well adapted to the particular risks of the branch business. This decreases the level of protection for policyholders.
- 18. Industry: No material incremental costs are expected.
- 19. Supervisor: There is a risk that the home regime is not well adapted to the particular risks of the branch business. In such a case reliance on prudential regime and supervisory practices of third country would make it more difficult to adequately protect branch policyholders, one of the objectives of Directive 2009/138/EC.

Option 2: Each NSA makes enquiries into the solvency position of the whole undertaking.

- 20. Policyholders: The level of protection of policyholder would be higher, since NSAs would be more aware of the financial situation of the third-country insurance undertaking on which its branch operations are dependent.
- 21. Industry: The NSA may require more own funds to be held by the undertaking than the home regulatory authority requires.
- 22. Supervisor: More resources are required to understand the results of the home supervisory authority's standards as applied to the undertaking and branch. The NSA is in a better position to protect branch policyholders, since it could react on the basis of information regarding the solvency position of the third-country insurance undertaking.

Option 3: Solvency II solvency standards are applied by each NSA to the whole undertaking's business.

- 23. Policyholders: No material incremental costs are expected.
- 24. Industry: Considerable computational effort is required to apply Directive 2009/138/EC to the whole undertaking in addition to complying with the home authority's requirements.
- 25. Supervisor: No material incremental costs are expected.

Policy Issue 2: Consequences of failure through the way assets are distributed

- 26. When an insurance undertaking fails, its assets are distributed to creditors in accordance with the applicable winding-up regime (generally the regime in the jurisdiction where the undertaking has its head office). Directive 2009/138/EC prescribes certain ways in which policyholders should be protected to ensure that they get a fair share of the available assets. In particular insurance claims should have priority over other claims. In addition, in the context of a branch, it would be consistent with the objective of Directive 2009/138/EC for policyholders of the branch not to be treated less fairly than policyholders of the rest of the undertaking.
- 27. Equivalence assessments under Article 227 of Directive 2009/138/EC are not relevant to this issue.

28. Option 1: Assets of a branch must always be segregated and subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.
29. Policyholders: The level of protection for branch policyholders should the undertaking fail is more likely to meet the level required by Solvency II.
30. Industry: All branches would need to organise their business such that appropriate segregation and ownership of branch assets was achieved. Alternatively, Member States would need to alter winding-up legislation such that a branch could be wound up separately to an insolvency proceeding in the jurisdiction where the undertaking has its head office.
31. Supervisor: Monitoring of the arrangements put in place would be required for all branches.

Option 2: Only branches which are subject to Solvency II-compliant winding-up regimes in the jurisdiction where their head office is located are authorised to open branches in the EEA.

32. Policyholders: A reduction in competition and choice.
33. Industry: Undertakings in certain jurisdictions would only be able to operate in the EEA through subsidiaries.
34. Supervisor: No material incremental costs are expected.

Option 3: An assessment is made of the compliance with Solvency II winding-up requirements by relevant NSA's and only branches which are not subject to a Solvency II-compliant winding-up regime are required to ensure that their assets are subject to contractual or legislative arrangements which ensure that they are distributed according to Solvency II requirements.

35. Policyholders: No material incremental costs are expected.
36. Industry: Only certain branches would need to organise their business such that appropriate segregation and ownership of branch assets was achieved.
37. Supervisor: Monitoring of the arrangements put in place would be required for only certain branches.

Policy Issue 3: Risk of failure through poor governance and controls

38. A branch may contribute to the failure of the undertaking of which it is part if its business is not appropriately managed. That management may be exercised by people based in the branch or based in the head office and controlled through systems which are based either in the branch or head office. In either case, those people and systems should be subject to some sort of regulatory regime if the undertaking is authorised by its home country to undertake insurance business. Additional supervision by the EEA NSA may therefore be duplicative.

Option 1: Each NSA relies on the home supervisory authority wherever the management and control functions are located.

39. Policyholders: The level of protection for policyholders would be decreased if the third-country requirements related to governance do not meet Solvency II standards.
40. Industry: No material incremental costs are expected.
41. Supervisor: Full reliance on the governance requirements of a third country would have a negative impact on the ability of the NSA to make sure that the branch is managed according to Solvency II standards, for instance if the third-country legal system is not well adapted to the particular risks of the branch business.

Option 2: The undertaking is required to establish management and control systems for the branch exclusively in the branch which each NSA monitors.

42. Policyholders: No material incremental costs are expected.
43. Industry: Increased costs of compliance and limitations to the freedom to structure business in a competitive way.
44. Supervisor: No material incremental costs are expected.

Option 3: The undertaking can establish management and control functions either in the branch or head office, but the NSA and home supervisory authority both exercise a degree of monitoring of those functions.

45. Policyholders: The protection of policyholders is effective, since the NSA is able to monitor performance of management and control functions and can react accordingly in case of events which can have a negative impact on the branch and eventually on its policyholders.
46. Industry: No material incremental costs are expected.
47. Supervisor: NSA is able to carry out effective supervision over a branch's performance. It has access to relevant information on branch's governance and is able to take necessary actions on the basis of the above-mentioned information. The approach does not impose excessive costs on the undertaking and so maximises cross-border trade and competition in the industry.

Policy Issue 4: Regular reporting requirements that are effective yet proportionate

48. In order to meet the objectives set out in the previous three issues, NSAs need to receive regular information to monitor the financial position of the branch and the whole undertaking. However, the information necessary will vary according to the nature, size and complexity of the branch's business. This variation can be achieved either by allowing NSAs a general discretion to exempt third-country insurance undertakings from certain reporting requirements or to specify which reporting requirements could be limited or exempted provided certain objective criteria were met (for instance criteria based on market share).

Option 1: NSAs to exercise their own judgement as to the extent of the regular reporting requirements necessary for each third-country insurance undertaking according to its circumstances

49. Policyholders: No material incremental costs are expected, since under both options any reduced reporting requirement would only apply if the nature, size and complexity of the risk of the branch operations warranted it.
50. Industry: Proportionality is taken into account for all regular reporting. This is particularly important for the scope of annual reporting for branches of third-country insurance undertakings that would be exempted from Directive 2009/138/EC through Article 4 if they were EEA undertakings.
51. Supervisor: Each NSA can have more refined judgements as to proportional reporting which will be more risk-based, effective and overall less costly.

Option 2: The regular reporting requirements for third-country insurance undertakings should be more standardised and follow criteria equivalent to those set out in Articles 35 (6) and (7) of Directive 2009/138/EC for insurance and reinsurance undertakings .
52. Policyholders: Less flexible reporting requirements could impose higher than necessary costs of compliance on small or low risk undertakings which would be passed on to policyholders.
53. Industry: The costs of compliance may be higher. branches of third-country insurance undertakings
54. Supervisor: Supervisors may have more information available to monitor branches, but some of this may be unnecessary and therefore absorb additional time and costs. branches of third-country insurance undertakings

Comparing the Options

Policy Issue 1: Risk of failure through inadequate own funds

55. These Guidelines adopt the approach described in option 2, this being the most proportionate approach which achieves the objective for these guidelines and the corresponding objectives of Directive 2009/138/EC. Option 1 would make it more difficult for NSAs to safeguard branch policyholders, whereas applying of option 3 may damage cross-border insurance business and competition.

Policy Issue 2: Consequences of failure through the way assets are distributed

56. These guidelines adopt the approach described in option 3, this being the most proportionate approach which achieves the objectives set out in Solvency II Directive.
57. The ways in which appropriate segregation and distribution of assets upon winding-up can be achieved will vary according to the circumstances of the undertaking, the costs and burden involved the laws applicable in the jurisdiction where the branch operates or holds assets, and the degree of risk which the host supervisory authority perceives to the objective of protecting policyholders. For this reason we have chosen not to include in the Guidelines specific means of meeting this definition but rather to set out some possible methods in the Explanatory Text.

Policy Issue 3: Risk of failure through poor governance and controls

58. These guidelines adopt the approach described in option 3, this being the most proportionate approach which achieves the objectives set out in Directive 2009/138/EC.

Policy Issue 4: to provide some proportionality in the reporting package for branches of third-country insurance undertakings

59. The guidelines adopt the approach described in option 1, this being the most proportionate approach which achieves the objectives of Directive 2009/138/EC. Supervisors would be able to apply a risk-based approach to supervision and an appropriate degree of consistency of approach across the European Union can be achieved with informal dialogue facilitated by EIOPA rather than guidelines.

Annex III: Resolution of comments

Summary of Comments on Consultation Paper EIOPA-CP-14/048				
CP-14-048-GL on third-country branches				
<p>EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), Association of Bermuda Insurers and Reinsurers (ABIR), CFO Forum and CRO Forum, Federation of European Accountants (FEE), Insurance Europe, International Underwriting Association of London (IUL), Life Insurance Corporation of India - UK Branch (LICI UK), and The American Insurance Association (AIA).</p> <p>The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/048.</p>				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comment	<p>Although it is clear that the Solvency II Directive is not very specific about how third country branches have to be dealt with, the IRSG believes that the draft adds many new requirements which can be questioned on legal grounds as it appears that EU legislation is being extended to third country undertakings.</p> <p>There is concern over unintended consequences in terms of possible retaliation by third country jurisdictions:</p> <ul style="list-style-type: none"> - the nature of the requirements may lead to retaliation by third country supervisory authorities against branches of EU undertakings in their jurisdictions; - if the same requirements (such as annual and quarterly reporting, approval of key persons and the localisation of assets) were to be requested everywhere, this would add significantly to the costs of EU undertakings with branches in third countries. 	<p>Disagreed</p> <p>These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II and in large part are therefore directed at supervisory authorities and their supervision practices which is not the same as imposing new laws. All requirements are transposed from Solvency II requirements for undertakings. In the case of reporting requirements the directive allows for supervisory authorities to obtain such information as they</p>

			<p>The question also arises whether less stringent requirements can be imposed on third country branches of undertakings which are incorporated in countries whose solvency regime has been declared equivalent or provisionally equivalent by the EC.</p>	<p>require to fulfil their duties and to this end reference can be made in these guidelines to reporting templates developed for insurance undertakings in ITSs. However, the reporting requirements imposed by these guidelines are not absolute and considerable discretion remains for national supervisory authorities to impose reporting requirements in a proportionate way under their national legislation, even if this increases the risk of a lack of convergence.</p> <p>Partially agreed</p> <p>Solvency II provisions on equivalence only apply in the context of groups and reinsurance. There is no legal ground to apply equivalence to third-country branches. However, equivalence decisions will be used as context information to assess the solvency of the whole third-country undertaking. For example, equivalent assessments pursuant to Art.227 of Solvency II</p>
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				<p>provide information on the local accounting system. However EIOPA disagrees to consider the third-country undertaking as solvent because it is established in an equivalent jurisdiction.</p> <p>EIOPA has altered the guidelines and explanatory text to better take into consideration equivalence in a proportionate way. In particular, EIOPA has reduced the burden of requiring each insurance undertaking to provide a legal opinion and instead has provided for supervisory authorities to rely on opinions from other sources to avoid duplication of costs. EIOPA has also increased the emphasis on equivalence decisions made under Solvency II in that the explanatory text suggests that supervisory authorities should take account of those decisions when assessing whether the whole undertaking has an adequate solvency</p>
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			<p>margin.</p> <p>The explanatory text now reads as follows:</p> <p><i>"In most circumstances the national supervisory authority would regard the solvency of the whole undertaking to be adequate where the undertaking is in compliance with the home solvency regime and a positive determination of equivalence has been made under Articles 227 and 260, in so far as an assessment for the purpose of group supervision is relevant to the solvency of an individual undertaking."</i></p> <p>Disagreed</p> <p>EIOPA disagrees to include a specific guideline on proportionality since proportionality should apply across the paper.</p>
2.	ABIR	General Comment	<p>Finally, EIOPA needs to look at the application of the proportionality principle in the case of small third country operations.</p> <p>There are a number of drafting changes needed for which some proposals are submitted.</p> <p>We would like to thank EIOPA for the opportunity to comment on the EIOPA-CP-14/048 Consultation Paper on the draft proposal for Guidelines on the supervision of branches of third-country insurance undertakings.</p> <p>The Association of Bermuda Insurers and Reinsurers (ABIR) represents 21 Bermuda domiciled insurers and reinsurers who are</p>

			worldwide business enterprises with their principal underwriting operations in Bermuda, Europe and the United States. Collectively, 97% of gross premium are written by companies traded on the New York or London stock exchanges (86% of premium written by US SEC registrants). Our members wrote €60.5 billion in global gross written premium (CY 2013) with an aggregate global capital of € 82.45 billion (CY 2013). ABIR members employ more than 9,000 people in Europe, nearly 17,000 in the US, over 1,500 in Bermuda, and nearly 39,000 worldwide (CY 2013).	
3.	CFO Forum and CRO Forum	General Comment	<p>The focus of responses in respect of reporting on QRTs has been in relation to CP-14-052. However many of the comments raised in response to that CP are equally valid in respect of CP -14-048 (where relevant). Accordingly applicable comments have been replicated in this response template to ensure consistency with the comments in respect of regular QRTs within the response to CP-14-052.</p> <p>1. Producing Q4 reporting to much shorter deadlines in addition to annual reporting of the quantitative templates creates an additional reporting burden. We would suggest removing duplication between annual and quarterly reporting and requiring all information to be provided according to the annual deadlines.</p> <p>2. We understand that changes in the QRTs were introduced following Omnibus II (LTG package), Implementing measures changes and Q&A process. However, we notice that every single template has been modified and such a number of changes was not expected.</p> <p>The impact of the changes on the implementation of Pillar 3 will be extremely significant, because not only additional data have been requested but also the design of the templates and the definitions of existing data have been changed. This will impact on IT tools as well as processes and interfaces, and will lead to additional costs and will raise issues regarding the timeline of the Pillar 3 project with potential delay in the implementation of the requirements by insurers, in particular given that the changes to the templates will not in fact be final before the end of June 2015. Moreover, the proposed templates are different from those used for the preparatory phase reporting, meaning work will be required on 2 different processes in</p>	<p>Noted</p> <p>As regards reporting, please see answer to comment 4 raised in response to CP-14-52</p> <p>Please note that the regular reporting (both quarterly and annually) may be limited or exempted by the host supervisory authority.</p>

			<p>parallel.</p> <p>For all the reasons presented above, we believe that NSAs should take into consideration these very late changes when they engage with undertakings on Pillar 3. In practice, the preparatory phase reporting requirements including national specificities should be re-considered in this respect allowing for proxies, shortcuts and limitations in the scope of entities to be covered. Finally, more time should be provided to undertakings in order to implement the final Pillar 3 requirements allowing them to use best efforts, proxies and shortcuts on the QRTs even after Solvency 2 enters into force in 2016.</p> <p>3. The format of the LOG files (PDF) makes data processing and analysis rather difficult. It would be easier to handle if LOG files are delivered in Excel and the format within the templates is consistent.</p> <p>4. For analysing EIOPA requirements it would be helpful if formulae remain within the templates (like in the July 2012 Consultation) or at least within the description field in the LOG file. The validation sheet is difficult to handle and some formulae are missing.</p> <p>5. In order to avoid inconsistencies between QRTs and LOG files and also within QRTs and within LOG files it would be helpful to have one "Consolidated LOG file" for every QRT. A benefit for undertakings is that the requirements are easier to analyse. An example can be provided if helpful.</p> <p>6. Please mark clearly any change in the QRTs / LOG files which has been done compared to the QRTs / LOG files subject to consultation.</p> <p>7. In the Note "Navigating through the Solvency II reporting and disclosure package" it is stated on page 9, point 4.7., that the codification of validations will be changed. Is this change also planned to be performed for the templates themselves? We would appreciate if the codification remains as in the consultation. Every (even small) changes in numbering, codifications etc. creates a very time consuming burden to undertakings as documentation has to be updated.</p> <p>8. Wherever third party names are required (e.g. issuer name in the asset listing template, counterparty in the derivative listing template) EIOPA's preference is to receive the name of third parties as set out</p>	
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			<p>in the LEI data base. In the early stage of Solvency II implementation, LEI coverage is expected to be very low and hence flexibility to apply alternative approaches and simplifications will be needed (for example, using the legal name of those undertakings).</p> <p>9. We have noted several inconsistencies throughout our analysis between the QRTs and LOG files, and also within the QRTs and LOGs. Please note that we have raised specific examples against specific QRTs for your reference.</p> <p>10. The templates issued as part of this consultation exclude any formulae. This makes it significantly more difficult to understand exactly what is required to be input into an individual cell. As a result reliance is being placed on the formulae that were provided in the set of templates issued in 2012. This is far from ideal, and leads to a greater risk of misinterpretation. When does EIOPA intend to provide formulae so that the QRT/requirements are finalised (this impacts, for example, systems built).</p> <p>11. Many QRTs (BS-C1B, Cover-A1A, OF-B1A, VA-C2C, TP-F1 and TP-E1) have been divided into several QRTs without changing the information content (except for the currency). These modifications will strongly impact our IT tools and will lead to additional costs. We are also concerned as regards the delay of such implementations, which doesn't fit with the timeline of the third pillar. We suggest keeping the old formats of these QRTs.</p> <p>(s.03.01/02/03 & s.05.01/02 & s.23.01/03 & s.29.03/04 & s.12.01/02/03 & s.17.01/02/03 : Division of a QRT into several QRTs)</p> <p>12. We have provided detailed comments below on the individual QRTs provided by EIOPA. Where those comments arise on several variants of the same template (including across different consultation papers) we have provided the comment with respect to each relevant variant of the template.</p>	
4.			This comment was submitted as confidential by the stakeholder.	
5.	Insurance Europe	General Comment	1. Insurance Europe appreciates the opportunity to provide comments on the draft guidelines.	Disagreed Proportionality applies to

		<p>We support EIOPA’s intention to ensure a level playing field within the EEA and we recognise the need to strike a balance between not overburdening third country branches disproportionately whilst not giving third country branches a competitive advantage over EEA undertakings subject to Solvency II requirements. We welcome the references to the principle of proportionality with regards to reporting requirements. However, the principle of proportionality should apply throughout the entire guidelines, to reflect appropriately the nature, scale, and complexity of the risks presented by third country branches.</p> <p>We acknowledge the efforts EIOPA is making to ensure that policyholder protection is achieved in branch supervision. However, we are concerned that the requirements imposed in the EIOPA guidance go beyond the level necessary to ensure an adequate level of policyholder protection provided by third country branches. Overly burdensome requirements of branches may hollow out the diversity of legal structures which undertakings currently employ. Accordingly, we have the following concerns:</p> <p>Use of guidelines as legislative instruments</p> <p>Chapter IX of Title I of the Solvency II Directive sets out requirements for third country branches. Guidelines issued under Article 16 of Regulation 1094/2010 should aim to ensure the common, uniform and consistent application of “Union law”. However,</p>	<p>the three pillars in different ways. For Pillar 1, proportionality is applied according to the risks for policy holders rather than the size of the branch. For Pillar 2, proportionality is applied by letting the head-office organise the governance for the whole undertaking. For Pillar 3, proportionality is left to the host supervisors’ judgement who can limit or exempt small undertakings from burdensome reporting. EIOPA disagrees to include a specific guideline on proportionality since proportionality should apply across the paper.</p> <p>Disagreed</p> <p>High standards are imposed to the extent needed for the protection of policy holders.</p> <p>These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II and in large part are therefore directed at supervisory</p>
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		<p>this set of Guidelines imposes significant additional requirements, not mentioned in the Directive, for example by adding additional conditions for authorisation, specifying additional contents for a branch scheme of operations and imposing reporting requirements on third country branches. We question whether EIOPA Guidelines should be used effectively as legislative provisions imposing new requirements on undertakings (since the “comply or explain” process leaves Member States little option but to implement Guidelines). Article 16 gives EIOPA the power to provide guidance and advice on how to apply provisions in EU legal provisions, such as Directives and Regulations, uniformly and consistently. We do not think it should be used to add further regulatory requirements to those appearing in Directives and Regulations.</p> <p>Retaliation by third country jurisdictions</p> <p>We believe that the extensive nature of these requirements may lead to retaliation by third country authorities against branches of EU undertakings in their jurisdictions. In view of the international presence of EU undertakings, such action would be damaging to the EU’s insurance industry. EU undertakings with branches in third countries will incur significant extra costs if the authorities in those countries follow the precedent set by EIOPA and impose onerous regulatory obligations, such as extensive annual and quarterly reporting and demanding authorisation conditions..</p>	<p>authorities and their supervision practices which is not the same as imposing new laws. All requirements are transposed from Solvency II requirements for undertakings. In the case of reporting requirements the directive allows for supervisory authorities to obtain such information as they require to fulfil their duties and to this end reference can be made in these guidelines to reporting templates developed for insurance undertakings in ITSs. However, the reporting requirements imposed by these guidelines are not absolute and considerable discretion remains for national supervisory authorities to impose reporting requirements in a proportionate way under their national legislation, even if this increases the risk of a lack of convergence.</p> <p>In relation to reporting the requirement is set in the Directive. Article 168 applies article 34 to</p>
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				branches established within the Community and belonging to insurance or reinsurance undertakings with head offices situated outside the Community. Article 34 defines the powers of supervisory authorities, among them being the power to require all information necessary to conduct supervision in accordance with Article 35. The Guideline is an instrument to harmonise the application of such power.
6.	IUL	General Comment	<p>Thank you for inviting comments on the draft guidelines on the supervision of third-country branches.</p> <p>We understand the need to protect policyholders and to ensure fair competition between EEA and non-EEA insurers. However, we believe that fairness also requires a reasonable and pragmatic approach to the regulation of third-country branches.</p> <p>We welcome EIOPA's emphasis on the need for proportionality in the application of reporting requirements. In our view, the same general proportionate approach needs to be taken across the board, taking into account the nature, scale and complexity of risks, as indicated in Guideline 48. We think it would be helpful if there were an additional</p>	<p>Noted</p> <p>Agreed</p> <p>The purpose of the guidelines is to provide a reasonable and pragmatic approach, in the context of the entire Solvency II system. High standards are imposed to the extent needed for the protection of policy holders.</p> <p>Disagreed</p> <p>Proportionality applies to the three pillars in different ways. For Pillar 1, proportionality is</p>

		<p>guideline inviting national supervisors to adopt a general approach of pragmatism, flexibility and cost-effectiveness in overseeing third-country branches. That is because of the inherent difficulties encountered by undertakings operating in a foreign jurisdiction. In our view dialogue leading to simple solutions may often resolve issues. For that reason, the guidelines should not be overly prescriptive and should leave it open to national supervisors to work out with individual firms appropriate arrangements in relation to solvency, governance and reporting, within the framework of the Solvency II Directive.</p> <p>The preparation of a legal opinion by the undertaking, as proposed in Guideline 4, is likely to be extremely costly and, moreover, may well not meet all the expectations of the supervisor. The necessity of taking into account the possibility of winding-up also appears to give rise to potentially inordinately complicated and burdensome arrangements and reporting requirements. Dialogue between the host supervisor and the undertaking could well lead to more efficient processes for resolving the issues underlying winding-up matters. Commitments or other arrangements on the part of the undertaking could be found to satisfy the supervisor.</p> <p>We agree that it will be sensible for supervisory authorities to have regard to equivalence decisions that are relevant to assessing the solvency of the whole third-country undertaking. Where a jurisdiction has been deemed equivalent for relevant purposes, the requirement under Guideline 1, that the whole undertaking have an adequate</p>	<p>applied according to the risks for policy holders rather than the size of the branch. For Pillar 2, proportionality is applied by letting the head-office organise the governance for the whole undertaking. For Pillar 3, proportionality is left to the host supervisors' judgement who can limit or exempt small undertakings from burdensome reporting. EIOPA disagrees to include a specific guideline on proportionality since proportionality should apply across the paper.</p> <p>Partially agreed</p> <p>In GL 4 EIOPA has reduced the burden of requiring each insurance undertaking to provide a legal opinion and instead has provided for supervisory authorities to rely on opinions from other sources to avoid duplication of costs.</p>
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			<p>solvency margin, should be deemed to be met, since it will be subject to rules equivalent to those of Solvency II.</p> <p>We note also that, where several firms are from the same home jurisdiction, it would be inefficient and costly in time and resources for the host supervisor and for the firms if the same information and very similar legal opinions were to be required from each one of them.</p> <p>Lastly, the requirements imposed by Europe on third-country undertakings will be seen as a model by other jurisdictions in both emerging and developed markets. The adoption in those markets of new capital and reporting requirements, following the example of the EU, could lead to significant costs for European undertakings seeking to operate abroad. An EU model based on a pragmatic and proportionate approach is therefore needed in the interests of freedom of commerce.</p>	<p>Disagreed</p> <p>EIOPA disagrees to consider the third-country undertaking as solvent because it is established in an equivalent jurisdiction.</p> <p>On equivalence, please also see answer to comment 1</p> <p>Partially agreed</p> <p>See response on this issue in same comment above.</p> <p>Partially agreed</p> <p>High standards are imposed to the extent needed for the protection of policy holders. Ring-fencing only applies to branches coming from third-countries granting a preferential treatment to their nationals.</p>
7.	LICI UK	General Comment	<p>LICI UK branch (LICI UK) is a very small life insurance branch of Life Insurance Corporation of India (LICI) which is a very large global life insurance firm having its head office in Mumbai, India. LICI is wholly owned by the Government of India and is authorised and regulated by the Insurance Regulatory and Development Authority of India (IRDA).</p> <p>The annual GWP (gross written premium) of LICI UK branch is less than £ 5million which is much less than 0.05% of LICI's overall</p>	<p>Partially agreed</p> <p>As regards proportionality, proportionality should apply across the paper. Therefore it is not necessary to include a specific guideline on proportionality. Please</p>

		<p>business</p> <p>1. As we understand the draft guidelines apply with respect to the branches of third country insurance undertakings (ie. LICI UK) and not to the third country insurance undertakings (i.e LICI)</p> <p>2. Guidelines appear to state that the third country insurance undertaking (ie. LICI) has to implement and/or provide information and/or carry out assessments etc in respect of its branch (ie. LICI UK) for a number of TCB guidelines. The role/responsibility of the third country insurance undertaking which is not required to be Solvency II compliant appears to be, excessive and onerous.</p> <p>3. Based on its size, nature, scale and complexity of the risks inherent in the business/operations, LICI UK branch has been categorised as Category 5 firm (small and minimum risk profile) by the PRA,UK. Being a category 5, TCB such as LICI UK, the requirements from third country insurance undertaking (ie. LICI) themselves are therefore disproportionate</p> <p>4. Additionally as the guidelines apply similarly to third country insurance undertakings, whether in Solvency II equivalent/non-equivalent jurisdictions - compliance will be even more excessive and disproportionate for non-equivalent third country undertakings (ie. LICI) and their TCBs (i.e LICI UK)</p> <p>5. Our representation, therefore, as a very small life insurance TCB , to EIOPA in this connection is to :</p> <p>a) Primarily require the Solvency II compliance to be implemented at the branch level (LICI UK), and</p> <p>b) Require respective third country undertakings (i.e LICI) to provide oversight and monitoring in connection with the branch (LICI UK) compliances of Solvency II rules and requirements</p> <p>c) Waive the several information requirements from the third country insurance undertakings, and require the third country insurance undertakings (i.e LICI) to submit their annual global balance sheet prepared in accordance with LICI's home regulatory requirements (ie. IRDA) as evidence of overall solvency of the third country insurance undertaking. This is particularly relevant where the LICI UK branch which is a TCB and a very small and less complex life</p>	<p>also refer to answer to comment 5.</p> <p>As regards equivalence, please see answer to comment 1.</p>
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			insurance branch accounts for much less than 0.05% of LICI's, (the third country insurance undertaking) worldwide business.	
8.	AIA	General Comment	<p>1. The American Insurance Association (AIA) welcomes the opportunity to comment on the EIOPA proposal for Guidelines on the supervision of branches of third-country insurance undertakings.</p> <p>2. AIA is the leading property-casualty insurance trade organization in the United States, representing approximately 300 major U.S. insurance companies that provide all lines of property-casualty insurance to consumers and businesses in the U.S. and around the world. AIA members write more than \$117 billion annually in U.S. property-casualty premiums and approximately \$225 billion annually in worldwide property-casualty premiums. AIA members make up some of the most globally active property-casualty insurers.</p> <p>3. Branches are a well-established form of business around the world that should not be discouraged or disadvantaged if they are complying with local market conduct requirements and policyholders are protected against insolvency. Branches bring capacity and capital, which benefit local markets and consumers. Generally, local markets are doubly protected by local assets and the fact that the local business is written by a much larger entity that would be obligated to cover liabilities even if the local assets were insufficient.</p> <p>4. We are concerned that the proposed EIOPA guidelines shift the focus from policyholder protection to creating requirements that are at least as burdensome as setting up a new entity in the EU. That seems unnecessary, and drastically reduces the efficiency and other advantages that utilizing branches offers to international insurance groups.</p> <p>6. Our general comments on the proposal are as follows:</p> <p>1) The rules on non-admitted insurance and reinsurance generally should be clarified as a necessary context for foreign companies considering the benefits of establishing a branch.</p> <p>2) It should be clear that if the EEA branch of a third-country undertaking is treated similarly to separate undertakings, the Solvency II Directive should give a right to the EEA branches to conduct business in other Member States on the freedom of services</p>	<p>Partially agreed</p> <p>High standards are imposed to the extent needed for the protection of policy holders.</p> <p>It needs to be highlighted that these draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II and in large part are therefore directed at supervisory authorities and their supervision practices which is not the same as imposing new laws. All requirements are transposed from Solvency II requirements for undertakings.</p> <p>As regards proportionality, please see answer in comment 5</p> <p>As regards equivalence, please see answer in comment 1.</p> <p>As regards grandfathering, the</p>

			<p>basis. Where such right is not provided, EEA branches should be subject to less onerous requirements than an insurance undertaking established in the Member State.</p> <p>3) Where there is Solvency II equivalence or some other form of reciprocity, the focus should shift from redundant Solvency II compliance for the branch to simply assuring that there is similar equivalence or reciprocity on branch requirements.</p> <p>4) We encourage EIOPA to consider a “grandfathering” or a longer transition period for existing branch operations.</p> <p>5) As with any EU or other multi-jurisdictional requirement, there should be strong disincentives for local jurisdictions to impose additional requirements.</p>	<p>practical issues surrounding reporting requirements for branches will depend on the approach to proportionality taken by each national supervisory authority. This may include allowance for the time which will be required to obtain the necessary analyses of relevant bankruptcy regimes and hence the eligibility of branch assets to contribute to branch own funds. During this period, undertakings may continue to report branch assets on the basis of existing allocation methods.</p>
9.			This comment was submitted as confidential by the stakeholder.	
10.	IRSG	1.2.	Last line: “to the standards of Directive 2009/138/EC”	Noted
11.	IRSG	1.3.	Third line: “especially concerning ...”	Noted
12.	ABIR	1.3.	<p>We support alternate methods to protect policyholders which ensure ‘a proportionate approach to supervision’ but the consultation paper infers to limiting the principle of proportionality to ‘certain aspects’ of Solvency II, such as valuation, own funds and submission of information. We would respectfully submit that the principle of proportionality should be applied across all of the guidelines to take</p>	<p>Partially agreed</p> <p>On proportionality, please answer to comment 5.</p> <p>Solvency II provisions on equivalence only apply in</p>

			<p>into consideration the nature, scale and complexity of the risks being written. We observe that the proposed guidelines place onerous and substantial regulatory reporting requirements for third-country branches and even require a legal opinion on the distribution of branch assets. It would be a useful exercise for EIOPA to analyse the existing regulatory requirements applied to branches of EEA undertakings operating in non-EEA jurisdictions in order to provide a comparison of the proposed EIOPA guideline requirements.</p>	<p>the context of groups and reinsurance. There is no legal ground to apply equivalence to third-country branches. However, equivalence decisions will be used as context information to assess the solvency of the whole third-country undertaking.</p> <p>EIOPA has altered the guidelines and explanatory text to better take into consideration equivalence in a proportionate way. In particular, EIOPA has reduced the burden of requiring each insurance undertaking to provide a legal opinion and instead we have provided for supervisory authorities to rely on opinions from other sources to avoid duplication of costs. EIOAP has also increased the emphasis on equivalence decisions made under Solvency II in that the explanatory text suggests that supervisory authorities should take account of those decisions when assessing whether the whole undertaking has</p>
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				<p>an adequate solvency margin.</p> <p>Please refer to amended GL 4 and amended explanatory text.</p> <p>As regards reporting requirements, the directive allows for supervisory authorities to obtain such information as they require to fulfil their duties and to this end reference can be made in these guidelines to reporting templates developed for insurance undertakings in ITSs. However, the reporting requirements imposed by these guidelines are not absolute and considerable discretion remains for national supervisory authorities to impose reporting requirements in a proportionate way under their national legislation, even if this increases the risk of a lack of convergence.</p>
13.			This comment was submitted as confidential by the stakeholder.	
14.			This comment was submitted as confidential by the stakeholder.	

15.	ABIR	1.4.	<p>We note that the proposed guidelines are to apply to branches of those undertakings which carry out insurance rather than reinsurance business (1.4). However, we note in 1.6 that the guidelines will apply to those branch operations consisting of insurance business or a “mix of insurance and reinsurance business.” If some Member States were to extend the application of the proposed guidelines to EEA branches of third-country reinsurers, it is questionable whether the same approach could be taken towards branches of third countries that will be found equivalent under Article 172 of Solvency II. It seems that applying the full set of guidelines to reinsurers from equivalent jurisdictions without any adjustment would be incompatible with the equivalent status since these third countries will have already adjusted their solvency regimes applicable to reinsurance undertakings to bring them in line with Solvency II standards. Therefore, any policyholder protection concerns raised by the reinsurance operations of EEA branches of third country reinsurers should not be fundamentally different from those of reinsurance operations of EEA reinsurers. (Reference our comment 1.6)</p>	<p>Partially agreed</p> <p>EIOPA guidelines are constrained by the scope of the Solvency II directive which does not apply to the authorisation and supervision of pure reinsurance branches. The choices which NSAs may make in aligning fully or partially or not at all their regime to these guidelines will be a matter of national discretion. Given that Solvency II does not require reinsurance policyholders to have priority over ordinary creditors (unlike direct policyholders) then there will need to be differences between the two regimes.</p>
16.			This comment was submitted as confidential by the stakeholder.	
17.			This comment was submitted as confidential by the stakeholder.	
18.			This comment was submitted as confidential by the stakeholder.	
19.	ABIR	1.6.	<p>It is disappointing to note that the proposed approach is to treat branches of third-country undertakings from jurisdictions deemed to be equivalent in exactly the same manner as branches of third-</p>	<p>Partially agreed</p> <p>EIOPA has made equivalence one of the</p>

		<p>country insurance undertakings from jurisdictions which are not equivalent. Whilst there seems to be some opportunity for the supervisory authority to have 'regard to equivalence decisions which have been made where they are relevant to assessing the solvency of the whole third-country undertaking', this as presented is only an option and therefore discretionary. It would seem that a third-country jurisdiction having been found to be equivalent would indicate that the branch in question would already be subject to a "Solvency II-like" regime and therefore should be allowed to file and submit financial reporting documents to the relevant EEA national authority that are already submitted to the equivalent third-country jurisdiction in question. The creation of a separate "Solvency II" balance sheet for the branch is redundant and creates additional hurdles to having already achieved equivalent status and therefore recognition as being on par with Solvency II requirements.</p> <p>It should be noted that the Impact Assessment on the risk of failure through inadequate own funds (paragraph 3.12) acknowledges a 'different degree of comfort as to the solvency of the whole undertaking can be taken from the home regime depending upon whether it is assessed as equivalent under Article 227 of the Directive 2009/138/EC, provisionally equivalent, or no assessment has been made.'</p> <p>EIOPA indirectly confirms that there could be a link between equivalence status under Article 227 of Solvency II and the application of the guidelines to EEA branches as paragraph 2.16 of the explanatory text to guideline 3 states that "when assessing the adequacy of the margin of solvency of the undertaking, the supervisor may consider relevant equivalence determinations or advice made pursuant to Article 227 of Solvency II". Notwithstanding the nature and status of EIOPA guidelines, where equivalence is granted, we believe that supervisors should be encouraged to consider the relevant equivalence determinations or advice granted.</p> <p>Further, the equivalence test under article 227 covers third-country solvency regime applicable to (re)insurance undertakings at solo level which corresponds to Pillar I requirements of Solvency II (this</p>	<p>considerations which NSAs should take into account when deciding how to apply reporting requirements in a proportionate manner under the explanatory text of Guideline 48.</p> <p>As regards the creation of separate "Solvency II", balance-sheet is a core element of the supervisory framework developed by these draft guidelines and cannot be abandoned without designing a completely different supervisory framework.</p> <p>On reporting, please see amendment introduced in the explanatory text of GL 48 to explicitly refer to equivalence as criteria to be considered if relevant by supervisory authorities when applying proportionality principle on reporting requirements.</p>
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			equivalence is intended for EU groups). Thus, it is questionable whether an EEA branch of an insurance undertaking with the head office in the equivalent third-country under Article 227 should be subject to the guidelines covering Pillar I requirements (e.g. valuation rules in guideline 22). This is so where the corresponding solvency requirements of that third country are simultaneously recognized by the EU and therefore EEA branches of such entities should also benefit from this recognition. This does not mean that all concerns vis-à-vis branches will have disappeared (e.g. priority of EEA policyholders claims).	
20.			This comment was submitted as confidential by the stakeholder.	
21.	Insurance Europe	1.6.	<p>Third country branches are not within the scope of the equivalence assessments as set out in Article 227 and 260 of the Directive. This paragraph says that supervisory authorities may have regard to equivalence decisions where they are relevant to assessing the solvency of the whole third-country undertaking. Our understanding is that no such assessment is required. Guideline 1 requires the third-country undertaking to have an adequate solvency margin under its home jurisdiction rules, not under Solvency II rules (or their equivalent). Hence, there is no need for a supervisory authority to have regard to equivalence decisions in assessing whether this condition is met.</p> <p>It should also be noted that the assessment of the solvency of the whole third-country undertaking, irrespective of whether local rules are equivalent or not, is not a prerequisite to granting authorization to the branch according to Article 162.</p>	See answer to comment 22 below.
22.	IUL	1.6.	We agree that it will be sensible for supervisory authorities to have regard to equivalence decisions which have been made where they are relevant to assessing the solvency of the whole third-country undertaking. Where a jurisdiction has been deemed equivalent for relevant purposes, the requirement under Guideline 1, that the whole undertaking have an adequate solvency margin, should be deemed to	<p>Partially agreed</p> <p>As regards equivalence, please see answers to comments 1 & 7.</p>

			be met, since it will be subject to rules equivalent to those of Solvency II.	
23.			This comment was submitted as confidential by the stakeholder.	
24.			This comment was submitted as confidential by the stakeholder.	
25.	LICI UK	1.7.	Templates and log files for reporting on the branches (TCB) of third country insurance undertakings have been provided - It is not clear whether the guidelines / information in CP 14-048 including its annexures is to be followed or TCBs can make use of the templates and log files developed under the proposed Implementing Technical Standards for the submission of information to the supervisory authorities	Noted Whenever specified in guidelines 44, 45 and 47, via a reference to the Implementing Technical Standard on the Templates for the Submission of Information, templates and LOGs to be used are the ones from the Implementing Technical Standard on the Templates for the Submission of Information. However, in some very few cases, templates and LOGs are specific to third-country branches, in these cases, there are provided in Technical Annexes III and IV of the third-country branches guidelines.
26.			This comment was submitted as confidential by the stakeholder.	

27.			This comment was submitted as confidential by the stakeholder.	
28.	LICI UK	1.8.	Not clear as to how specific TCB templates will be provided - reference is made to Technical Annexes III & IV	<p>Noted</p> <p>Please, see answer to comment 25.</p> <p>The IT format for submission is to be decided by each supervisory authority. However, the XBRL taxonomy being developed by EIOPA will include TCB templates.</p>
29.			This comment was submitted as confidential by the stakeholder.	
30.			This comment was submitted as confidential by the stakeholder.	
31.	Insurance Europe	1.9.	It is not clear what the spreadsheet mentioned in this paragraph refers to, as what is currently available on the EIOPA website is Technical Annexes III and IV. Please clarify the name of this spreadsheet and where it can be found.	<p>Noted</p> <p>All material will be publically available on EIOPA website.</p>
32.	LICI UK	1.9.	Will the complete package of templates applicable to third country branches be available with the final EIOPA Policy Statement? Simplification of reporting requirements is requested as otherwise excessive and disproportionate.	<p>Noted</p> <p>Please, see answers to comments 3, 25 & 31.</p>
33.			This comment was submitted as confidential by the stakeholder.	
34.			This comment was submitted as confidential by the stakeholder.	

35.			This comment was submitted as confidential by the stakeholder.	
36.	IRSG	1.11.	Under f) last line: "Articles 89 and 90..." Under k): "policyholders within the meaning of Article 268 (g) of Directive 2009/138/EC" Under n) intro: "means any claim which....insurance undertaking ranks..."	Amended
37.			This comment was submitted as confidential by the stakeholder.	
38.			This comment was submitted as confidential by the stakeholder.	
39.	IRSG	Guideline 1 1.13	- First line: "of a branch of a third-country..." Fifth line: "need for supervisory purposes..."	Noted
40.	ABIR	Guideline 1 1.13	- Guideline 1 requires the third-country undertaking to have an adequate solvency margin under its home jurisdiction rules, not under Solvency II rules. In this regard, third-country jurisdictions having been deemed equivalent should automatically be deemed as having an adequate solvency margin.	Partially agreed Please see answer to comment 1.
41.			This comment was submitted as confidential by the stakeholder.	
42.	Insurance Europe	Guideline 1 1.13	- The conditions that a third country undertaking must meet in order for its branch to be granted an authorisation are specified in Article 162(2) of the Solvency II Directive. As noted earlier, we have concerns over whether it is appropriate for EIOPA to add to this list – agreed by EU institutions – by way of Guidelines. If, nevertheless, EIOPA is determined to pursue this course of action the paragraph should read less ambiguously. We suggest the following: When authorising or continuing authorisation of a branch of a third-country insurance undertaking, a host supervisory authority should be	Disagreed These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II and in large part are therefore directed at supervisory

			<p>satisfied that the third-country insurance undertaking meets the conditions specified in Directive Article 162(2). In addition, a host supervisory authority should:</p> <p>a) Be satisfied that the third-country insurance undertaking has the solvency margin required by its home jurisdiction rules. The undertaking may demonstrate this by providing recent confirmation of its solvency position from its home supervisory authority.</p> <p>b) Receive written confirmation from the undertaking that it will provide any information that the host supervisory authority may reasonably need for supervision purposes.</p> <p>As it is currently written, this paragraph, which consists of a single lengthy sentence, and the succeeding paragraph 1.14, require clarification. It is unclear what is meant by an "adequate" solvency margin and how a host supervisory authority should determine adequacy. It is also unclear precisely what information the undertaking should agree to provide to the host supervisor. Our understanding of these paragraphs is that:</p> <p>1) A host supervisor should be satisfied that the undertaking meets the solvency margin required by its home jurisdiction prudential requirements.</p> <p>2) The undertaking should:</p> <p>a. Agree to provide any information which the host supervisor may need for supervision purposes.</p> <p>b. Provide confirmation that it has an adequate solvency margin under its home jurisdiction rules.</p> <p>c. Provide written confirmation from its home supervisor that it meets its home jurisdiction rules.</p> <p>This appears duplicative. Requirement b could be removed and presumably a host supervisor is not required to make its own assessment of whether the undertaking meets home solvency rules, but can rely on a statement provided by the home supervisor.</p>	<p>authorities and their supervision practices which is not the same as imposing new laws. All requirements are transposed from Solvency II requirements for undertakings.</p> <p>Partially agreed</p> <p>Adequate is intended to mean what is adequate in the view of the relevant national supervisory authority. EIOPA has added explanatory text explaining how equivalence decisions have a bearing on the determination of 'adequate' solvency.</p>
43.	IUL	Guideline 1 -	Please see our answers to paragraphs 1.14 and 1.15.	Noted

		1.13		
44.	LICI UK	Guideline 1 1.13	- Third country insurance undertakings (ie. LICI) and TCBs (ie. LICI UK) need to be advised of: i. the basis for adequacy of the solvency margin which will be to the satisfaction of the host regulator (ie. PRA, UK) ii. the type of information required for satisfying host regulators of the whole undertaking's (LICI's) solvency. iii. the type of information that host regulators (PRA,UK) will require for demonstration of the adequacy of solvency at the third country insurance undertaking level (LICI) under the home jurisdiction rules (ie. IRDA) and that the home supervisory authority confirms that those home jurisdiction rules are met. iv. the additional requirements from third country insurance undertakings appear to be disproportionate, as the third country insurance undertakings (ie. LICI in our case) are not required to be Solvency II compliant and/or equivalent. v. Solvency II applies to the third country branches only. Third country insurance undertakings with UK branches already submit their third country insurance undertaking's annual returns / balance sheet from which undertaking's global solvency (using home regulator's solvency rules) is readily available. vi. Third country insurance undertakings like LICI which have Category 5 TCBs, (LICI UK) can submit its global annual return to satisfy host regulators (ie. PRA, UK) of LICI's overall solvency adequacy requirement.	Noted EIOPA expects that, upon implementing these guidelines, NSAs will communicate with firms the types of information required and the format it will be required in, aligned with the provisions in the guidelines.
45.			This comment was submitted as confidential by the stakeholder.	
46.	IRSG	Guideline 1 1.14	- First line: "Host supervisory authorities..."	Noted
47.	ABIR	Guideline 1	- The host supervisory authority should rely on the assessment of the	Disagreed

		1.14	home supervisory authority when the home jurisdiction's solvency regime has been deemed equivalent with Solvency II.	EIOPA disagrees to consider the third-country undertaking as solvent because it is established in an equivalent jurisdiction. On equivalence, please also see answer to comment 1.
48.			This comment was submitted as confidential by the stakeholder.	
49.	Insurance Europe	Guideline 1 1.14	- This paragraph should be deleted as it goes beyond the Directive and the requirements it sets out are hardly manageable. It is unrealistic to expect that the host supervisor will possess the experience necessary to apply the home jurisdiction's solvency regime.	Disagreed High standards are imposed to the extent needed for the protection of policy holders. Ring-fencing only applies to branches coming from third-countries granting a preferential treatment to their nationals. These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II and in large part are therefore directed at supervisory authorities and their supervision practices which is not the same as imposing new laws. All requirements are transposed from

			<p>The host supervisory authority should rely on the assessment of the home supervisory authority, when the home jurisdiction's solvency regime has been deemed equivalent with Solvency II as described under paragraph 1.6 of the introduction.</p>	<p>Solvency II requirements for undertakings.</p> <p>EIOPA disagrees to consider the third-country undertaking as solvent because it is established in an equivalent jurisdiction. Please also refer to answer to comment 1.</p>
50.	IUL	Guideline 1 1.14 -	<p>Paragraph 1.14 appears to duplicate the second half of Paragraph 1.13, which already covers the solvency margin of the whole undertaking under home jurisdiction rules.</p>	<p>Disagreed</p> <p>Paragraph 1.14 highlights that the host supervisor may seek additional information where required to assess the adequacy of the solvency margin of the undertaking as a whole.</p>
51.	LICI UK	Guideline 1 1.14 -	<p>1. Solvency margin of the undertaking as a whole (ie. of LICI) on the basis of the prudential requirements of the home supervisory authority (IRDA) is available in the undertaking's annual balance sheet. This can be submitted annually for satisfying this requirement.</p> <p>2. Any further additional information requirement would be excessive and disproportionate for LICI, the third country insurance undertaking, which is neither required to be Solvency II compliant and/or equivalent. Its solvency adequacy is being sought only on account of its very small branch in the UK (LICI UK) which is required to be Solvency II compliant.</p> <p>3. LICI UK Branch has an existing waiver direction from the UK regulators (PRA & FCA) under which LICI submits its abridged annual global returns duly audited by the external auditors in India and certified by the Directors of LICI.</p> <p>The existing waiver direction states..... "The PRA, on the application</p>	<p>Noted</p> <p>Please see answer to comment 50.</p>

			of the firm, made a direction (1743365) under section 138A of the Financial Services and Markets Act 2000 in March 2014. The effect of the direction is to modify GENPRU 2.1.3R, IPRU (INS) 1.1R, INSPRU 1.1.3R, INSPRU 1.2.1R, INSPRU 3.1.1R and INSPRU 3.2.1R so as to permit the firm to calculate the realistic reserve and realistic balance sheet figures in relation to its UK branch business and on the basis of the valuation and capital resource requirement calculations for the global business as calculated by the Indian parent under the Indian regulatory requirements.”	
52.	AIA	Guideline 1 - 1.14	It is unclear how the host supervisory authority (EU supervisor) would be able to assess the adequacy of the solvency margin of the whole third-country undertaking based on prudential requirements of the home jurisdiction. The EU supervisor should instead request the relevant third-country supervisor to confirm that, under home jurisdiction rules, the third-country insurance undertaking has an adequate solvency margin. Indeed, in paragraph 1.13, the EU supervisor is already required to ask the third-country supervisor to confirm that the undertaking meets the relevant home jurisdiction rules.	Partially agreed Adequate is intended to mean what is adequate in the view of the relevant national supervisory authority. EIOPA has added explanatory text explaining how equivalence decisions have a bearing on the determination of ‘adequate’ solvency.
53.			This comment was submitted as confidential by the stakeholder.	
54.	IRSG	Guideline 2 - 1.15	In our view there should be no need for third country insurers to justify the differences between home country solvency rules and Solvency II requirements within their scheme of operations. Although it seems to be a reasonable expectation that the third country insurer is able to explain which differences have occurred it might not be able to justify the reasons for the differences given that it is not the insurer who has set the rules. Furthermore in case of multiple insurers in the same third country applying for branch authorisation the requirement would lead to a situation in which national supervisors may receive multiple	Partially agreed EIOPA has adjusted the requirements on legal opinions to provide for supervisory authorities to rely on opinions for other sources. Analyses on the legal and practical operation of the bankruptcy regime of a third country shall be

			submissions of the same or similar information as each insurer would be in the need to submit an analysis of the differences. Therefore we suggest that the analysis of differences should only be required on request by the supervisor. Furthermore it should be ensured that an analysis is not necessary if the home country solvency regime has been assessed as equivalent with Solvency II under Article 227 of the Solvency II Directive.	made available to EIOPA, who will make the analyses available to other national supervisory authorities. Therefore the burden requiring each undertaking to provide a legal opinion has been reduced significantly.
55.	ABIR	Guideline 2 - 1.15	Guideline 2 should provide that a third-country undertaking is not required to provide an analysis of the differences between the home country solvency rules and the rules of Solvency II if the home country solvency regime has been deemed equivalent to Solvency II.	Partially agreed Solvency II provisions on equivalence only apply in the context of groups and reinsurance. There is no legal ground to apply equivalence to third-country branches. However, equivalence decisions will be used as context information to assess the solvency of the whole third-country undertaking.
56.	Federation of European Accountants (FEE)	Guideline 2 - 1.15	<p>The scheme of operations required by third country insurers should not be required to justify the differences between home country solvency rules and Solvency II's requirements. The third country insurer, may reasonably be expected to be able to explain what the differences are but would not necessarily be in a position to justify the reasons for them as the reasons for such differences will stem from the differing intentions of those who set the rules.</p> <p>Where national supervisors receive applications for branch authorisation from multiple insurers in the same third country, this guideline would require each insurer to submit an analysis of the differences between home country solvency rules and Solvency II's</p>	Partially agreed Please see answer to comment 54.

			<p>requirements. This could lead to multiple submissions of the same or similar information. To avoid unnecessary duplication, it is therefore suggested that this analysis should be required where requested by the supervisor rather than as a matter of course.</p> <p>Consideration should be given to disapplying this requirement where the home country solvency regime has been assessed as equivalent with Solvency II under Article 227 of the Solvency II Directive.</p>	
57.			This comment was submitted as confidential by the stakeholder.	
58.	Insurance Europe	Guideline 2 1.15	<p>- This guideline should be deleted as it goes beyond the Directive. The guideline asks that third country undertakings provide analyses of the differences between their home jurisdiction's solvency rules and those of Solvency II and then justify those differences. This is an inappropriate request, requiring an undertaking to carry out an academic exercise as a condition for regulatory approval. How well it hands the request will have little bearing on whether its application should be approved.</p> <p>This would be an inefficient way of collecting information about solvency regimes worldwide. Many undertakings applying for branch approval will be located in the same jurisdictions, so the preparation and submission of several analyses of the same solvency regimes and their assessment by EU supervisory authorities will be a waste of time and resources. Insurance undertakings are not responsible for the solvency regimes under which they operate and it is unreasonable to impose a regulatory obligation on them to justify the differences between such regimes and Solvency II.</p>	<p>Partially agreed</p> <p>Please see answer to comment 54.</p>
59.	IUL	Guideline 2 1.15	<p>- Analysis of the differences between two regimes could require a deep and complex examination of theories of regulation and of practices in different parts of the world. It could also generate a great deal of cost and hard work for the undertaking and the host supervisor. It appears to us that what should be expected is that the host jurisdiction should be able to evaluate the capital adequacy of the whole undertaking and that the annual returns of the company and</p>	<p>Partially agreed</p> <p>EIOPA has reduced the burden of requiring each insurance undertaking to provide a legal opinion and instead we have provided for supervisory</p>

			related documentation would provide the information needed for the host jurisdiction to make that evaluation and to understand the home-state regulation of solvency	authorities to rely on opinions from other sources to avoid duplication of costs.
60.	LICI UK	Guideline 2 1.15	- 1. Third country insurance undertakings are not required to be compliant with Solvency II solvency rules. Only the TCB has to comply with Solvency II capital rules & requirements. 2. The reason for the undertaking therefore being asked for an analysis of the differences in Solvency rules between Solvency II regulation and the home supervisory authority's solvency rules are not understood. 3. It is exceedingly onerous and disproportionate for LICI to have to provide this information only on account of having its very small UK branch (less than 0.05% GWP and low risk profile) 4. EIOPA is requested to waive the requirement of a comparative analysis between Solvency II solvency rules and LICI's home regulator's solvency rules	Noted Please see answers to comments 54 & 59.
61.	AIA	Guideline 2 1.15	- Requiring the third-country undertaking to provide an analysis of the differences between the home country solvency rules and the rules of Solvency II is an onerous requirement.	Noted Please see answers to comments 54 & 59.
62.			This comment was submitted as confidential by the stakeholder.	
63.	IRSG	Guideline 3 1.16	- First line: "When determining whether a third-country..."	Noted
64.			This comment was submitted as confidential by the stakeholder.	
65.	IUL	Guideline 3 1.16	- It appears to us that dialogue between the host supervisor and the undertaking could lead to commitments to satisfy the supervisor that branch policyholder claims would be met fairly. That should be an alternative to entering into what could be an exhaustive and	Disagree The third-country insurance undertaking

			resource-hungry examination of the distribution of assets, very probably followed by a further need for legal advice, as is suggested in paragraph 1.19.	may have little or no ability to alter the priorities of creditors. Supervisors need to understand how the branch assets will be distributed in a winding-up of the undertaking
66.	LICI UK	Guideline 3 1.16	- 1. The host regulatory authority has to satisfy themselves of this requirement. The UK Branch returns and financial data will provide this information if/as may be required. 2. The branch assets would be solely used for paying branch liabilities (claims of branch policy holders). Branch would maintain the required solvency for the branch liabilities. 3. Please advise if any other information is required by the host regulator from the TCB in this connection	Noted
67.			This comment was submitted as confidential by the stakeholder.	
68.			This comment was submitted as confidential by the stakeholder.	
69.	Insurance Europe	Guideline 4 1.17	- This paragraph should be deleted as it goes beyond the requirements set by the Directive.	Partially agreed EIOPA has reduced the burden of requiring each insurance undertaking to provide a legal opinion and instead has provided for supervisory authorities to rely on opinions from other sources to avoid duplication of costs.
70.	IUL	Guideline 4	- As suggested in our response to 1.16, there may be more simple and	Partially agreed

		1.17	<p>direct means by which an undertaking can satisfy the host supervisor that branch policyholder claims will be met fairly.</p> <p>The preparation of a legal opinion by the undertaking is likely to be extremely costly and, moreover, may well not meet all the expectations of the supervisor. Dialogue between the host supervisor and the undertaking could well be a more efficient process and lead to commitment to arrangements on the part of the undertaking that would satisfy the regulator.</p>	Please see answer to comment 69.
71.	LICI UK	Guideline 4 1.17	<p>- The legal opinion regarding the winding up arrangements and distribution of branch assets appears to be another additional requirement from the third country insurance undertaking in connection with its UK branch.</p> <p>It is excessive, onerous and disproportionate, considering that the TCB such as LICI UK is very small having minimal risk in both business and risk profile and its third country undertaking -- LICI is very large global life insurance firm. As stated earlier, LICI UK branch is considered to be a Category 5 firm by PRA, UK ie very small and low risk having negligible potential for creating disruption in markets.</p>	<p>Partially agreed</p> <p>Please see answer to comment 69.</p>
72.			This comment was submitted as confidential by the stakeholder.	
73.	IRSG	Guideline 4 1.18	<p>- Second line: "is prepared on the presumption that the branch will be subject..."</p>	Noted
74.			This comment was submitted as confidential by the stakeholder.	
75.	Insurance Europe	Guideline 4 1.18	<p>- The language is unclear. The guideline speaks of the country where the head office of a branch is located. Rather, it should refer to the undertaking's home jurisdiction.</p>	<p>Partially agreed</p> <p>Please see revised GL 4.</p>
76.	IUL	Guideline 4	<p>- Please see our responses to 1.16 and 1.17.</p>	Noted

		1.18		Please see resolution of comments to 1.16 and 1.17.
77.	LICI UK	Guideline 4 1.18	- We request EIOPA to advise the minimum key considerations, explanations and analysis that they would expect in the legal opinion (if LICI is at all required to submit such information), to avoid potential additional legal opinion requirement, if analysis is insufficient and individual providing opinion inadequately qualified	Partially agreed Please see revised GL 4.
78.			This comment was submitted as confidential by the stakeholder.	
79.	IRSG	Guideline 5 1.19	- Third line: "is not sufficient, the third country insurance undertaking ..."	Noted
80.			This comment was submitted as confidential by the stakeholder.	
81.	IUL	Guideline 5 1.19	- Please see our responses to 1.16, 1.17 and 1.18.	Noted Please see resolution of comments to 1.16, 1.17 and 1.18.
82.	LICI UK	Guideline 5 1.19	- Please refer to 1.17 & 1.18 response	Noted Please see resolution of comments to 1.17 and 1.18.
83.			This comment was submitted as confidential by the stakeholder.	
84.	IRSG	Guideline 6 1.20	- Second line: "the technical provisions, as defined in Article..."	Noted
85.	IUL	Guideline 6	-	

		1.20		
86.	IRSG	Guideline 7 - 1.21	Under a): "the assets are distributed in accordance with Article ..." Under b): "the assets..."	Noted
87.			This comment was submitted as confidential by the stakeholder.	
88.	Federation of European Accountants (FEE)	Guideline 7 - 1.22	The reference to 'the insurance claims of branch policyholders' should be extended to also refer to 'branch preferential claims' consistent with paragraphs 1.21(b) and 1.23.	Noted
89.			This comment was submitted as confidential by the stakeholder.	
90.	IUL	Guideline 7 - 1.22	Please see our responses to 1.16, 1.17, 1.18 and 1.19.	Noted Please see resolution of comments to paragraphs 1.16, 1.17, 1.18 and 1.19.
91.			This comment was submitted as confidential by the stakeholder.	
92.			This comment was submitted as confidential by the stakeholder.	
93.			This comment was submitted as confidential by the stakeholder.	
94.	Insurance Europe	Guideline 8 - 1.24	This guideline should be deleted as it duplicates the Solvency II Directive. The Directive automatically allows supervisory authorities to apply Articles 34, 35, 36, 37, 84, 85, 110, 118 and 119.	Disagreed These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent

				with Solvency II.
95.	LICI UK	Guideline 8 - 1.24	UK regulators has to satisfy themselves in this respect - Regulators may advise how they wish to satisfy themselves in this connection given that the LICI UK branch has been categorised as Category 5 firm (small and minimum risk profile) by the PRA, UK based on its size, nature, scale and complexity of the risks inherent in the business/operations	Noted
96.			This comment was submitted as confidential by the stakeholder.	
97.	IRSG	Guideline 9 - 1.25	Title: "Assessment of the financial situation of the branch as..."	Noted
98.			This comment was submitted as confidential by the stakeholder.	
99.	IUL	Guideline 9 - 1.25	Please see our responses to 1.16 and 1.17.	Noted Please see resolution of comments to paragraphs 1.16 & 1.17.
100.	LICI UK	Guideline 9 - 1.25	Please refer to 1.24 response	Noted Please see resolution of comment to 1.24.
101.			This comment was submitted as confidential by the stakeholder.	
102.	IUL	Guideline 10 - 1.26	We suggest that other aspects of supervision could be similarly delegated by one jurisdiction to another for the sake of efficiency, following application from the branches.	Noted
103.	IRSG	Guideline 11 -	Last line: "it considers that the conditions..."	Noted

		1.27		
104.			This comment was submitted as confidential by the stakeholder.	
105.	Insurance Europe	Guideline 12 - 1.28	<p>7. We understand this guideline as aiming to ensure that a third country undertaking informs a host supervisory authority of changes in the location of a branch in the host supervisory authority's jurisdiction. It can be read as requiring a third country undertaking to inform a host supervisory authority of changes in the locations of branches in other countries as well, which would serve no obviously useful purpose. We therefore suggest that paragraph 1.28 is re-worded to read:</p> <p>"The third country insurance undertaking should inform the relevant host supervisory authority of changes in the location of its branch office in the host supervisory authority's member state."</p>	<p>Disagreed</p> <p>Such information is necessary to allow cooperation between host supervisors.</p> <p>Guideline 12 has now become Guideline 11 and reads as follows: <i>"The host supervisory authority should ensure that a third-country insurance undertaking informs it on a continuous basis of the location of the branches which that undertaking has established or intends to establish in any other Member State."</i></p>
106.	IRSG	Guideline 14 - 1.30	Second line: "should promptly inform the supervisory authorities of the other Member States in which the third country insurance undertaking operates about the withdrawal of the advantages"	Noted
107.			This comment was submitted as confidential by the stakeholder.	
108.	Insurance Europe	Guideline 15 - 1.31	This guideline should be deleted as it duplicates the Solvency II Directive. Branches of third-country insurance undertakings are automatically subject to the supervisory review process of Article 36.	<p>Disagreed</p> <p>These draft guidelines intend to develop a comprehensive</p>

				<p>supervisory framework for branches consistent with Solvency II.</p> <p>The purpose of GL 15 is also to highlight that only the branch's operations are subject to supervisory review process.</p>
09.			This comment was submitted as confidential by the stakeholder.	
110.	IRSG	Guideline 16 - 1.32	First line: "granted the advantages referred to in..."	Noted
111.	IRSG	Guideline 17 - 1.35	First line: "The host supervisory.."	Noted
12.			This comment was submitted as confidential by the stakeholder.	
113.	LICI UK	Guideline 17 - 1.35	Host regulator (ie. PRA, UK) to advise whether they wish to communicate with the third country undertaking's regulator –IRDA. LICI as the third country insurance undertaking of LICI UK Branch is subject to IRDA regulations and communicates with IRDA for all regulatory and reporting compliances.	Noted
14.			This comment was submitted as confidential by the stakeholder.	
15.			This comment was submitted as confidential by the stakeholder.	
116.	IRSG	Guideline 18 - 1.37	Last line: "any person charged with a winding-up of the undertaking..."	Noted

17.			This comment was submitted as confidential by the stakeholder.	
118.	Insurance Europe	Guideline 18 - 1.37	This should be deleted because it is unnecessary. The location of branch assets is sufficiently captured in the QRTs: S.06.02, Country of custody C0110 A1.	Disagreed This provision was kept as the reporting of the QRTs might be limited/exempted. It is important to keep the requirement on internal records.
119.	IUL	Guideline 18 - 1.37	Please see our responses to 1.16 and 1.17.	Noted Please see resolution of comment for paragraphs 1.16 & 1.17.
120.	IRSG	Guideline 18 - 1.38	What does the expression "management accounts" mean?	Noted This is a well understood phrase but for the avoidance of doubt means the accounts prepared for the management and control of the undertaking which do not necessarily need to be prepared according to internationally agreed accounting standards.
21.			This comment was submitted as confidential by the stakeholder.	
22.			This comment was submitted as confidential by the stakeholder.	
123.	Insurance Europe	Guideline 19 -	This should be deleted as it duplicates article 166(4) of the Directive	Disagreed

		1.39	and is therefore unnecessary. Furthermore, as stated above, the location of branch assets is already sufficiently captured in the QRTs.	Please see answer to comment 118.
24.			This comment was submitted as confidential by the stakeholder.	
125.	IRSG	Guideline 20 - 1.40	Title: "Quality requirements on the deposit lodged as security" Second line: Article 162 (2) e) of Directive..."	Noted
26.			This comment was submitted as confidential by the stakeholder.	
27.			This comment was submitted as confidential by the stakeholder.	
128.	IRSG	Guideline 20 - 1.41	Delete comma after "not exercise" in the third line	Noted
129.	ABIR	Guideline 20 - 1.41	The guideline seems to impose a very high standard for the deposit that third-country insurance undertakings are required to lodge pursuant to Article 162(2)(e) of Solvency II since the explanatory text to guideline 20 (paragraph 2.35) refers to cash or cash equivalents as assets of sufficiently high quality for the deposit.	Noted High standards are imposed to the extent needed for the protection of policy holders.
30.			This comment was submitted as confidential by the stakeholder.	
131.	IUL	Guideline 20 - 1.41	Please see our responses to 1.16 and 1.17.	Noted Please see resolution of comments for paragraphs 1.16 & 1.17.
32.			This comment was submitted as confidential by the stakeholder.	
133.	IRSG	Guideline 21 -	Title: "Assessment of the quality of the deposit lodged as security"	Noted

		1.42		
34.			This comment was submitted as confidential by the stakeholder.	
135.	Insurance Europe	Guideline 22 - 1.43	This guideline should be deleted as it duplicates Articles 165 and 166 of the Directive.	Disagreed This Guideline was kept for the avoidance of doubt.
36.			This comment was submitted as confidential by the stakeholder.	
137.	Insurance Europe	Guideline 23 - 1.44	This guideline should be deleted as it duplicates the Directive. Article 166 already states that "However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned."	Disagreed These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II. The purpose of the GL 24 is also to highlight that the requirements is addressed to the third-country undertaking.
138.	Insurance Europe	Guideline 24 - 1.45	This guideline should be deleted as it duplicates the Directive. Compliance with the branch SCR is already mentioned under article 166 of the Directive.	Disagreed These draft guidelines intend to develop a comprehensive supervisory framework for branches consistent with Solvency II. The purpose of the GL 25 is also to highlight that the requirements is

				addressed to the third-country undertaking.
39.			This comment was submitted as confidential by the stakeholder.	
140.	Insurance Europe	Guideline 25 - 1.46	This guideline should be deleted as it duplicates the Directive. Compliance with the branch MCR is already mentioned under article 166 of the Directive.	Disagreed Please see answer to comment 138.
41.			This comment was submitted as confidential by the stakeholder.	
142.	IRSG	Guideline 26 - 1.47	Under b): delete the words "if they would be distributed"	Agreed Please see revised Guideline 25.
143.	Federation of European Accountants (FEE)	Guideline 26 - 1.47	In the first sentence the reference to 'the insurance claims of branch policyholders' should be extended to also refer to 'branch preferential claims' consistent with point (b) of the second sentence.	Disagreed These guidelines aim at protecting the insurance claims of branch policy holders.
144.	IUL	Guideline 26 - 1.47	Please see our responses to 1.16 and 1.17.	Noted Please see resolution of comments to paragraphs 1.16 & 1.17.
45.			This comment was submitted as confidential by the stakeholder.	
146.	IRSG	Guideline 27 - 1.48	Intro second sentence: "so that it is able to assess"	Noted
47.			This comment was submitted as confidential by the stakeholder.	

148.	IUL	Guideline 27 - 1.48	Please see our responses to 1.16 and 1.17.	Noted Please see resolution of comments for paragraphs 1.16 & 1.17.
149.	LICI UK	Guideline 27 - 1.48	<p>Third-country insurance undertaking is required to provide all the information listed under 1.48 (a) to (k) for assessment of branch assets and their availability for payment of branch liabilities</p> <p>Extent of information required is onerous, excessive and disproportionate, if a very large global third country insurance undertaking (ie. LICI - which is not required to comply with Solvency II directives), is required to provide this disproportionate amount of information in relation to assessment, availability, and movement of assets of its very small UK branch (LICI UK - GWP less than £5m only and less than 0.05% of LICI's global business).</p> <p>LICI's (third-country insurance undertaking) global solvency should be adequate to satisfy host regulators (PRA) of the capital adequacy of its worldwide business and the way the LICI UK branch assets are ring-fenced for making them available to UK branch policyholders only.</p>	Disagreed Please see answer to comment 114.
50.			This comment was submitted as confidential by the stakeholder.	
151.	IRSG	Guideline 28 - 1.49	Second line: delete the words "system of"	Disagreed This guideline refers to the "System of governance" as it used in the SII Directive.
152.	ABIR	Guideline 28 - 1.49	The Guideline should provide that the third-country insurance undertaking is not required to comply with the system of governance requirements under Articles 41 to 50 of Solvency II with regard to branch operations if the governance requirements of the third country have been deemed equivalent to Solvency II. The third-country	Partially agreed Compliance with the System of Governance requirements under Art.41 to 50 of Solvency

			undertaking should be able to apply the equivalent third-country governance rules to the branch operations.	II Directive does not prevent the branch to apply the equivalent third-country governance rules to the branch operations
53.			This comment was submitted as confidential by the stakeholder.	
154.	AIA	Guideline 28 - 1.49	<p>9. An important underpinning of global insurance markets is that groups should be free to use the corporate form of their choice when operating abroad, subject to appropriate regulations. However, we are concerned that the Governance and Risk Management guidelines (i.e. guidelines 28 to 36) will place regulatory burdens on branches and the insurance group that do not reflect the principle of proportionality that is central to the stated aims of the branch supervision guidelines (see paragraph 1.3). Applying governance and risk management requirements under Solvency II, including the ORSA, to branches is not proportional, is inconsistent with the limited scope of branch operations, and is duplicative of the contemplated requirements with respect to the foreign entity generally. It effectively means that the system of governance of a third-country undertaking will have to be Solvency II-compliant, at least to the extent that it covers branch operations. Since the system of governance of the undertaking is normally based on third-country governance requirements, it may be difficult in practice to impose two sets of standards within the undertaking's corporate structure: an undertaking-wide governance model based on third-country rules and a Solvency II-based governance for branch operations.</p> <p>10. If requirements on branches are too onerous, EIOPA's guidelines could inadvertently discourage the use of branches and the development of insurance markets as a result. We suggest that the guidelines for governance and risk management need to reflect the differences between branches, subsidiaries of non-EEA insurance</p>	<p>Disagreed</p> <p>High standards are imposed to the extent needed for the protection of policy holders.</p> <p>In addition, we should not include a specific guideline on proportionality since proportionality should apply across the paper.</p>

			groups, and EEA insurance groups. This comment concerns guidelines 28 to 36 (paragraphs 1.49 to 1.57).	
55.			This comment was submitted as confidential by the stakeholder.	
156.	IRSG	Guideline 29 - 1.50	Second line: "the branch assets in order to ensure that they..."	Noted
157.	IRSG	Guideline 30 - 1.51	Fourth line: "information in its regular reporting..."	Noted
58.			This comment was submitted as confidential by the stakeholder.	
59.			This comment was submitted as confidential by the stakeholder.	
60.			This comment was submitted as confidential by the stakeholder.	
161.	Insurance Europe	Guideline 32 - 1.53	Guideline 32 and 33 should be combined as they deal with the same matter. The current paragraph 1.54 should be the initial paragraph followed by 1.53	Noted
162.	LICI UK	Guideline 32 - 1.53	The general representative of LICI UK Branch will be the PRA approved person, who under PRA's proposed changes to the 'approved person regime' can be the 'third country branch manager'. This person will also effectively run the branch operation. As LICI UK is a very small TCB, the approved person (general representative in this case) could hold multiple responsibilities including key functions. We seek further clarification in this matter from EIOPA.	Noted
63.			This comment was submitted as confidential by the stakeholder.	

164.			This comment was submitted as confidential by the stakeholder.	
165.	IUL	Guideline 33 - 1.54	When the person subject to the fit and proper assessment does not live in the country or, indeed, on the continent in which the branch is located, national supervisors need to bear in mind that direct access to the person will not always be practical or reasonable, so face-to-face interviews should be required only exceptionally and arranged on mutually acceptable dates.	Noted
66.			This comment was submitted as confidential by the stakeholder.	
167.	IRSG	Guideline 34 - 1.55	Last line: "the branch operations"	Noted
68.			This comment was submitted as confidential by the stakeholder.	
169.	LICI UK	Guideline 34 - 1.55	<p>Guideline 34 - Own risk and solvency assessment (ORSA) states</p> <p>The third-country insurance undertaking should perform, at least annually, an ORSA complying with Article 45 of Directive 2009/138/EC with regard to branch operations.</p> <p>However under explanatory text 2.76 of Guideline 34 it states</p> <p>A third-country insurance undertaking may fulfil its obligations under Article 45 of Directive 2009/138/EC by performing an assessment substantially equivalent to an ORSA in respect of the entirety of its operations, prepared in accordance with the requirements of a jurisdiction deemed to be equivalent for purposes of Directive 2009/138/EC.</p> <p>Apparently there is some contradiction between the two statements which are highlighted. Please advise on this matter.</p>	<p>Disagree</p> <p>The explanatory text to current GL.33 offers a modality for implementing this guideline.</p>
170.	AIA	Guideline 34 -	Requiring an annual (or more frequent) ORSA (guidelines 34, 35, 36) could place an undue burden on branches, particularly those that	<p>Disagreed</p> <p>Solvency II requires the</p>

		1.55	have minor operations and are closely tied to the head office of the undertaking. The solvency requirements and any ORSA requirements would be part of the home country solvency regulation set forth in guideline 1. Having a separate solvency, ORSA or governance requirement for the branch is inconsistent with guideline 1 and does not reflect the limited operations of a typical branch. The focus of branch regulation should be local market conduct compliance and a reasonable level of local assets or security to protect local policyholders.	preparation of an ORSA for the branch – EIOPA does not have the ability to waive this requirement. The Guidelines do limit the scope of the ORSA to the branch operations and is a core element of the Solvency II Supervisory framework.
71.			This comment was submitted as confidential by the stakeholder.	
172.	IRSG	Guideline 35 - 1.56	Title: "Material risks to be included in the ORSA"	Noted
73.			This comment was submitted as confidential by the stakeholder.	
174.	IUL	Guideline 35 - 1.56	The inclusion of all material risks could be construed as a requirement to report on every detailed aspect of the business of the whole undertaking. In our view, there should be included only major risks to the whole group that could have a significant effect on the branch.	Partially agreed The requirement to take into account all material risks for branch operations and any risk for other operations of the third-country undertaking that may have effect on branch operations is justified by the need to understand the risks that may have impact on the branch operations.
175.	LICI UK	Guideline 35 -	1. ORSA is meant for the TCB only. 2. However it is being extended to include any risks with regards to	Disagreed Please see answer to

		1.56	<p>the third country insurance undertaking's other operations which may have a material impact on UK branch operations. Analysis of such risks will be extremely onerous and disproportionate for LICI</p> <p>3. ORSA does not apply to the third country insurance undertaking, but to the UK Branch only. LICI UK branch is the only branch of LICI operating in EEA. The LICI UK Branch has no business interactions and or inter-dependence with other operations including other overseas operations of LICI</p> <p>4. Any consideration of risks with regard to undertaking's other operations is considered disproportionate especially when the LICI UK branch is considered to be a Category 5 firm by PRA, UK ie. very small and low risk having negligible potential for creating disruption in markets.</p>	comment 174.
176.	AIA	Guideline 35 - 1.56	<p>Many smaller branches offer highly specialized lines that, while essential to corporate policyholders, are not offered on a scale that would support a subsidiary. We understand that France, Germany and Poland already require separate ORSAs for branches, and that some undertakings with branches in those countries have found the requirement to be very burdensome and disproportionate to the scale of their operations. We hope that such requirements will not be duplicated in other markets as a result of the EIOPA guidelines.</p> <p>This comment also applies to guideline 36 (paragraph 1.57).</p>	Noted
77.			This comment was submitted as confidential by the stakeholder.	
178.	IRSG	Guideline 36 - 1.57	Title" the ORSA"	Noted
79.			This comment was submitted as confidential by the stakeholder.	
180.	IUL	Guideline 36 - 1.57	Please see our responses to 1.16 and 1.17.	Noted Please see resolutions to comments for

				paragraphs 1.16 & 1.17.
81.			This comment was submitted as confidential by the stakeholder.	
182.	IRSG	Guideline 37 - 1.58	Second line: "policyholders..."	Noted The comment is not clear.
83.			This comment was submitted as confidential by the stakeholder.	
184.	IUL	Guideline 38 - 1.59	With regard to (e), the definition of "significant concerns" could be interpreted very widely. In our view, there should be included only major concerns for whole group that could have a significant effect on the branch.	Partially agreed When assessing which concerns from the home supervisory authority is to be reported, third-country insurance undertakings should apply a materiality principle, represented in this case by the word "significant".
185.	LICI UK	Guideline 38 - 1.59	<p>1. LICI UK, a very small UK TCB will be applying to PRA for waiver of quarterly reporting. It will submit annual return as per Solvency II standards on its branch business.</p> <p>2. As regards its parent undertaking ie. LICI will submit annual returns and balance sheet as calculated under the Indian regulatory requirements (ie. IRDA requirements) providing solvency and other information</p> <p>3. The UK Branch ORSA will also be submitted</p>	Noted Guideline 38 establishes the information to be reported to the host supervisory authority. This guideline is to be read in accordance with Guideline 48, on reporting proportionality. The implementation of such guidelines is to be discussed with each National Competent

				Authority.
186.	AIA	Guideline 38 - 1.59	<p>Reporting should be limited to the core activities of the branch as determined by the third country undertaking and should not extend to functions and processes not necessary to the branch operations and not performed locally. They should be limited to the adequacy of the capital or assets available locally for the branch.</p> <p>This comment relates to guidelines 38 to 50 (paragraphs 1.59 to 1.82).</p>	<p>Partially agree</p> <p>These guidelines aim at having a comprehensive framework for the supervision of third-country branches, including reporting to the host supervisory authorities. In this regards, reporting should focus essentially on branch operations.</p>
87.			This comment was submitted as confidential by the stakeholder.	
188.	LICI UK	Guideline 38 - 1.60	The information sought from the third county insurance undertaking (ie. LICI) is extremely onerous for having a miniscule , small and extremely low risk profile UK branch. The understanding was that third country undertaking would be required to provide information on adequacy of entity level capital only	<p>Partially agreed</p> <p>Please, see answers to comment 3 and 185.</p>
89.			This comment was submitted as confidential by the stakeholder.	
90.			This comment was submitted as confidential by the stakeholder.	
191.	IRSG	Guideline 39 - 1.62	Under a) third line: "undertaking from those results"	Amended
192.	Insurance Europe	Guideline 39 - 1.62	Please amend the title to "Own Risk and Solvency Assessment Supervisory Report".	Amended

193.			This comment was submitted as confidential by the stakeholder.	
194.	IRSG	Guideline 39 - 1.63	Second line: "should also cover ..."	Amended
195.	LICI UK	Guideline 39 - 1.63	Please refer to 1.56 response	Noted Please, see answer to comment 175.
196.			This comment was submitted as confidential by the stakeholder.	
197.	IRSG	Guideline 40 - 1.64	Second line: "which requires conversion ..." As the source of the exchange rate to be used for the balance sheet in the Solvency II context is specified insurers may need to retranslate balance sheet items compared to the exchange rate used for accounting purposes, i.e. complexity may be (unnecessarily) added. So, we suggest, to permit the use of the closing exchange rate which are already used under the insurer's applicable GAAP, even if this has some negative influence on comparability.	Agreed The Guideline was amended to allow the use of the exchange rate from the undertaking's financial statements.
198.	IRSG	Guideline 40 - 1.66	Last line: "as used for accounting purposes".	Amended
199.	CFO Forum and CRO Forum	Guideline 40 - 1.67	1. It is difficult to apply the requirement relating to using exchange rates issued by the European Central bank or the National Central Bank due to the following reasons: FX rates published by the BOE do not cover the total population of FX rates that may be needed for reporting – e.g. FX rate for Indonesian rupiah, Vietnamese dong, Philippine peso, Cambodian riel, Ghana cedi etc. are not published by the BOE. The European Central bank (ECB) published FX rates are only between Euro (base currency) and other currencies. UK insurers need	Agreed Please, see answer to comment 197.

			<p>FX rates between Pounds and other currencies. We also note there is a coverage issue with ECB rates as well. Furthermore, the application of ECB/NCB rates would be inconsistent with FX rates currently used for all other purposes / systems, e.g. for statutory accounting. The relevant market data sources have been carefully chosen and feed into audited reports. Introducing a separate data source just for Solvency II purpose would increase complexity and create additional costs. We propose the following wording (in case EIOPA regards a specification on FX rates to be necessary): (4) The conversion into the Solvency II reporting currency as referred to in paragraph 1 and 2 shall be calculated by applying an exchange rate which is available from reliable market data sources such as those used for the statutory reporting or reported by the European Central Bank or the relevant national central bank.</p>	
200.	Federation of European Accountants (FEE)	Guideline 40 - 1.67	<p>The specification of the source of the exchange rate to be used for the balance sheet may require the undertaking to retranslate balance sheet items compared to the exchange rate used for branch accounting purposes. This may add undue complexity into the reporting process compared to permitting the use of the closing exchange rate used under the undertaking's applicable GAAP.</p>	<p>Agreed</p> <p>Please, see answer to comment 197.</p>
201.	IRSG	Guideline 41 - 1.68	<p>First line: "submitted to the host supervisory..."</p>	Amended
202.			<p>This comment was submitted as confidential by the stakeholder.</p>	
203.			<p>This comment was submitted as confidential by the stakeholder.</p>	
204.	IRSG	Guideline 43 - 1.70	<p>Intro third line: "determined by the national supervisory authorities or by the group supervisor..."</p>	Amended

205.	Federation of European Accountants (FEE)	Guideline 43 - 1.70	For the sake of clarity, it may be helpful to specify in this Guideline how reported figures should be rounded (for example, always rounded up, or rounded up if greater than or equal to 0.50, rounded down otherwise).	Noted Please see answer to comment 26 raised in response to CP-14-52.
206.			This comment was submitted as confidential by the stakeholder.	
207.			This comment was submitted as confidential by the stakeholder.	
208.			This comment was submitted as confidential by the stakeholder.	
209.			This comment was submitted as confidential by the stakeholder.	
210.			This comment was submitted as confidential by the stakeholder.	
211.	IRSG	Guideline 45 - 1.73	<p>Under a) and b) ii): delete the words "detailing the information"</p> <p>Under c) third line: "according to the branch management accounts value for the branch operations". What are "management accounts"?</p> <p>Under i) second line: "...used in the branch managements accounts for the branch operations".</p> <p>Under j): the text is unclear. Should it read: "applying the valuation and recognition principles used in the management accounts for the operations of the branch"?</p> <p>Under l): What does this mean? Shares held?</p> <p>Under v): "the best estimate of future..."</p> <p>Under w) third line: "risk groups..."</p> <p>Under x): delete the words "description of"</p> <p>Under dd) "cash flows base on the best..."</p>	<p>Disagreed: No, this wording was kept for the sake of clarity.</p> <p>Noted: "Management accounts" are the accounts used at a branch level</p> <p>Amended</p> <p>Amended</p> <p>Noted: This means that all CIU held by the branch are to be look-through.</p> <p>Noted: This is the name of the template.</p> <p>Amended</p>

			<p>Under gg): " Information on the loss distribution..."</p> <p>Under ii): "Information on the non-life..."</p> <p>Under nn): "Information on annual movements in ..."</p> <p>Under pp): "Information on the Solvency Capital Requirement calculated..."</p> <p>Under pp) ii: "the standard formula and a partial..."</p> <p>Under qq): "Information on the Solvency Capital Requirement .."</p> <p>Under qq) vii): "in the calculation of the Solvency Capital Requirement..."</p> <p>Under rr): "In the case of the existence..."</p> <p>Under ss) second line: "catastrophe risk, ..."</p> <p>Under uu): "on the Minimum Capital Requirement insurance undertakings that pursue:"</p> <p>Under uu) i: "only life or only non-life insurance activity..."</p> <p>Under zz and zz)aaa: What means "basic data" and "shares data"?</p>	<p>Noted: This is the name of the template.</p> <p>Noted: This is the name of the template.</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Amended</p> <p>Comment not clear</p> <p>Noted: These elements are the name of the templates.</p>
212.			This comment was submitted as confidential by the stakeholder.	
213.	Insurance Europe	Guideline 45 - 1.73	<p>Paragraph ss) the specific reference to non-life catastrophe risk is not in line with the RSR ITS (Implementing Technical Standards on the templates for the submission of information to the supervisory authorities), article 8(1)ww. Paragraph 1.73 ss). The reference to the use of a partial internal model should be generalized, and the paragraph should therefore be redrafted to</p> <p>"When a partial internal model is used in relation to the non-life catastrophe risk, this template information defined in subparagraph qq. shall only be reported in relation to the standard formula unless</p>	Amended

			otherwise decided on the basis of Guideline 48.” Paragraph 1.73 tt) This paragraph is not perfectly in line the RSR ITS (Implementing Technical Standards on the templates for the submission of information to the supervisory authorities) article 8(1)xx. Paragraph 1.73 tt) should therefore be redrafted to “When a full internal model is used, this template information defined in sub-paragraph qq. shall not be reported.”	
214.			This comment was submitted as confidential by the stakeholder.	
215.			This comment was submitted as confidential by the stakeholder.	
216.			This comment was submitted as confidential by the stakeholder.	
217.	IRSG	Guideline 46 - 1.75	Second and third lines of intro: “with Guideline 48, submit on a quarterly basis to the host supervisory authorities, in respect of the branch operations...” Under a): delete the words “detailing the information” Under c): delete the word “both” Under d) second line and under e): “principles used in the branch management accounts for the branch operations” Under g): Clarify “collective investment undertakings held” Under m): “Information on the Minimum Capital Requirement that pursue:” Under m)i: “only life or non-life insurance”	Amended Disagreed: No, this wording was kept for the sake of clarity. Amended Amended Noted: This means that all CIU held by the branch are to be look-through. Amended Comment not clear
218.			This comment was submitted as confidential by the stakeholder.	
219.	Insurance Europe	Guideline 46 - 1.75	1.75j) please change “Annex x” into “Annex I”	Amended

220.	LICI UK	Guideline 46 - 1.75	LICI UK will apply for waiver of quarterly reporting so that an annual supervisory report will be adequate and proportionate.	Noted Please, see answers to comments 3 and 185.
221.			This comment was submitted as confidential by the stakeholder.	
222.	IRSG	Guideline 46 - 1.76	Third line: "... paragraph refers..."	Amended
223.			This comment was submitted as confidential by the stakeholder.	
224.	Insurance Europe	Guideline 46 - 1.76	<p>8. This guideline would benefit from a more explicit reflection of where supervisors should expect to apply proportionality and materiality principles. Similar to article 7 of the Implementing Technical Standard on the Templates for the Submission of Information (Implementing Technical Standards on the templates for the submission of information to the supervisory authorities), the following paragraphs should be added:</p> <p><input type="checkbox"/> Under section c) S.02.01.o: "When submitting the information for template S.02.01.o insurance and reinsurance undertakings may apply proportionality and materiality principles. In making assessments of materiality, it may be recognised that quarterly measurements may rely on estimates and estimation methods to a greater extent than measurements of annual financial data. The measurement procedures for the quarterly reporting shall be designed to ensure that the resulting information is reliable and complies with the Solvency II standards and that all material information that is relevant for the understanding of the data is reported."</p> <p><input type="checkbox"/> Under section j) S.12.01.o: "When submitting the information for template S.12.01.o insurance and reinsurance undertakings may apply simplified methods in the calculation of the technical provisions"</p> <p><input type="checkbox"/> Under section k) S.17.01.o: "When submitting the information for</p>	Agreed An additional Guideline (new GL 47) has been added to reflect this point.

			templates S.17.01.o insurance and reinsurance undertakings may apply simplified methods in the calculation of the technical provisions"	
225.			This comment was submitted as confidential by the stakeholder.	
226.	IRSG	Guideline 47 - 1.77	<p>Under a): text unclear- need to specify</p> <p>Under d): "Solvency Capital Requirement"</p> <p>Under d) ii): "the standard formula and a partial...."</p> <p>Under e intro: "Solvency Capital Requirement"</p> <p>Under e) vii: "Solvency Capital Requirement"</p>	<p>Noted</p> <p>Please refer to the corresponding template.</p> <p>Amended</p> <p>Amended</p> <p>Amended</p>
227.			This comment was submitted as confidential by the stakeholder.	
228.	Insurance Europe	Guideline 47 - 1.77	<p>9. 1.77 f) the specific reference to non-life catastrophe risk is not in line the RSR ITS (Implementing Technical Standards on the templates for the submission of information to the supervisory authorities) article 8(2)f.</p> <p>10. Paragraph 1.77 f) should therefore be redrafted to:</p> <p>11. "When a partial internal model is used in relation to the non-life catastrophe risk this template information defined in paragraph e), should only be reported in relation to the standard formula unless otherwise decided on the basis of Guideline 48."</p> <p>1.77 g) This paragraph is slightly misaligned with the RSR ITS (Implementing Technical Standards on the templates for the submission of information to the supervisory authorities) article 8(2)g.</p> <p>Paragraph 1.77 g) should therefore be redrafted to</p> <p>"When a full internal model is used this template information defined in paragraph e. shall not be reported."</p>	Amended

229.			This comment was submitted as confidential by the stakeholder.	
230.	IRSG	Guideline 47 - 1.78	The text of the intro is unclear – need to specify Under a): “and the valuation in the undertaking’s financial statements”	Noted This information is to be reported to the host supervisory authority in case the branch has at least a ring fenced fund or a matching portfolio. Amended
231.			This comment was submitted as confidential by the stakeholder.	
232.			This comment was submitted as confidential by the stakeholder.	
233.	IRSG	Guideline 47 - 1.79	Delete the words “the following information” in the intro	Amended
234.			This comment was submitted as confidential by the stakeholder.	
235.	LICI UK	Guideline 47 - 1.79		
236.			This comment was submitted as confidential by the stakeholder.	
237.	IRSG	Guideline 48 - 1.80	First line: “should consider to limit...”	Amended
238.	Insurance Europe	Guideline 48 - 1.80	We propose that guideline 48 regarding proportionality reporting is moved to the beginning of the “quantitative reporting requirements for third country insurance undertaking” section to emphasise the	Noted The order of the guidelines does not

			significance of proportionality.	mean one guideline is more important than the others.
239.	IUL	Guideline 48 - 1.80	Guideline 48 appears very sensible. It will relieve both firms and regulators of unnecessary effort and increase efficiency accordingly.	Agreed Welcomed and agreed
240.	LICI UK	Guideline 48 - 1.80	Proportionality considerations are requested for both TCBs and their third country undertaking's reporting requirements – 1) LICI UK branch (TCB) will submit annually the solvency assessment and balance sheet as required by Solvency II rules 2) LICI as third country insurance undertaking will submit its annual balance sheet for its overall global operations as per regulatory requirements of its home regulator (IRDA)	Noted Please, see answers to comments 3 and 185.
241.			This comment was submitted as confidential by the stakeholder.	
242.	IRSG	Guideline 49 - 1.81	Clarify the words "and the remaining part" in fourth line	Noted The remaining part is the business of the undertakings after deduction of the material RFF and material MAP parts.
243.			This comment was submitted as confidential by the stakeholder.	
244.	IRSG	Guideline 50 - 1.82	Third line: "authorities comply..."	Amended
245.	Insurance Europe	Guideline 50 - 1.82	Please amend this guideline so it refers to the host supervisory authority and not the national supervisory authority to use consistent references.	Amended

246.			This comment was submitted as confidential by the stakeholder.	
247.	IRSG	Guideline 51 - 1.83	Title: "Deadlines for the submission of the regular supervisory report"	Amended
248.			This comment was submitted as confidential by the stakeholder.	
249.	IRSG	Guideline 52 - 1.84	Title: "for submission of the regular..."	Amended
250.	IRSG	Guideline 53 - 1.85	First line: "Where the..." Last line: " the periods referred to in Guideline 51"	Amended
251.			This comment was submitted as confidential by the stakeholder.	
252.	IRSG	Guideline 54 - 1.86	Title: "submission of the ORSA..."	Amended
253.			This comment was submitted as confidential by the stakeholder.	
254.	IRSG	Guideline 55 - 1.87	Title: "submission of the annual...."	Amended
255.			This comment was submitted as confidential by the stakeholder.	
256.	IRSG	Guideline 56 - 1.88	Title: "submission of the..."	Amended
257.			This comment was submitted as confidential by the stakeholder.	

258.	IRSG	Guideline 57 - 1.89	Last line: "application of ..."	Amended
259.	IRSG	Guideline 58 - 1.90	<p>First line of intro: "application of..."</p> <p>Under a), b), c): delete the words "detailing the information"</p> <p>Under d): "and the valuation in the management accounts of the branch for the branch operations"</p> <p>Under f): "the Solvency Capital Requirement" and "a partial internal model"</p> <p>Under g): "Minimum Capital Requirement" and "pursue"</p> <p>Under g) i: "or only non-life insurance"</p>	<p>Noted</p> <p>Please, see answer to comment 211.</p>
260.	LICI UK	Guideline 58 - 1.91	<p>1. Difference between previous year's and current year's branch asset valuation can arise only on account of application of Solvency II rules in current year's accounts. The requirement for third- country insurance undertakings to submit to the host supervisory authority, separately for each material class of branch assets and branch liabilities, a qualitative explanation of the main differences between the figures reported in the opening valuation and those calculated according to the solvency regime previously in place, is excessive and avoidable.</p> <p>2. EIOPA is requested to waive this requirement and accept from LICI UK – a very small TCB their current year's asset valuation made according to Solvency II rules</p>	<p>Noted</p> <p>Please, see answers to comments 3 and 185.</p>
261.	IRSG	Guideline 59 - 1.92	Title: "Deadline for the submission of the ..."	Amended
262.			This comment was submitted as confidential by the stakeholder.	
263.	IRSG	Guideline 60 -	Title: "deadline for the submission of the..."	Amended

		1.93		
264.			This comment was submitted as confidential by the stakeholder.	
265.	Insurance Europe	Guideline 60 - 1.93	As there are transitional measures set out in Article 308b of the Directive, it does not seem logical that the guidelines addressing these transitional measures are not at the forefront of the "frequency and deadlines" as these are the deadlines that apply until 2020.	Noted Transitional provisions are located in a dedicated part from the other guidelines. The location of the Guidelines do not legally matter.
266.	IUL	Guideline 60 - 1.93	The transitional arrangements will be very helpful, but for some firms, operating under different financial years from their competitors, anomalies could still arise where they might find themselves reporting many months in advance of other companies. We suggest that national supervisors should be expected to be flexible when such cases are brought to their attention.	Noted Specific cases should be dealt with the National competent authority.
267.	IRSG	Guideline 61 - 1.94	Title: "deadline for the submission of the annual...." Under c): "templates related to the ..."	Amended
268.	IRSG	Guideline 62 - 1.95	Title: "Deadlines for the submission of the quarterly..."	Amended
269.	Insurance Europe	Guideline 62 - 1.95	Please amend heading of the guideline so it refers to transitional deadline for submission to be consistent. Paragraph a) please change "ending on or after 1 September 2016" into "ending on or after 1 January 2016", consistent with the Directive Article 308b(7).	Disagreed It was made on purpose that quarterly reporting for branch operations should start at Q3 of 2016 to allow sufficient time to third-country branches to prepare the

				processes and systems.
270.			This comment was submitted as confidential by the stakeholder.	
271.	IRSG	TA I (1)	Title of Annex I: "Information to be included in the"	Amended
272.	IRSG	TA I (2)	Third last line: "... In place to provide certain...."	Amended
273.	LICI UK	TA I (2)	Please refer to 1.17 and 1.18 response	Noted Please, see answers to comments 3 and 185.
274.			This comment was submitted as confidential by the stakeholder.	
275.	IRSG	TA I (4)	Under b): " in relation to the branch operations"	Amended
276.			This comment was submitted as confidential by the stakeholder.	
277.			This comment was submitted as confidential by the stakeholder.	
278.			This comment was submitted as confidential by the stakeholder.	
279.			This comment was submitted as confidential by the stakeholder.	
280.			This comment was submitted as confidential by the stakeholder.	
281.			This comment was submitted as confidential by the stakeholder.	
282.	IRSG	TA I (7)	Under a) second last line: "reported in the previous..."	Amended

283.			This comment was submitted as confidential by the stakeholder.	
284.			This comment was submitted as confidential by the stakeholder.	
285.	IRSG	TA I (8)	Last line: same remark as under (7)	Noted Information is to be provided for the branch operations and the third-country undertakings only if it has an impact on the branch's operations.
286.			This comment was submitted as confidential by the stakeholder.	
287.	IRSG	TA I (11)	Under a) second line and under c): "with regard to branch operations..."	Amended
288.			This comment was submitted as confidential by the stakeholder.	
289.			This comment was submitted as confidential by the stakeholder.	
290.			This comment was submitted as confidential by the stakeholder.	
291.			This comment was submitted as confidential by the stakeholder.	
292.	IRSG	TA I (13)	Last line: "...for the branch...."	Amended
293.	0.	1.	2. This comment was submitted as confidential by the stakeholder.	

3.294.	4.	5.	6.This comment was submitted as confidential by the stakeholder.	
295.	IRSG	TA I (14)	Last line: "related to the branch..."	Noted Please, see answer to comment 285.
7.296.	3.	9.	0.This comment was submitted as confidential by the stakeholder.	
1.297.	1.	3.	4.This comment was submitted as confidential by the stakeholder.	
298.	IRSG	TA I (15)	Last line; "the winding-up of ..."	Amended
5.299.	1.	7.	8.This comment was submitted as confidential by the stakeholder.	
9.300.	1.	1.	2.This comment was submitted as confidential by the stakeholder.	
3.301.	1.	3.	5.This comment was submitted as confidential by the stakeholder.	
7.302.	1.	1.	0.This comment was submitted as confidential by the stakeholder.	
303.	IRSG	TA I (17)	Under b) second line: "the persons responsible for the branch...."	Amended
1.304.	1.	3.	1.This comment was submitted as confidential by the stakeholder.	
5.305.	1.	7.	8.This comment was submitted as confidential by the stakeholder.	
306.	IRSG	TA I (18)	Under b) "information on how the undertaking is..." Under d): "assessment" (twice!) Under f) second line: "is implemented..."	Amended Disagreed: There is no repetition.

			Under f) last line: "processes of the undertaking in respect of..."	Amended Amended
307.	Federation of European Accountants (FEE)	TA I (18)	With respect to subparagraph (c), should the requirement to invest assets in accordance with the 'prudent person' principle apply only to the branch assets, rather than to all assets of the third-country insurance undertaking?	Noted Please, see answer to comment 285.
9.308.	.	.	.This comment was submitted as confidential by the stakeholder.	
3.309.	.	.	.This comment was submitted as confidential by the stakeholder.	
310.	IRSG	TA I (19)	Under a) last line: "of the branch"	Amended
7.311.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.312.	.	.	.This comment was submitted as confidential by the stakeholder.	
5.313.	.	.	.This comment was submitted as confidential by the stakeholder.	
9.314.	.	.	.This comment was submitted as confidential by the stakeholder.	
315.	IRSG	TA I (21)	Under d): "a description of the undertaking's internal audit plan"	Amended
3.316.	.	.	.This comment was submitted as confidential by the stakeholder.	
7.317.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.318.	.	.	.This comment was submitted as confidential by the stakeholder.	

5.319.	.	.	.This comment was submitted as confidential by the stakeholder.	
320.	IRSG	TA I (23)	Second line: "insurance undertakings should"	Amended
9.321.	.	.	.This comment was submitted as confidential by the stakeholder.	
3.322.	.	.	.This comment was submitted as confidential by the stakeholder.	
7.323.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.324.	.	.	.This comment was submitted as confidential by the stakeholder.	
5.325.	.	.	.This comment was submitted as confidential by the stakeholder.	
9.326.	.	.	.This comment was submitted as confidential by the stakeholder.	
3.327.	.	.	.This comment was submitted as confidential by the stakeholder.	
7.328.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.329.	.	.	.This comment was submitted as confidential by the stakeholder.	
5.330.	.	.	.This comment was submitted as confidential by the stakeholder.	
9.331.	.	.	.This comment was submitted as confidential by the stakeholder.	
3.332.	.	.	.This comment was submitted as confidential by the stakeholder.	

7.333.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.334.	.	.	.This comment was submitted as confidential by the stakeholder.	
5.335.	.	.	.This comment was submitted as confidential by the stakeholder.	
9.336.	.	.	.This comment was submitted as confidential by the stakeholder.	
3.337.	.	.	.This comment was submitted as confidential by the stakeholder.	
7.338.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.339.	.	.	.This comment was submitted as confidential by the stakeholder.	
5.340.	.	.	.This comment was submitted as confidential by the stakeholder.	
9.341.	.	.	.This comment was submitted as confidential by the stakeholder.	
3.344.	.	.	.This comment was submitted as confidential by the stakeholder.	
7.343.	.	.	.This comment was submitted as confidential by the stakeholder.	
1.344.	.	.	.This comment was submitted as confidential by the stakeholder.	
5.345.	.	.	.This comment was submitted as confidential by the stakeholder.	
9.346.	.	.	.This comment was submitted as confidential by the stakeholder.	

347.	IRSG	TA I (38)	Second line: delete the words "other assets and the"	Amended
348.	IRSG	TA I (39)	Title: "Alternative valuation methods" Intro: "Where an alternative valuation method is used...."	Amended
349.	IRSG	TA I (40)	"Third country insurance undertakings should provide, in...."	Amended
350.	IRSG	TA I (42)	Under g) last line: "own funds within the undertaking and the branch"	Amended
3.351.	.	.	.This comment was submitted as confidential by the stakeholder.	
7.352.	.	.	.This comment was submitted as confidential by the stakeholder.	
353.	IRSG	TA I (43)	Last line: "within the European Union"	Amended
1.354.	.	.	.This comment was submitted as confidential by the stakeholder.	
355.	IRSG	TA I (44)	Second line: "lodged as deposit..."	Amended
5.356.	.	.	.This comment was submitted as confidential by the stakeholder.	
357.	IRSG	TA I (45)	Third line of intro: "in accordance with the home jurisdiction rules..."	Amended
9.358.	.	.	.This comment was submitted as confidential by the stakeholder.	
359.	IRSG	TA I (46)	Under each littera: "branch's"	Amended
3.360.	.	.	.This comment was submitted as confidential by the stakeholder.	
361.	IRSG	TA I (47)	Third and fourth lines: "which is comparable with the Solvency Capital Requirement and the Minimum Capital Requirement"	Amended

7.362.	3.	9.	0.This comment was submitted as confidential by the stakeholder.	
1.363.	2.	3.	4.This comment was submitted as confidential by the stakeholder.	
364.	IRSG	TA I (48)	First and second lines: "for the calculation of the branch's Solvency Capital Requirement, third country...."	Amended
5.365.	6.	7.	8.This comment was submitted as confidential by the stakeholder.	
366.	IRSG	TA I (49)	"with regards to the branch's SCR...."	Amended
9.367.	1.	.	2.This comment was submitted as confidential by the stakeholder.	
3.368.	4.	5.	6.This comment was submitted as confidential by the stakeholder.	
369.	IRSG	TA I (53)	Third line: "of the process in place..."	Amended
370.	IRSG	TA I (57)	Second and third lines: " with the branch's MCR or the branch's SCR...."	Amended
371.	IRSG	TA I (59)	Under a) third line: "any remedial measures taken, an explanation..."	Amended
372.	Federation of European Accountants (FEE)	TA II	Items (a) and (d) have the same description but represent different amounts. The description of one (or both) of these items should be amended to distinguish between them. Items (c) and (f) have the same description but represent different amounts. The description of one (or both) of these items should be amended to distinguish between them.	Noted
373.	IUL	TA II	note that in Annex II, the top half of the balance sheet only includes its "subject to rights in rem" and "branch assets subject to /security/collateral arrangements in favour of creditors with branch	Noted EIOPA has clarified this issue in the annex.

			<p>ance claims". It does not include assets that meet the test in lines 7 and 26. Thus, it appears that the Annex is establishing a requirement that is not justified elsewhere in the Directive or in the lines. (It is only at the bottom half of the balance sheet that cured assets are allowed to be counted - against reinsurance claims non-insurance claims). In our view, the new requirement should be moved.</p>	
374.	CFO Forum and CRO Forum	TA III – S.01.02 Opening submission	<p>1. Row reference C0010/R0080 is used inconsistently between different template versions ("Reporting submission date" vs. "Language of reporting").</p>	<p>Noted</p> <p>Please see answer to comment 90 raised in response to CP-14-52.</p>
375.	Insurance Europe	TA III – S.01.02 Opening submission	<p>There are inconsistencies in the LOGs and between QRTs and LOGs:</p> <p>Cell C0010/R0080 Country of authorisation is missing in the LOG S.01.02.o.p.u. This creates incorrect cell referencing for the remaining fields in the template and the LOG. For example, Cell C0010/R0090 should be Language of reporting whereas in the LOG it is reported as Reporting submission date.</p>	<p>Noted</p> <p>Please see answer to comment 96 raised in response to CP-14-52.</p>
376.	CFO Forum and CRO Forum	TA III – S.02.01 Opening submission	<p>1. The definitions for the fields no longer contain the reference to the CIC categories and the crosschecks. It is useful to have these.</p> <p>2. Reinsurance recoverable not recognized for TP calculation - it is not clear what items should be reported here. The definition seems to overlap with that of Reinsurance receivables, that is same items, required under both - payments in relation to other events or settled insurance claims. By definition, amounts not recognized are not part of any balance sheet. As such, we would request clarification from EIOPA.</p> <p>3. The LOG file refers to a cell Z0010 "Fund Number". This cell is not relevant for this template, and as such we suggest EIOPA delete this to avoid confusion.</p> <p>4. L23 (Contingent liabilities) is an off-balance sheet item under IFRS. There should therefore be no entry in the statutory accounts value column of row R0740 / C0020, and we would suggest that the</p>	<p>Noted</p> <p>Please see answer to comment 105 raised in response to CP-14-52.</p>

			<p>relevant cell be struck through for clarity, consistent with other cells in the template where no value is expected.</p> <p>5. S.02.01 requires now that property under construction for own use be reported as part of line item Property, plant & equipment held for own use, and no longer under Property (other than for own use) as in the Preparatory Phase. However, property under construction both for own use and for investment is included in one CIC category 94. We believe this should be split, as we should not have one CIC category being reported in 2 different lines on the balance sheet. Further, this will create an issue for the data point model.</p> <p>6. Would EIOPA confirm that the new Asset Category 0 created for "Other Assets not elsewhere shown" corresponds to Balance Sheet Item C0010-C0020/R0430 (A29) rather than the "Other Investments" line on the Balance Sheet (C0010-C0020/R0210 (A11)).</p> <p>7. For opening reporting, we believe that the column "Solvency I – C0030", should correspond instead to C0020 ("Statutory accounts value) just as for the regular balance sheet template templates, meaning that statutory balance sheet figures would be provided. Furthermore, the reference C0030 is absent from the corresponding LOG.</p>	
377.	Insurance Europe	TA III – S.02.01 Opening submission	<p>There may be possible issues related to obtaining the information for the new item "Reinsurance recoverables not recognised for TP calculation". Undertakings might have to take special care to define what is meant by reinsurance recoverables when not related to a specific claims file or event, where agreement may potentially be sought between accounting/finance, legal and management teams. This might trigger additional unnecessary burdensome operational effort to setup a process and appropriate governance to obtain this figure. Therefore, we suggest that further guidance is required on the content of these new items: "Reinsurance recoverables not recognised for TP calculation" and "Other technical provisions". This is also unclear in Article 41 of the Delegated Acts regarding recoverables from reinsurance contracts.</p> <p>We also suggest the following amendments to the templates:</p>	<p>Noted</p> <p>Please see answer to comment 112 raised in response to CP-14-52.</p>

			<p><input type="checkbox"/> The heading "Participations and related undertakings" should be changed to "Related undertakings, including participations". This is consistent with the terminology in the EIOPA Set 1 Guidelines Treatment of related undertakings, including participations, and would correspond to the definitions of the Directive (Articles 1(20) and 212(1)) where participations are a sub-category of related undertakings.</p> <p><input type="checkbox"/> Column "Solvency I – C0030", should correspond instead to C0020 ("Statutory accounts value") just as for the regular balance sheet templates, meaning that statutory balance sheet figures would be provided. Furthermore, the reference C0030 is absent from the corresponding LOG. In case this is not a mistake, we urge EIOPA to align day one reporting on balance sheet information with those requirements for regular reporting. Otherwise, undertakings have to set up their systems just for one time reporting in case Solvency I information differs from the "Statutory accounts value" used for regular reporting. Moreover, data from day one reporting would not be comparable with the future data on balance sheet.</p> <p>In addition to the above comments, the following analysis of the updated LOGs and templates, the following questions arise:</p> <p><input type="checkbox"/> Regarding overdrafts, these are normally netted off against positive balances where both legal right of offset and intention to settle net exist - why does EIOPA disagree with this treatment?</p> <p><input type="checkbox"/> We would like confirmation that the new Asset Category created for "Other Assets not elsewhere shown" corresponds to Balance Sheet Item C0010-C0020/R0430 (A29) rather than the "Other Investments" line on the Balance Sheet (C0010-C0020/R0210 (A11))?</p> <p><input type="checkbox"/> We assume that template BS-S.02.01.u contains a typographical error in the column label. Thus, we ask EIOPA to change the title from "Solvency I" into "Statutory accounts value"? In case this is not a mistake, we urge EIOPA to align day one reporting on balance sheet information with those requirements for regular reporting. Otherwise, undertakings have to set up their systems just for one time reporting in case Solvency I information differ from "Statutory accounts value" used for regular reporting. Moreover, data from day one reporting would not be comparable with the future data on balance sheet.</p>	
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			<p>For example:</p> <p>When reporting the opening balance, reporting of the group should be made by Solvency II value and Solvency I value. Since the "Deduction and aggregation method" is the main method in Sweden until 2015, it is not possible to report the Solvency I values. Clarification is needed in the LOG that there is no need for reporting of Solvency I values when using the "Deduction and aggregation method" in the regular reporting.</p>	
378.	.CFO Forum and CRO Forum	.TA III – S.23.01 Opening submission	<p>1. There is no LOG file description for R0230/C0010 until C0040. It is therefore unclear how the cell is to be completed. We suggest a cross-reference (CT) may be missing to S.24.01. E.g. R0230/C0010 until C0040 = S.24.01.b.R0060/C0370 until C0400</p> <p>Further examples where a cross-reference (CT) would be helpful are: R0590/C0010; R0270/C0010; R0580/C0010; R0590/C0010; R0600/C0010; R0610/C0010; R0700/C0010; R0710/C0010; R0740/C0010.</p> <p>2. In several cases formulae have been deleted from the templates. Some formulae are self-explanatory. However in several cases, additional guidance would be helpful, especially when it comes to ratios.</p> <p>Examples: R0560/C0010 until C0040 (ratio eligible OF); R0570/C0010 until C0040 (ratio eligible OF); R0630/C0010 (figure "solvency ratio"); R0670/C0010 (figure "solvency ratio").</p> <p>3. Some cells are not included in the template, however they are mentioned in the validation sheet: R0730/C0020; R0760/C0020; R0790/C0020.</p>	<p>Noted</p> <p>Please see answer to comment 398 raised in response to CP-14-52.</p>
379.	Insurance Europe	TA III – S.23.01 Opening submission	<p>We disagree with the new reference to the reconciliation reserve and the related LOG. Only some given participations in credit and financial institutions have to be deducted at solo level, and this is normally done directly from some given Tier 1, 2 or 3 items. This should be precised in the LOG, in order to be aligned with the Delegated Acts (Article 70). Besides, this is normally already included (and aligned</p>	<p>Noted</p> <p>Please see answer to comment 405 raised in response to CP-14-52.</p>

			<p>with the DAs) in S.24.01.b in RSR (CP 14/052).</p> <p>Besides, the fact to require a reconciliation of differences between accounting valuation and valuation according to article 75 of Directive 2009/138/EC is odd and goes beyond the existing legislation. Indeed, Solvency II and accounting valuations are not aimed to lead to identic balance sheet amounts. Therefore this part of the sentence should be removed.</p>	
380.	CFO Forum and CRO Forum	TA III – S.01.02	<p>1. Row reference C0010/R0080 is used inconsistently between different template versions ("Reporting submission date" vs. "Language of reporting").</p>	<p>Noted</p> <p>Please, see answer to comment 376.</p>
381.	CFO Forum and CRO Forum	TA III – S.02.01	<p>1. The definitions for the fields no longer contain the reference to the CIC categories and the crosschecks. It is useful to have these.</p> <p>2. Reinsurance recoverable not recognized for TP calculation - it is not clear what items should be reported here. The definition seems to overlap with that of Reinsurance receivables, that is same items, required under both - payments in relation to other events or settled insurance claims. By definition, amounts not recognized are not part of any balance sheet. As such, we would request clarification from EIOPA.</p> <p>3. The LOG file refers to a cell Z0010 "Fund Number". This cell is not relevant for this template, and as such we suggest EIOPA delete this to avoid confusion.</p> <p>4. L23 (Contingent liabilities) is an off-balance sheet item under IFRS. There should therefore be no entry in the statutory accounts value column of row R0740 / C0020, and we would suggest that the relevant cell be struck through for clarity, consistent with other cells in the template where no value is expected.</p> <p>5. S.02.01 requires now that property under construction for own use be reported as part of line item Property, plant & equipment held for own use, and no longer under Property (other than for own use) as in the Preparatory Phase. However, property under construction both for own use and for investment is included in one CIC category 94. We believe this should be split, as we should not have one CIC category</p>	<p>Noted</p> <p>Please see answer to comment 106 raised in response to CP-14-52.</p>

			<p>being reported in 2 different lines on the balance sheet. Further, this will create an issue for the data point model.</p> <p>6. Would EIOPA confirm that the new Asset Category 0 created for "Other Assets not elsewhere shown" corresponds to Balance Sheet Item C0010-C0020/R0430 (A29) rather than the "Other Investments" line on the Balance Sheet (C0010-C0020/R0210 (A11)).</p>	
382.	Insurance Europe	TA III – S.02.01	<p>There may be possible issues related to obtaining the information for the new item "Reinsurance recoverables not recognised for TP calculation". Undertakings might have to take special care to define what is meant by reinsurance recoverables when not related to a specific claims file or event, where agreement may potentially be sought between accounting/finance, legal and management teams. This might trigger additional unnecessary burdensome operational effort to setup a process and appropriate governance to obtain this figure. Therefore, we suggest that further guidance is required on the content of these new items: "Reinsurance recoverables not recognised for TP calculation" and "Other technical provisions". This is also unclear in Article 41 of the Delegated Acts regarding recoverables from reinsurance contracts.</p> <p>We also suggest the following amendments to the templates:</p> <p><input type="checkbox"/> We suggest that the heading "Participations and related undertakings" should be changed to "Related undertakings, including participations". This is consistent with the terminology in the EIOPA Set 1 Guidelines Treatment of related undertakings, including participations, and would correspond to the definitions of the Directive (Articles 1(20) and 212(1)) where participations are a sub-category of related undertakings.</p> <p><input type="checkbox"/> The LOG file refers to cell Z0100 Fund Number. This cell is irrelevant for this template, and we suggest to remove it for all of the S.02.01 templates.</p> <p>Following analysis of the updated LOGs and templates, the following questions arise:</p> <p><input type="checkbox"/> Is it correct that the investment funds analysis in this QRT has</p>	<p>Noted</p> <p>Please see answer to comment 182 raised in response to CP-14-52.</p>

			<p>gone (the July 2012 version of public disclosure BS-C1 required investment funds to be analysed by type of underlying asset type, however this has now disappeared)?</p> <p><input type="checkbox"/> Regarding overdrafts, these are normally netted off against positive balances where both legal right of offset and intention to settle net exist - why does EIOPA disagree with this treatment?</p> <p><input type="checkbox"/> Regarding when a collective investment undertaking is also a related undertaking, where should it go on the balance sheet - under "Participations and related undertakings" (A6/R0090) or "Collective investment undertaking" (A9/R0180), or elsewhere?</p> <p>It is unclear as to what the dotted lines below cells A7B, A8E, A14, A17A, A19B, LS0, LS6F and L15E mean. If for instance more granular information for equities split by listed (A7) and unlisted (A7A) under a statutory accounts reporting basis is unavailable, would it therefore be correct to report on a total basis in cell A7B? In addition, if the split was available, would it be correct to report the listed and unlisted equities in cells A7 and A7A respectively, leaving the total value for equities A7B blank?</p>	
383.	CFO Forum and CRO Forum	TA III – S.06.02	<p>1. Many field names have been modified in the new QRTs, in particular for QRT S.06.02, without improving the global understanding of QRTs architecture. We suggest keeping the old field names for all of QRTs.</p> <p>2. We assume that EIOPA has introduced cell C0300 (infrastructure investments) to understand the quantum of investments by the European insurance industry within infrastructure investments. We suggest that EIOPA collects this information at a higher level of granularity on a different template rather than collecting the information on an asset-by-asset basis on a complex template that has already been built.</p> <p>3. CIC 0/09 has been introduced for "Other Assets not elsewhere shown" (Balance Sheet line ref: C0010-C0020/R0430 (A29)), and would now bring these assets into scope for template S.06.02. Is this CIC actually intended to capture "Other Investments," which are still not reported on S.06.02 (i.e. S.02.01 balance sheet item Ref: C0010-</p>	<p>Noted</p> <p>Please see answer to comment 182 raised in response to CP-14-52.</p>

			<p>C0020/R0210 (A11))?</p> <p>4. We believe there to be an inconsistency regarding Country of Custody (and possibly Issuer Country) for Property CIC 9. The regulations say in respect of Country of Custody: "Regarding CIC Category 9, excluding CIC 95 – Plant and equipment (for own use), the issuer country is assessed by the address of the property". CIC 9 was previously considered out of scope for Country of Custody, as properties are not held in Custody; we interpret the above to suggest it is required. The regulations however refer to "Issuer Country" rather than Country of Custody, so this could have been intended for the "Issuer Country" item. In either of these cases, a change would be required.</p>	
384.	Insurance Europe	TA III – S.06.02	<p>We further note that there is a potential (unintended discrepancy) between the most recent version of this form and the previous version from 2012. Cell C0290 uses CIC codes to classify assets, whereas the previous version of the templates, the CIC code classification was aligned with the underlying asset category classification on the look through template. These codes are no longer aligned as CIC category 4 is "Investment Funds" but asset category 4 in cell C0060 on S.06.03 (RSR CP 14/052) is now "Unlisted equity" and category 5 is now "Collective Investment Undertakings".</p> <p>The following comments and questions arise:</p> <p><input type="checkbox"/> C0160/A25: for consistency purposes, explicit reference to a weighted average acquisition price would be useful (instead of simply average acquisition price); It would be useful to have a column reflecting the "unit percentage of par amount Solvency II price", similar to the column in the "information on assets table", i.e. C0380.</p> <p><input type="checkbox"/> In C0200/A8 the definition of issuer name is ambiguous ("Name of the issuer, defined as the entity that offers assets for sale to investors") and could be interpreted as the seller of a security in general, not necessarily the issuer. The issuer is also the seller only on the primary market, so we suggest redefining name of the issuer.</p> <p><input type="checkbox"/> If the detailed information such as the industry class split according to the LOG Files is required for statistical purposes, we</p>	<p>Noted</p> <p>Please see answer to comment 193 raised in response to CP-14-52.</p>

			<p>propose to ask for this information rather in a separate survey but not as part of the regular supervisory reporting. Otherwise a best effort approach should be supported with allowing for the class "other" where the information might anyway not provided in a reliable way.</p> <p>Following analysis of the updated LOGs and templates, the following questions arise:</p> <p><input type="checkbox"/> C0170: Clarification is needed as to how to calculate the total SII amount for foreign currency items.</p> <p><input type="checkbox"/> C0350 refers to internal ratings only "to the extent that the external ratings are used in their internal modelling" - does this mean that an undertaking using the standard formula does not need to report internally generated credit ratings, even in the case of assets that do not have an external rating and an internal one would be used for SCR calculation?</p> <p><input type="checkbox"/> The rationale is sought as to why forms such as this are requested multiple times for each reporting period (quarterly, financial stability and annually)?</p> <p><input type="checkbox"/> Clearer guidance is needed on which fields apply to deposits with cedants. The CIC that applies to deposits with cedants could be "Other Investments", which are not reported on this template, but rather in the Balance Sheet for item: C0010-C0020/R0210 (A11). This may become clear once validation rules for data submissions are available.</p> <p><input type="checkbox"/> How should net current assets of unit linked funds be treated on S.06.02? In order for the total on S.06.02 to agree with unit linked assets on the balance sheet QRT (S.02.01), net current assets will have to be included in S.06.02. A possible option includes leaving a reconciling item between S.06.02 and S.02.01, or including under CIC code 79: "cash/other".</p> <p><input type="checkbox"/> CIC 0/09 has been introduced for "Other Assets not elsewhere shown" (Balance Sheet line ref: C0010-C0020/R0430 (A29)), and would now bring these assets into scope for template S.06.02. Is this CIC actually intended to capture "Other Investments," which are still not reported on S.06.02 (i.e. S.02.01 balance sheet item Ref: C0010-</p>	
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			<p>C0020/R0210 (A11))?</p> <p><input type="checkbox"/> The cells for the following items have been recodified with “numbers and letters”, unlike for the QRTs for preparatory phase, where “letters” were only used. This change will result in increased operational costs. What is the motivation behind the change? Particularly:</p> <ul style="list-style-type: none"> o C0060 (A1) Letters Numbers or numbers and letters o C0090 (A3) Letters Numbers or numbers and letters o C0100 (A6) Letters Numbers or numbers and letters o C0150 (A24) Letters Numbers or numbers and letters o C0220 (A33) Letters Numbers or numbers and letters o C0260 (A33) Letters Numbers or numbers and letters o C0310 (A16) Letters Numbers or numbers and letters <p><input type="checkbox"/> For the cell C0310 (A16) “Participation”, the LOG states “identify if an equity and other share is a participation included in group supervision.” This has been written as if the undertaking prepares group reporting. How should it be written in the case of individual undertaking?</p>	
385.	CFO Forum and CRO Forum	TA III – S.23.01	<p>1. There is no LOG file description for R0230/C0010 until C0040. It is therefore unclear how the cell is to be completed. We suggest a cross-reference (CT) may be missing to S.24.01. E.g. R0230/C0010 until C0040 = S.24.01.b.R0060/C0370 until C0400</p> <p>Further examples where a cross-reference (CT) would be helpful are: R0590/C0010; R0270/C0010; R0580/C0010; R0590/C0010; R0600/C0010; R0610/C0010; R0700/C0010; R0710/C0010; R0740/C0010.</p> <p>2. In several cases formulae have been deleted from the templates. Some formulae are self-explanatory. However in several cases, additional guidance would be helpful, especially when it comes to ratios.</p> <p>Examples: R0560/C0010 until C0040 (ratio eligible OF); R0570/C0010 until C0040 (ratio eligible OF); R0630/C0010 (figure</p>	<p>Noted</p> <p>Please see answer to comment 399 raised in response to CP-14-52.</p>

			<p>"solvency ratio"); R0670/C0010 (figure "solvency ratio").</p> <p>3. Some cells are not included in the template, however they are mentioned in the validation sheet: R0730/C0020; R0760/C0020; R0790/C0020.</p>	
386.	Insurance Europe	TA III – S.23.01	<p>We disagree with the new reference to the reconciliation reserve and the related LOG. Only some given participations in credit and financial institutions have to be deducted at solo level, and this is normally done directly from some given Tier 1, 2 or 3 items. This should be precise in the LOG, in order to be aligned with the Delegated Acts (Article 70). Besides, this is normally already included (and aligned with the DAs) in S.24.01.b (RSR CP 14/052).</p> <p>Besides, the fact to require a reconciliation of differences between accounting valuation and valuation according to article 75 of Directive 2009/138/EC is odd and goes beyond the existing legislation. Indeed, Solvency II and accounting valuations are not aimed to lead to identic balance sheet amounts. Therefore this part of the sentence should be removed.</p> <p>As the EPIFP is not used in this QRT, we see no additional value in keeping this in this QRT and would therefore propose it to be removed and included instead in the templates related to Technical provisions since it makes more sense in our opinion.</p> <p>Finally, some cells are not included in the template, however they are mentioned in the validation sheet: R0730/C0020; R0760/C0020; R0790/C0020. Only the columns C0010 seems to apply for those cells, the other ones are crossed and therefore are not reported in our understanding.</p>	<p>Noted</p> <p>Please see answer to comment 406 raised in response to CP-14-52.</p>
387.	CFO Forum and CRO Forum	TA III – S.29.01	<p>The Variation analysis (S29.01 till S29.04) is based on two different methods, results based and cash flow based. In our opinion it isn't possible to get structured information out of an analysis if it is based on two different methods.</p> <p>We would also please request that EIOPA include the formulas (where applicable) in the log files or QRT for fields that can be derived from other information already included in the QRT. As also the case in the</p>	<p>Noted</p> <p>Please see answer to comment 477 raised in response to CP-14-52.</p>

			<p>previous Log files.</p> <p>The analysis is based on the information reported in template S23.01. In S.29.01, we believe there is one line missing which is part of the information in template S23.01; "Share premium account related to preference shares" and would suggest EIOPA update the template to reflect this.</p> <p>Under "Variation of components of reconciliation reserve _Items reported in 'Own Funds' "there are the elements:</p> <ul style="list-style-type: none"> - "Excess of assets over liabilities (Variation of BOF explained by Variation Analysis Templates). We would note that we have been unable to find an explanation of Variations of BOF for this template and would request that EIOPA clarify. <p>"Restricted own funds items due to ring fencing" - we would suggest EIOPA change this to read "Restricted own funds items due to ring fencing and matching."</p> <p>We are also having difficulty understanding the relation between "Summary Analysis of Variation of Excess of Assets over liabilities" sum of V17 till V23 and Excess of assets over liabilities V12, and would therefore request further clarification from EIOPA.</p> <p>We would suggest that EIOPA consider using industry standard reports such as cash flow statements for reporting of the analysis of movements in balance sheet positions, except where EIOPA identifies a specific need to deviate from established movement overviews, and provides a set of standards to achieve the stated purpose.</p>	
388.	Insurance Europe	TA III – S.29.01	<p>Following analysis of the updated LOGs and templates, the following comments and questions arise:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The Variation analysis is based on two different methods, results based and cash flow based. In our opinion it is not possible to get structured information out of an analysis if it is based on two different methods. <input type="checkbox"/> Please include the formulas (where applicable) in the log files or QRT for fields that can be derived from other information already included in the QRT. As also the case in the previous Log files. 	<p>Noted</p> <p>Please see answer to comment 478 raised in response to CP-14-52.</p>

			<p><input type="checkbox"/> Under "Variation of components of reconciliation reserve _Items reported in 'Own Funds' "there are the elements:</p> <p>o "Excess of assets over liabilities (Variation of BOF explained by Variation Analysis Templates). In which template is this Variations of BOF explained?</p> <p>o Restricted own funds items due to ring fencing must this be changed into Restricted own funds items due to ring fencing and matching</p> <p><input type="checkbox"/> What is the relation between "Summary Analysis of Variation of Excess of Assets over liabilities" sum of V17 till V23 and Excess of assets over liabilities V12?</p> <p><input type="checkbox"/> We would suggest that EIOPA consider using industry standard reports such as cash flow statements for reporting of the analysis of movements in balance sheet positions, except where EIOPA identifies a specific need to deviate from established movement overviews, and provides a set of standards to achieve the stated purpose.</p> <p><input type="checkbox"/> Why the cells (R0120, C0010):(R240, C0020) are not filled. Filling would make the reading and checking easier.</p>	
389.	CFO Forum and CRO Forum	TA IV – S.02.01 Opening submission	<p>1. The definitions for the fields no longer contain the reference to the CIC categories and the crosschecks. It is useful to have these.</p> <p>2. Reinsurance recoverable not recognized for TP calculation - it is not clear what items should be reported here. The definition seems to overlap with that of Reinsurance receivables, that is same items, required under both - payments in relation to other events or settled insurance claims. By definition, amounts not recognized are not part of any balance sheet. As such, we would request clarification from EIOPA.</p> <p>3. The LOG file refers to a cell Z0010 "Fund Number". This cell is not relevant for this template, and as such we suggest EIOPA delete this to avoid confusion.</p> <p>4. L23 (Contingent liabilities) is an off-balance sheet item under IFRS. There should therefore be no entry in the statutory accounts value column of row R0740 / C0020, and we would suggest that the relevant cell be struck through for clarity, consistent with other cells</p>	<p>Noted</p> <p>Please see answer to comment 105 raised in response to CP-14-52.</p>

			<p>in the template where no value is expected.</p> <p>5. S.02.01 requires now that property under construction for own use be reported as part of line item Property, plant & equipment held for own use, and no longer under Property (other than for own use) as in the Preparatory Phase. However, property under construction both for own use and for investment is included in one CIC category 94. We believe this should be split, as we should not have one CIC category being reported in 2 different lines on the balance sheet. Further, this will create an issue for the data point model.</p> <p>6. Would EIOPA confirm that the new Asset Category 0 created for "Other Assets not elsewhere shown" corresponds to Balance Sheet Item C0010-C0020/R0430 (A29) rather than the "Other Investments" line on the Balance Sheet (C0010-C0020/R0210 (A11)).</p>	
390.	CFO Forum and CRO Forum	TA IV – S.23.01 Opening submission	<p>1. Some QRTs still appear to be work in progress (e.g. cells with references and a strike-through). In addition many of the Log Files contain typos and errors, such as (non-exhaustive list):</p> <ul style="list-style-type: none"> - Group log file for s.23.01 contains references to cells A12 and B12, while in the QRT only A12A and B12A exist. - Group log file description for s.23.01 for cell B603 states 'tier 1 restricted' this should be 'tier 1 unrestricted' - Descriptions for cells B586 and C586 in Group log file for s.23.01 do not match with intended content of these cells. - For cells A605 to E605 in group log file s.23.01 the description is equal for all cells, which is not expected. - Group log file for s.23.01 contains references to cells A20 to D20, while in the QRT only A21 and D21 exist. - In group log file for s.23.01 cell C45D is referred to as tier 1 - unrestricted, while this should be tier 1 - restricted. - Group log file description for s.23.01 for cell C51A states 'tier 1 unrestricted' this should be 'tier 1 restricted' - Group log file for s.23.01 contains references to cells B29, while in the QRT only B29A exist. 	<p>Noted</p> <p>Please see answer to comment 714 raised in response to CP-14-52.</p>

			<p>- The description of A54A in variants f and g leads to confusion. It is not clear what the difference is between a Group SCR and a consolidated Group SCR or is this equivalent? Please define these terms.</p> <p>The description of Cells A37 to D38 in the Log file contains a wrong reference. The reference mentioned is 2006/48/EC. Is this correct, or should this be 2009/138/EC?</p> <p>Cell B1A is included in the log file but can't be found on the template, where do we fill in this information?</p> <p>R0220/C0020 in the log file does not have a reference to a cell in the QRT. Is this a field, as in the previous version of the QRT this one did not exist.</p>	
391.	CFO Forum and CRO Forum	TA IV – S.02.01 Regular	<p>1. R0260 Loans and mortgages – we believe the cell definition should be amended to include reference to R0250 as well: "Financial assets created when creditors lend funds to debtors – others, not classifiable in item R0240 and R0250, with collateral or not, including cash pools."</p> <p>2. We would suggest that cells C0010-C0020/R0170 and C0010-C0020/R0180 be defined by reference to CIC codes instead of the criteria presented in the LOG file, to avoid confusion and unnecessary capital expenditure in investment systems.</p> <p>3. We consider the definition provided for line C0010- C0020/R0740 (contingent liabilities) to be inconsistent with Article 11 of the delegated acts. We suggest EIOPA align the LOG file to the delegated acts.</p> <p>4. The LOG file for line C0010- C0020/R0740 (contingent liabilities) refers to contingent liabilities where the obligation cannot be measured with sufficient reliability. This type of contingent liability will not be quantifiable and therefore we will not recognise it on the balance sheet, but report it on the relevant template elsewhere in the set.</p>	<p>Noted</p> <p>Please see answer to comment 553 raised in response to CP-14-52.</p>
392.	CFO Forum and	TA IV – S.23.01	<p>1. Some QRTs still appear to be work in progress (e.g. cells with references and a strike-through). In addition many of the Log Files</p>	<p>Noted</p> <p>Please see answer to</p>

	CRO Forum	Regular	<p>contain typos and errors, such as (non-exhaustive list):</p> <ul style="list-style-type: none"> - Group log file for s.23.01 contains references to cells A12 and B12, while in the QRT only A12A and B12A exist. - Group log file description for s.23.01 for cell B603 states 'tier 1 restricted' this should be 'tier 1 unrestricted' -Descriptions for cells B586 and C586 in Group log file for s.23.01 do not match with intended content of these cells. - For cells A605 to E605 in group log file s.23.01 the description is equal for all cells, which is not expected. - Group log file for s.23.01 contains references to cells A20 to D20, while in the QRT only A21 and D21 exist. - In group log file for s.23.01 cell C45D is referred to as tier 1 - unrestricted, while this should be tier 1 - restricted. - Group log file description for s.23.01 for cell C51A states 'tier 1 unrestricted' this should be 'tier 1 restricted' - Group log file for s.23.01 contains references to cells B29, while in the QRT only B29A exist. - The description of A54A in variants f and g leads to confusion. It is not clear what the difference is between a Group SCR and a consolidated Group SCR or is this equivalent? Please define these terms. <p>The description of Cells A37 to D38 in the Log file contains a wrong reference. The reference mentioned is 2006/48/EC. Is this correct, or should this be 2009/138/EC?</p> <p>Cell B1A is included in the log file but can't be found on the template, where do we fill in this information?</p> <p>R0220/C0020 in the log file does not have a reference to a cell in the QRT. Is this a field, as in the previous version of the QRT this one did not exist.</p>	comment 712 raised in response to CP-14-52.
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