

Comments Template on EIOPA-CP-14-048 Draft proposal for Level 3 Guidelines on the supervision of branches of thir-country insurance undertakings		Deadline 02.Mar.2015 23:59 CET
Company name:	Insurance and Reinsurance Stakeholder Group	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Reference". ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> ○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. <p>Please send the completed template to Consultation_Set2@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-048.</p>		
Reference	Comment	
General Comment	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. There is concern over unintended consequences in terms of possible retaliation by third country jurisdictions:	

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	<p>- the nature of the requirements may lead to retaliation by third country supervisory authorities against branches of EU undertakings in their jurisdictions;</p> <p>- 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> <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>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>	
1.1.		
1.2.	Last line: "to the standards of Directive 2009/138/EC "	
1.3.	Third line: "especially concerning ... "	
1.4.		
1.5.		
1.6.		
1.7.		
1.8.		
1.9.		
1.10.		
1.11.	<p>Under f) last line: "Articles 89 and 90..."</p> <p>Under k): "policyholders within the meaning of Article 268 (g) of Directive 2009/138/EC"</p> <p>Under n) intro: "means any claim which....insurance undertaking ranks..."</p>	
1.12.		
Guideline 1 - 1.13	<p>First line: "of a branch of a third-country..."</p> <p>Fifth line: " need for supervisory purposes..."</p>	

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Guideline 1 - 1.14	First line: "Host supervisory authorities... "	
Guideline 2 - 1.15	<p>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.</p> <p>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 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.</p>	
Guideline 3 - 1.16	First line: "When determining whether a third-country..."	
Guideline 4 - 1.17		
Guideline 4 - 1.18	Second line: "is prepared on the presumption that the branch will be subject..."	
Guideline 5 - 1.19	Third line: "is not sufficient, the third country insurance undertaking ... "	
Guideline 6 - 1.20	Second line: " the technical provisions, as defined in Article..."	
Guideline 7 - 1.21	Under a): " the assets are distributed in accordance with Article ... " Under b): " the assets..."	
Guideline 7 - 1.22		
Guideline 7 - 1.23		
Guideline 8 - 1.24		
Guideline 9 - 1.25	Title: "Assessment of the financial situation of the branch as... "	
Guideline 10 - 1.26		

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Guideline 11 - 1.27	Last line: "it considers that the conditions..."	
Guideline 12 - 1.28		
Guideline 13 - 1.29		
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 "	
Guideline 15 - 1.31		
Guideline 16 - 1.32	First line: "granted the advantages referred to in... "	
Guideline 16 - 1.33		
Guideline 17 - 1.34		
Guideline 17 - 1.35	First line: " The host supervisory.."	
Guideline 18 - 1.36		
Guideline 18 - 1.37	Last line: "any person charged with a winding-up of the undertaking..."	
Guideline 18 - 1.38	What does the expression "management accounts" mean?	
Guideline 19 - 1.39		
Guideline 20 - 1.40	Title: "Quality requirements on the deposit lodged as security " Second line: Article 162 (2) e) of Directive... "	
Guideline 20 - 1.41	Delete comma after "not exercise" in the third line	
Guideline 21 - 1.42	Title: "Assessment of the quality of the deposit lodges as security "	
Guideline 22 - 1.43		
Guideline 23 - 1.44		
Guideline 24 - 1.45		
Guideline 25 - 1.46		
Guideline 26 - 1.47	Under b): delete the words "if they would be distributed"	
Guideline 27 - 1.48	Intro second sentence: "so that it is able to assess"	
Guideline 28 - 1.49	Second line: delete the words "system of"	

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Guideline 29 - 1.50	Second line: " the branch assets in order to ensure that they... "	
Guideline 30 - 1.51	Fourth line: "information in its regular reporting..."	
Guideline 31 - 1.52		
Guideline 32 - 1.53		
Guideline 33 - 1.54		
Guideline 34 - 1.55	Last line: " the branch operations "	
Guideline 35 - 1.56	Title: "Material risks to be included in the ORSA"	
Guideline 36 - 1.57	Title" the ORSA"	
Guideline 37 - 1.58	Second line: " policyholders... "	
Guideline 38 - 1.59		
Guideline 38 - 1.60		
Guideline 38 - 1.61		
Guideline 39 - 1.62	Under a) third line: " undertaking from those results"	
Guideline 39 - 1.63	Second line: "should also cover ... "	
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.	
Guideline 40 - 1.65		
Guideline 40 - 1.66	Last line: "as used for accounting purposes ".	
Guideline 40 - 1.67		
Guideline 41 - 1.68	First line: "submitted to the host supervisory..."	
Guideline 42 - 1.69		

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Guideline 43 - 1.70	Intro third line: " determined by the national supervisory authorities or by the group supervisor... "	
Guideline 44 - 1.71		
Guideline 44 - 1.72		
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>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>	

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Guideline 45 - 1.74		
Guideline 46 - 1.75	<p>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..."</p> <p>Under a): delete the words "detailing the information"</p> <p>Under c): delete the word "both"</p> <p>Under d) second line and under e): "principles used in the branch management accounts for the branch operations"</p> <p>Under g): Clarify "collective investment undertakings held"</p> <p>Under m): "Information on the Minimum Capital Requirement that pursue:"</p> <p>Under m)i: "only life or non-life insurance"</p>	
Guideline 46 - 1.76	Third line: "... paragraph refers... "	
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>	
Guideline 47 - 1.78	<p>The text of the intro is unclear – need to specify</p> <p>Under a): "and the valuation in the undertaking's financial statements"</p>	
Guideline 47 - 1.79	Delete the words "the following information" in the intro	
Guideline 48 - 1.80	First line: "should consider to limit..."	
Guideline 49 - 1.81	Clarify the words "and the remaining part" in fourth line	
Guideline 50 - 1.82	Third line: "authorities comply... "	
Guideline 51 - 1.83	Title: "Deadlines for the submission of the regular supervisory report"	
Guideline 52 - 1.84	Title: "for submission of the regular... "	
Guideline 53 - 1.85	First line: "Where the... "	

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	Last line: " the periods referred to in Guideline 51"	
Guideline 54 - 1.86	Title: "submission of the ORSA... "	
Guideline 55 - 1.87	Title: "submission of the annual.... "	
Guideline 56 - 1.88	Title: "submission of the... "	
Guideline 57 - 1.89	Last line: "application of ... "	
Guideline 58 - 1.90	First line of intro: "application of... " Under a), b), c): delete the words "detailing the information" Under d): " and the valuation in the management accounts of the branch for the branch operations " Under f): " the Solvency Capital Requirement " and " a partial internal model " Under g): " Minimum Capital Requirement " and " pursue " Under g) i: "or only non-life insurance "	
Guideline 58 - 1.91		
Guideline 59 - 1.92	Title: "Deadline for the submission of the ... "	
Guideline 60 - 1.93	Title: "deadline for the submission of the... "	
Guideline 61 - 1.94	Title: "deadline for the submission of the annual.... " Under c): "templates related to the ... "	
Guideline 62 - 1.95	Title: "Deadlines for the submission of the quarterly... "	
TA I (1)	Title of Annex I: "Information to be included in the "	
TA I (2)	Third last line: "... In place to provide certain.... "	
TA I (3)		
TA I (4)	Under b): " in relation to the branch operations"	
TA I (5)		
TA I (6)		
TA I (7)	Under a) second last line: "reported in the previous..."	
TA I (8)	Last line: same remark as under (7)	

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TA I (9)		
TA I (10)		
TA I (11)	Under a) second line and under c): "with regard to branch operations... "	
TA I (12)		
TA I (13)	Last line: "...for the branch...."	
TA I (14)	Last line: "related to the branch..."	
TA I (15)	Last line; "the winding-up of ... "	
TA I (16)		
TA I (17)	Under b) second line: "the persons responsible for the branch...."	
TA I (18)	Under b) "information on how the undertaking is... " Under d): " assessment " (twice!) Under f) second line: " is implemented..." Under f) last line: "processes of the undertaking in respect of... "	
TA I (19)	Under a) last line: "of the branch "	
TA I (20)		
TA I (21)	Under d): "a description of the undertaking's internal audit plan "	
TA I (22)		
TA I (23)	Second line: "insurance undertakings should "	
TA I (24)		
TA I (25)		
TA I (26)		
TA I (26)		
TA I (27)		
TA I (28)		
TA I (29)		

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TA I (30)		
TA I (31)		
TA I (32)		
TA I (33)		
TA I (34)		
TA I (35)		
TA I (36)		
TA I (37)		
TA I (38)	Second line: delete the words "other assets and the"	
TA I (39)	Title: "Alternative valuation methods" Intro: "Where an alternative valuation method is used....	
TA I (40)	"Third country insurance undertakings should provide , in...."	
TA I (41)		
TA I (42)	Under g) last line: "own funds within the undertaking and the branch"	
TA I (43)	Last line: "within the European Union"	
TA I (44)	Second line: "lodged as deposit..."	
TA I (45)	Third line of intro: "in accordance with the home jurisdiction rules..."	
TA I (46)	Under each littera: "branch's"	
TA I (47)	Third and fourth lines: "which is comparable with the Solvency Capital Requirement and the Minimum Capital Requirement"	
TA I (48)	First and second lines: "for the calculation of the branch's Solvency Capital Requirement, third country...."	
TA I (49)	"with regards to the branch's SCR...."	
TA I (50)		
TA I (51)		
TA I (52)		

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TA I (53)	Third line: "of the process in place... "	
TA I (54)		
TA I (55)		
TA I (56)		
TA I (57)	Second and third lines: " with the branch's MCR or the branch's SCR....	
TA I (58)		
TA I (59)	Under a) third line: "any remedial measures taken, an explanation... "	
TA I (60)		
TA II		
TA III – S.01.02 Opening submission		
TA III – S.02.01 Opening submission		
TA III – S.23.01 Opening submission		
TA III – S.01.01		
TA III – S.01.02		
TA III – S.02.01		
TA III – S.02.03		
TA III – S.06.02		
TA III – S.23.01		
TA III – S.23.03		
TA III – S.29.01		
TA IV – S.01.02 Opening submission		
TA IV – S.02.01 Opening submission		

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TA IV – S.23.01 Opening submission		
TA IV – S.01.01 Regular		
TA IV – S.01.02 Regular		
TA IV – S.02.01 Regular		
TA IV – S.02.03 Regular		
TA IV – S.06.02 Regular		
TA IV – S.23.01 Regular		
TA IV – S.23.03 Regular		
TA IV – S.29.01 Regular		