EIOPA-CP-14/044

27 November 2014

Consultation Paper
on
the draft proposal for
Guidelines on
methods for determining the market share for reporting

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Responding to this paper

EIOPA welcomes comments on the Consultation Paper on the draft proposal for Guidelines on methods for determining market share for reporting.

- Comments are most helpful if they:
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the provided Template for Comments, by email Consultation_Set2@eiopa.europa.eu, by 2 March 2015.

Contributions not provided in the template for comments, or sent to a different email address, or after the deadline will not be processed.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents[1].

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

EIOPA, as a European Authority, will process any personal data in line with Regulation (EC) No 45/2001 on the protection of the individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data. More information on data protection can be found at https://eiopa.europa.eu/ under the heading 'Legal notice'.

[1] https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-(EIOPA-MB-11-051).pdf

Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance to Article 16 (2) of the EIOPA Regulation.

This Consultation Paper presents the draft Guidelines.

The analysis of the expected impact from the proposed policy is covered under Annex I Impact Assessment.

Next steps

EIOPA will consider the feedback received and expects to publish a Final Report on the consultation and to submit the Consultation Paper for adoption by the Board of Supervisors.

1. Guidelines on methods to determine the market share for reporting

Introduction

1.1. According to Article 16 of Regulation (EU) 1094/2010 of 24 November 2010 (hereafter, EIOPA Regulation or the Regulation)[2] EIOPA is issuing Guidelines on how to determine the market shares as required in referred to in Article 35(11) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (hereafter Solvency II Directive)[3].

1.2. The purpose of these Guidelines is to specify the methods to be used when determining the market shares referred to in Article 35(6) and (7) and Article 254 of Directive 2009/138/EC.

1.3. These Guidelines define the market shares corresponding to 100% of the markets that each national competent authority supervises under Solvency II.

1.4. To calculate the market share, relevance is given to the type of business, i.e. life and non-life business, rather than to the authorisation granted to undertakings, i.e. life insurance authorisation or non-life insurance authorisation.

1.5. The specific situation of composite undertakings and of the reinsurance market was considered due to the potential complexity of the risk profile. EIOPA considers that this should be addressed when considering the criteria defined in article 35(8) of Directive 2009/138/EC.

1.6. In Member States where there is a high volume of reinsurance business, the inclusion of such business in the market share may lead to different exemptions than if considering, four different market shares, two for direct business (life and non-life) and two for reinsurance (life and non-life). However, as national competent authorities shall apply article 35(8) of Directive 2009/138/EC, it might be more likely to find more situations of companies that would have to report due to the distortion of the inclusion of the reinsurance business in the market share.

1.7. The business undertaken by insurance and reinsurance undertakings through their branches (EEA and non-EEA) and under freedom to provide services should be considered in the relevant market shares of the country where the undertaking is located.

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[2] OJ L 331, 15.12.2010, p. 48–83
[3] OJ L 335, 17.12.2009, p. 1-155

1.8. Exempted insurance and reinsurance undertakings should be aware that they might need to report in the future due to changes in the annually recalculated market shares even if the size of their business remains unchanged.

1.9. These Guidelines are addressed to national competent authorities under the Solvency II Directive in order to ensure a coherent and consistent application of the methods used in the determination of the market shares by national competent authorities.

1.10. The Guidelines shall apply from 1 January 2016.

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

Guideline 1 – Scope of market

1.12. The national competent authority should ensure that the market share:

a) includes the business underwritten by all insurance and reinsurance undertakings which are established in the relevant national market according to Article 2 of Directive 2009/138/EC;

b) does not include the business undertaken by insurance and reinsurance undertakings that meet the criteria laid down in article 4 of Directive 2009/138/EC.

Guideline 2 – Calculation of the Life Market

1.13. The national competent authority should ensure that the life insurance and reinsurance market is determined annually by aggregating the amount of gross technical provisions of the life business, including technical provisions for index-linked and unit-linked insurance, of the relevant insurance and reinsurance undertakings identified in Guideline 1.

Guideline 3 – Calculation of the Non-Life Market

1.14. The national competent authority should ensure that the non-life insurance and reinsurance market is determined annually by aggregating the amount of gross written premiums of the non-life business of the relevant insurance and reinsurance undertakings identified in Guideline 1.

Guideline 4 – Inclusion of business of insurance and reinsurance undertakings with a different financial year than the calendar year end in the market

1.15. The national competent authority should ensure that where an insurance or reinsurance undertaking has a financial year end other than 31 December, the latest annual information available should be considered in the calculation of the non-life or life market.

Guideline 5 – Treatment of insurance and reinsurance undertakings that pursue both life and non-life insurance activity

1.16. The national competent authority should ensure that an insurance undertaking or reinsurance undertaking which have business in both the non-life and the life market should not be exempted from reporting if the undertakings business is above the 20% threshold in at least one of the market shares.

Guideline 6 – Information to be used to determine the market

1.17. The national competent authority should consider the latest annual information available from the solvency regime previously in place to apply Guidelines 1 to 5 regarding the first and second year of application.

1.18. The national competent authority should consider the information reported in the quantitative templates as defined under the Implementing Technical Standards on Supervisory Reporting regarding the third year and following ones of application of these Guidelines.

Guideline 7 – Information to undertakings that are part of a group

1.19. The national competent authority should inform the insurance or reinsurance undertakings that are part of a group of the deadline to request a limitation to regular supervisory reporting with a shorter frequency than one year or to request to be exempt from reporting on an item-by-item basis.

Guideline 8 – Consultation of the group supervisor

1.20. To assess if regular supervisory reporting with a frequency shorter than one year or if reporting on an item-by-item basis is inappropriate according to the nature, scale and complexity of the risks inherent in the business of the group, the national competent authority should take into account the opinion of the group supervisor while assessing the request for exemption of insurance or reinsurance undertakings that are part of a group.

Compliance and Reporting Rules

1.21. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, national competent authorities shall make every effort to comply with guidelines and recommendations.

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

1.23. Competent authorities shall confirm to 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.

1.24. 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

1.25. The present Guidelines shall be subject to a review by EIOPA.

Annex I: Impact Assessment

Procedural Issues and Consultation of Interested Parties

1.1. In the course of the policy drafting of each provision in the Guidelines, an analysis has been carried out with respect to the expected costs and benefits expected to be generated by these texts.

1.2. When analysing the impact from proposed policies, the impact assessment methodology envisaged that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered.

Problem definition

1.3. Solvency II directive – Article 35(11) - introduces the obligation for EIOPA to elaborate guidelines to further specify the methods to be used when determining the market shares referred to paragraphs (6) and (7) of Article 35 of the same directive.

1.4. It is important to harmonise the way supervisors calculate the market share for the limitation and exemption of the quarterly reporting and item-by-item annual reporting.

Baseline

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

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

1.7. In particular the baseline includes:

- The relevant content of Directive 2009/138/EC as amended by Directive 2009/51/EC.
- The relevant Implementing Measures.

Objective pursued

1.8. These guidelines aim at ensuring a consistent application of the directive in order to provide National Supervisory Authorities some guidance on the methodology to follow to calculate the market share of exemptions provided in article 35 (6) and (7) of the Solvency II Directive.

1.9. Therefore the objective of these guidelines is to provide a common framework for NSAs with regard to the calculation of the market share for quarterly exemptions and item-by-item ones in the limit of the 20% of a Member States' life and non-life insurance or reinsurance market respectively.

1.10. The objective pursued in developing these guidelines corresponds to the respective Solvency II's objectives:

- Enhanced policy holder protection;
- To advance supervisory convergence and cooperation.

Proportionality

1.11. The approach of the proposed policy is intended to be proportionate, avoiding entering into detailed legal processes, that could be easily solved at a national level, and also supportive for national supervisory authorities when providing common methods to calculate the market share exemptions/ limitations.

Policy options

1.12. In the Solvency II project policy-makers have already considered, analysed and compared a number of policy options. Based on the impact assessment already done for the requirements set in the directive and in Implementing Measures, EIOPA has considered a wide range of policy options referring to the concrete solutions set out in the guidelines. In this section EIOPA would like to show the policy alternatives which were considered, the preferred policy options, as well as those which were discarded.

1.13. EIOPA proposes to approach the analysis of the impact by addressing the following specific policy issues:

- **Policy issue 1: Number of insurance/reinsurance markets**
- **Policy issue 2: Calculation of market share**

1.14. For each of these areas the respective proposed policy options are outlined including the developments following the pre-consultations and the Solvency II text, where applicable.

Policy issue 1: Number of insurance/reinsurance markets

- **Option 1:** Calculation based on split into "life insurance and reinsurance market" and "non-life insurance and reinsurance market" (2 markets);
- **Option 2:** Calculation based on split into life insurance market, life reinsurance market, non-life insurance market and non-life reinsurance market (4 markets).

Policy issue 2: Calculation of market share

- **Option 1:** Calculation follows the type of business, e.g. life or non-life business;
- **Option 2:** Calculation follows the legal form of the undertaking, e.g. life or non-life undertaking.

Analysis of Impacts

1.15. This chapter describes the analysis of impact conducted by EIOPA in order to identify the best options. For each option, the impact on Policyholders, the industry (comprising both regulated insurance undertakings and non-EEA insurers with EEA branches) and national supervisory authorities (NSAs) were considered.

Policy issue 1: Number of insurance/reinsurance markets

Option 1: Calculation based on split into "life insurance and reinsurance market" and "non-life insurance and reinsurance market" (2 markets)

Pros (+):

1.16. It is consistent with the requirements from the Solvency II directive which do not specify in particular to split the insurance and reinsurance market into two markets, i.e.: the wording, "insurance and reinsurance undertakings" is used throughout the directive only to address all undertakings.

1.17. Article 35 (6) and (7) provide general requirements for exemption of all undertakings. Solvency II does not in general distinguish the treatment of insurance undertakings from reinsurance undertakings.

1.18. Supervisors are still allowed, based on the criteria of article 35 (8), to exempt undertakings based on risk-based criteria.

Cons (-):

1.19. It does not take into account the specificities of each national market, in particular the proportion of insurance and reinsurance undertakings.

1.20. In Member States where there is a high volume of reinsurance business the inclusion of this business in the market share may lead to different exemptions than if considering four different market shares, two for direct business (life and non-life) and other two for reinsurance (life and non-life).

Option 2: Calculation based on split into life insurance market, life reinsurance market, non-life insurance market and non-life reinsurance market (4 markets)

Pros (+):

1.21. It allows NSA to take into consideration the specific case of the reinsurance market which could be material in some jurisdictions.

Cons (-):

1.22. It creates a bias in the analysis as it would lead to exempt reinsurance undertakings of different sizes compared to the one exempted for direct business.

1.23. The calculation should be based on straightforward criteria, and supervisors can still exempt undertakings based on supervisory judgment with article 35 (8).

1.24. In Member States where there is a high volume of reinsurance business the inclusion of this business in the market share may lead to different exemptions than if considering four different market shares, two for direct business (life and non-life) and other two for reinsurance (life and non-life).

Policy issue 2: Calculation of market share

1.25. The issue at stake is that at the end the NSA needs to exempt the "undertaking as a whole", not part of its business. However, due to the fact that some undertakings pursue business in both markets the following two options for the calculation of the market share were discussed.

Option 1: Calculation follows the type of business, e.g. life or non-life business

Pros (+):

1.26. This approach allows to reach the 20% of a Member State's life and non-life insurance and reinsurance market respectively, considering all the life and non-life business of every single undertaking, in line with article 35 (6) and (7).

1.27. The key element of this market share calculation is to assess which part of each life and non-life market is exempted, meaning that what is important is not the legal form of an undertaking but its activity in terms of premiums and technical provisions.

1.28. It takes into account all the business performed by each undertaking, which is in line with the spirit of exemptions based on market share calculation.

1.29. It allows supervisors to have an accurate level of exemptions as it is a precise criterion; i.e.: it covers all the activity of each undertaking.

1.30. Although it might not be consistent with the approach which NSAs take to assess impact of undertakings (e.g. during Risk Assessment Framework - RAF), where in some cases the operation of the undertaking might be taken into account as a whole without splitting into lines of business, it would be impossible to align it as the Solvency II Directive also requires the use of premiums and technical provisions for the market share calculation while NSA might also consider for the RAF impact assessment the value of the assets or any other criteria.

Cons (-):

1.31. Assessment following the lines of business leads to splitting the business of the undertakings pursuing business in both life and non-life markets into these two markets.

1.32. It does not address the undertaking as a whole but its operation in life or non-life lines of business.

1.33. Many undertakings are included in two markets (even if they are authorised as an undertaking operating in only one - life or non-life - market and not as a composite).

1.34. May not be consistent with the approach which NSAs take to assess impact of undertakings (e.g. during Risk Assessment Framework), where the operation of the undertaking might be taken into account as a whole without splitting into lines of business.

Option 2: Calculation follows the legal form of the undertaking, e.g. life or non-life undertaking

Pros (+):

1.35. Assessment following the legal form of the undertaking is consistent with the approach taken in Solvency II Directive regarding life and non-life undertakings, i.e. life undertakings are those which get authorisation for at least one class of life insurance (annex II of Directive), non-life undertakings are those which get authorisation for at least one class of non-life insurance (annex I of Directive).

1.36. Assessment following the legal form of the undertaking may be consistent with the approach taken by some NSAs to assess impact of undertakings (e.g. during Risk Assessment Framework), which means that it could be the same approach which will be taken to prioritise the smallest undertakings.

Cons (-):

1.37. This approach leads to ignoring part of the business of the undertakings due to the fact that only one activity is considered and so creating a bias in the calculation, i.e.: life business for life undertakings and non-life business for non-life undertakings.

1.38. Even if in the end the aim is to exempt legal undertakings, the Directive is clear that exemptions are based on a market share calculation in life and non-life business.

Comparing the options

Policy issue 1: Number of insurance/reinsurance markets

1.39. On the basis of the analysis of impacts, EIOPA believes that option 1 (Calculation based on split into "life insurance and reinsurance market" and "non-life insurance and reinsurance market" (2 markets)); is more effective and efficient with respect to achieving the objective of this guideline. It would allow all national competent authorities to calculate the relevant market shares taking into account the different set up of their national markets.
Therefore, Option 1 is the preferred policy option.

Policy issue 2: Calculation of market share

1.40. On the basis of the analysis of impacts, EIOPA believes that option 1 (Calculation follows the type of business, e.g. life or non-life business) is more effective and efficient with respect to achieving the objective of this guideline. The proposed policy option is expected to allow national competent authorities to calculate the relevant market share following the intention of the Solvency II regulation and also adequately considering the business of undertakings writing both non-life and life insurance/reinsurance business.

Therefore, Option 1 is the preferred policy option.