



EIOPA-CP-14/057

27 November 2014

**Consultation Paper**

**on**

**the proposal for draft Implementing  
Technical Standards with regard to the  
lists of regional governments and local  
authorities exposures to whom are to be  
treated as exposures to the central  
government**

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## **Responding to this paper**

EIOPA welcomes comments on the Consultation Paper on the proposal for draft Implementing Technical Standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government.

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](mailto: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<sup>1</sup>.

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Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published.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'.

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<sup>1</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/aboutceiops/Public-Access-\(EIOPA-MB-11-051\).pdf](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 drafting Technical Standards in accordance to Articles 10 and 15 of the EIOPA Regulation.

This Consultation Paper presents the draft Technical Standards. 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. Draft Technical Standard



EUROPEAN COMMISSION

Brussels, 29.6.2011  
C(20..) yyy final

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of [ ]**

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down  
implementing technical standards with regard to the lists of regional governments and local  
authorities exposures to whom are to be treated as exposures to the central government  
according to Directive 2009/138/EC of the European Parliament and of the Council**

**of [ ]**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)<sup>2</sup> and in particular Article 109a(2)(a) thereof,

Whereas:

- (1) This Regulation lays down the lists of the types of entities and, where appropriate, the individual entities categorised as regional governments and local authorities under the applicable national law exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established.

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<sup>2</sup> OJ L 335, 17.12.2009, p.1.

- (2) These lists of entities have been compiled taking into account information provided by the supervisory authorities on regional governments and local authorities in their respective Member State.
- (3) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (4) The European Insurance and Occupational Pensions has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

*Article 1*

***Lists of regional governments and local authorities***<sup>[3]</sup>

- (1) In accordance with the criteria set out in Article 109a(2)(a) of Directive 2009/138/EC and Article 85 of the Implementing Measures, exposures to the following regional governments and local authorities are to be treated as exposures to the central government of the jurisdiction in which they are established:
  - (a) in the Republic of Austria:
    - (i) regional governments (Länder),
    - (ii) local authorities (Gemeinden);
  - (b) in the Kingdom of Belgium:
    - (i) communities (Communauté/Gemeenschappen),
    - (ii) regions (Régions/Gewesten),
    - (iii) communes (Communes, Gemeenten),
    - (iv) provinces (Provinces, Provincies);
  - (c) in the Kingdom of Denmark:
    - (i) regional government (Regioner),
    - (ii) local authorities (kommuner);
  - (d) in the Republic of Finland:
    - (i) community (kunta/kommun),
    - (ii) city (kaupunki/stad),
    - (iii) province of Åland (Ahvenanmaan maakunta/Landskapet Åland);
  - (e) in the Federal Republic of Germany:
    - (i) state governments (Länder),
    - (ii) local governments (Gemeinden),
    - (iii) local government associations (Gemeindeverbände);

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<sup>3</sup> [The list of regional governments and local authorities will be finalised in due course depending on the timely provision of additional information from Member States, where necessary].

- (f) in the Principality of Liechtenstein:
  - (i) municipality (Gemeinden);
  
- (g) in the Grand Duchy of Luxembourg:
  - (i) municipalities (communes),
  - (ii) syndicates of municipalities (syndicats de communes);
  
- (h) in the Republic of Lithuania:
  - (i) municipalities (Savivaldybės);
  
- (i) in the Kingdom of the Netherlands:
  - (i) provinces (Provincies),
  - (ii) municipalities (Gemeenten),
  - (iii) water boards (Waterschappen);
  
- (j) in the Republic of Poland:
  - (i) powiat (powiat),
  - (ii) gmina (gmina),
  - (iii) voivodship (województwo);
  - (iv) associations of gminas and associations of powiats (związki międzygminne i związki powiatów),
  - (v) the capital city of Warsaw (miasto stołeczne Warszawa);
  
- (k) in the Portuguese Republic:
  - (i) autonomous region of Azores (Região Autónoma dos Açores),
  - (ii) autonomous region of Madeira (Região Autónoma da Madeira);
  
- (l) in the Kingdom of Spain:
  - (i) autonomous regions (comunidades autónomas),
  - (ii) local government (gobierno local);
  
- (m) in the Kingdom of Sweden:
  - (i) municipalities (kommuner),
  - (ii) country councils (landsting),
  - (iii) regions (regioner);
  
- (n) in the United Kingdom of Great Britain and Northern Ireland:
  - (i) the Scottish Parliament,
  - (ii) National Assembly for Wales,
  - (iii) Northern Ireland Assembly;

*Article 2*

***Entry into force***

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, []

*For the Commission*  
*The President*

*On behalf of the President*

*[Position]*

# **Annex I: Impact Assessment**

## **Section 1: Procedural issues and consultation of interested parties**

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

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

The draft ITS and this Impact Assessment are envisaged to be subject to a public consultation.

## **Section 2: Problem definition**

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

The Implementing Measures require for the categorisation that there should be no difference in risk between exposures to the regional government or local authority and exposures to the central government.

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

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

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

## **Baseline**

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

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

In particular the baseline will include:

- The content of Directive 2009/138/EC as amended by Directive 2014/51/EU.
- The relevant Implementing Measures.

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

### **Section 3: Objective pursued**

The objectives of the ITS are:

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

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

### **Section 4: Policy Options**

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

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

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

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

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

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

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

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

#### **4.2 Policy issue 2: Sufficient criteria for institutional arrangements**

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

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

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

#### **4.3 Policy issue 3: Granularity of the list**

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

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

Both options have in common that certain entities would be listed. Option 1 however allows for 'groupings' of RGLA entities where this is feasible.

### **Section 5: Analysis of impacts**

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

##### **5.1.1 Policy option 1:**

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

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

The following impacts on different stakeholders have been assessed:

- Impact on policyholder protection

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

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

- Impact on the economic position of the insurer

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

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

- Impact on risk management, governance and market behaviour

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

- Impact on National Supervisory Authorities (NSA) and EIOPA

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

### **5.1.2 Policy option 2:**

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

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

The following impacts on stakeholders have been assessed:

- Impact on policyholder protection

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

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

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

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

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

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

- Impact on National Supervisory Authorities (NSA) and EIOPA  
In this respect, risks associated with investments in RGLA may not be captured appropriately in the standard formula. Supervisors would have to monitor the investments carefully and decide whether supervisory actions are needed.

## **5.2 Policy issue 2 (Sufficient criteria for institutional arrangements)**

### **5.2.1 Policy option 1:**

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

With this policy option the following types of arrangements are admissible:<sup>4</sup>

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

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<sup>4</sup> The Annex contains an overview on which RGLA fulfil which of the criteria under policy option 1.

fulfilled by the RGLA. While RGLA can often be seen as a form of decentralized territorial administration, this perspective is misleading in such cases. The RGLA act on the same level as central governments in their sphere of competence.

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

The following stakeholders and impacts have been assessed:

- Impact on policyholder protection

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

On the other hand, no negative impact is expected.

- Impact on the economic position of insurers

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

On the other hand, no negative impact is expected.

- Impact on insurers risk management, governance and market behaviour

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

On the other direction, no negative impact is expected.

- No impact on National Supervisory Authorities (NSA) is expected.

- Impact on EIOPA

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

### **5.2.2 Policy option 2:**

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

The following impacts on stakeholders have been assessed:

- Impact on policyholder protection

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

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

- Impact on the economic position of insurers  
No positive impact is expected.

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

- Impact on risk management, governance and market behaviour  
In this respect, no positive impact is expected.

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

- No impact on National Supervisory Authorities (NSA) is expected.
- Impact on EIOPA  
This policy option has the on-going positive impact that monitoring the fulfilment of the criterion by RGLA will be easier.

### **5.3 Policy issue 3 (granularity of the list)**

#### **5.3.1 Policy option 1: To list categories of regional governments and local authorities where possible**

The following impacts on stakeholders have been identified:

- Regarding policyholder protection, EIOPA does not expect any impact.
- Regarding the economic position of insurers, EIOPA does not expect any impact.
- Impact on risk management, governance and market behaviour:
  - This policy option has the positive on-going impact that undertakings will be able to work with a stable list in the ITS that does not change frequently.
  - On the other hand, this policy option may have the negative on-going impact that undertakings will need processes to decide whether their exposures belong to one of the categories in the list.
- Impact on National Supervisory Authorities and EIOPA.
  - This policy option has the positive on-going impact that neither National Supervisory Authorities nor EIOPA need to trigger a change to the Technical Standard as a result of administrative reforms in the Member

- States which do not affect the risk profile of the categories (e.g. a merging of two communities).
- On the other hand, this policy option may have the negative impact that supervisors need to verify whether the exposures undertakings treat as exposures to a central government of a Member State actually belong to one of the categories listed in the Technical Standard.

### **5.3.2 Policy option 2: To list all entities that may be treated as the central government.**

The following impacts on stakeholders have been identified:

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

## **Section 6: Comparison of options**

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

The preferred option for this issue is the policy option 1. It provides a clear criterion that RGLA need to fulfil for inclusion in the Technical Standard. Although the criterion is strict EIOPA does not expect that RGLA that could for other reasons be considered of the same risk as the central government are excluded from the list. As a consequence of the strict criterion the SCR may be overstated. As mentioned above, EIOPA expects that this is not the case. Compared to policy option 2 the preferred policy option ensures that the revenue-raising powers are comparable to those of a central government. Policy option 2 would allow for RGLA that have no influence on their revenue situation and have therefore a disadvantage compared to central governments. Due to the aforementioned, the policy option 2 has been discarded very early in the process of drafting this ITS.

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

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

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

Regarding NSAs and EIOPA there is more certainty for them as regards to the equivalence of risks between the identified RGLA and the Central Governments. Policy option 2 would mean that there is uncertainty whether the RGLA is really of the same risk as the central government. Supervisory actions may be required.

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

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

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

### **Policy issue 2 (sufficient criteria for institutional arrangements)**

The preferred option for this issue is the policy option 1. It provides a comprehensive set of criteria for institutional arrangements where RGLA need to fulfil at least one of them to be listed in the Technical Standard. Compared to policy option 2, the preferred policy option takes into account that different constitutional structures have evolved in the Union. Policy option 2 would only allow a significantly smaller subset of RGLA than policy option 1. Although policy option 2 provides a simple and transparent criterion, it would discard RGLA that are of the same risk as their central governments.

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

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

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

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

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

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

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

### **Policy issue 3 (granularity of the list)**

The preferred policy option for this policy issue is option 1 (a list of categories where possible) because of the regulatory stability. Option 2 (a detailed list of entities) has been disregarded because it seems not feasible to maintain a complete list of entities in a European Regulation. The recital 41 of the Directive 2014/51/EU (often referred to as Omnibus II) also stipulates that the list of regional governments and local authorities should not be more granular than necessary. The comparison of effects on different stakeholder groups may be summarised as follows:

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

Regarding undertakings, under option 1 there is the burden of identifying entities that belong to the categories in the Technical Standard. However, it is expected that different administrative bodies in the member states maintain list of entities that belong into the categories listed in the Technical Standard. Option 2 would also require monitoring of frequently changing European regulations by undertakings.

Regarding NSAs and EIOPA, under option 1 there are costs for the identification of entities that belong to the categories in the Technical Standard for the supervisory review process. However, it is expected that different administrative bodies in the member states maintain lists of entities that belong into the categories listed in the Technical Standard. Option 2 would also require monitoring of frequently changing European regulations.

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

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

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