

**Opinion**  
**of the European Insurance and Occupational Pensions Authority**  
**of 20 December 2012 on**  
**interim measures regarding Solvency II**

**Legal Basis**

1. This opinion is issued under the provisions of Article 29(1) (a) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 (hereafter the 'Regulation') in conjunction with Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (hereafter Solvency II Directive).
2. As established in Article 29(1) (a) of the Regulation, EIOPA shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.
3. As established under Article 1 (6) of the Regulation EIOPA shall contribute to improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision, (Art. 1(6)(a)) preventing regulatory arbitrage and promoting equal conditions of competition (Art. 1(6)(d)). EIOPA shall also contribute to enhancing consumer protection (Art. 1(6)(f)).
4. As established under Article 8 (1) of the Regulation EIOPA's task is to contribute to the establishment of high quality common regulatory and supervisory standards and practices (Art. 1(6)(a)) and to contribute to the consistent application of legally binding Union acts ensuring consistent, efficient and effective application of the acts referred to in Art. 1 (2) of the Regulation (Art. 1(6)(b)). The fact that the Solvency II Directive has entered into force, means that it is considered "Union law", but it will not have legally binding effect until after the date of its application, which is currently set to 1

January 2014 in accordance with the ("Quick Fix") Directive 2012/23/EU of 12 September 2012.

5. This opinion is addressed to the national competent authorities represented in EIOPA's Board of Supervisors.

## **Context**

6. During the Board of Supervisors (BoS) meeting of September 2012, Members expressed their strong concerns with respect to the current status of the OMNIBUS II negotiations which might further delay the application of the Solvency II Directive.
7. In its explanatory memorandum to the Proposal for the Solvency II Directive the European Commission states:

"The present solvency rules are outdated. They are not risk sensitive, they leave too much scope to Member States for national variations, they do not properly deal with group supervision and they have meanwhile been superseded by industry, international and cross-sectoral developments. This is the reason why a new solvency regime, called Solvency II, which fully reflects the latest developments in prudential supervision, actuarial science and risk management and which allows for updates in the future is necessary."

8. In addition, in the absence of a final agreement on Solvency II, European supervisors may be forced to develop national solutions in order to ensure sound risk sensitive supervision. Instead of reaching consistent and convergent supervision in the EU, different national solutions may emerge to the detriment of a good functioning internal market.
9. The BoS mandated the Chair of EIOPA to write to the OMNIBUS II dialogue parties setting out its concerns. In his letter, dated 4 October 2012<sup>1</sup>, the Chair not only expressed the need for a stable and reliable time plan but also the need to reflect on an earlier implementation of some Solvency II elements. Undertakings which are well-governed and which, in particular, measure correctly, mitigate and report the risks which they face will be more likely to be prepared for the new regulatory framework and act in the interests of policyholders.
10. In that regard it is of key importance that there will be a consistent and convergent approach with respect to the preparation of Solvency II. In the run-up to the new system the following key areas of Solvency II need to be addressed in order to ensure proper management of undertakings and to ensure that supervisors have sufficient information at hand. These are the system of governance, including risk management system and a forward

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<sup>1</sup> <https://eiopa.europa.eu/publications/other-documents/index.html>

looking assessment of the undertaking's own risks (based on the ORSA<sup>2</sup> principles), pre-application of internal models, and reporting to supervisors.

11. EIOPA sets out below its expectations for the national competent authorities. These actions are consistent with EIOPA's obligation to foster supervisory convergence.
12. EIOPA will, taking into account its objective under Article 1 Para 6 and its tasks and powers under Article 8 of the Regulation, contribute to the consistent efficient and effective preparation of supervisors and insurance and reinsurance undertakings for the application of the Solvency II Directive.
13. As a follow-up to the opinion, and by making use of its powers under Article 16 of the Regulation, EIOPA will publish guidelines addressed to national competent authorities on how to proceed in the interim phase leading up to Solvency II.
14. Within 2 months of the issuance of the guidelines, each national competent authority shall confirm whether it complies or intends to comply with the guidelines. In the event that a national competent authority does not comply or does not intend to comply, it shall inform EIOPA, stating its reasons.
15. EIOPA will publish the fact that a national competent authority does not comply or does not intend to comply with that guideline.

#### **Proposed actions by national competent authorities**

16. As part of the preparation for Solvency II, national competent authorities should put in place, starting on 1 January 2014 certain important aspects of the prospective and risk based supervisory approach to be introduced in order to address the concerns set out above.
17. National competent authorities are expected to ensure that insurance and reinsurance undertakings have in place an effective system of governance which provides for sound and prudent management of the undertaking and an effective risk management system including a forward looking assessment of the undertaking's own risks (based on the ORSA principles).
18. National competent authorities are expected to ensure that insurance and reinsurance undertakings have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.
19. National competent authorities are expected to review and evaluate with respect to the undertakings concerned the system of governance, the assessment of the risks which those undertakings face or may face and the

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<sup>2</sup> Own Risk and Solvency Assessment

assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

20. Through internal model pre-application processes, national competent authorities engaged in pre-application of internal models<sup>3</sup> should continue to work with undertakings to form a view on undertakings' degree of readiness for internal model applications, and should also follow subsequent evolutions to the internal model framework.
21. National competent authorities are encouraged to request all the information necessary for applying a prospective and risk based supervisory approach.
22. National competent authorities are expected to ensure that the requirements mentioned above are applied in a manner which is proportionate to the nature, scale and complexity inherent in the business of the insurance and reinsurance undertaking.

This opinion will be published on EIOPA's website.

Done at Frankfurt am Main, 20 December 2012

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<sup>3</sup> CEIOPS-DOC-76-10 CEIOPS Level 3 Guidance on Solvency II : Pre-application process for internal models.