



EIOPA-IRSG-14-06

IRSG Opinion on draft Implementing Technical Standards (ITS) for approval processes

Executive Summary

The IRSG is obliged to opine on EIOPA consultations, and this responsibility is particularly important in relation to ITS which are intended on endorsement by the Commission to become European law. The draft ITS listed below have been considered by the IRSG particularly from a consumer/stakeholder perspective which has led us to develop detailed suggestions for improvement regarding clarity, simplicity, and timeliness of supervisory decision-making. We believe redrafted ITS will contribute usefully to the successful achievement of the Solvency 2 objectives of enhanced public confidence and a vibrant competitive market for insurance.

Introduction and Scope

This Opinion relates to the following draft ITS issued for public consultation on 1 April 2014:

- Cp-14/004 Consultation Paper On The Proposal For ITS With Regard To The Procedures To Be Used For Granting Supervisory Approval For The Use Of Ancillary Own-Fund Items
- Cp-14/005 Consultation Paper On The Proposal For ITS On Internal Models Approval Processes
- Cp-14/006 Consultation Paper On The Proposal For ITS On The Process To Reach A Joint Decision For Group Internal Models

- Cp-14/007 Consultation Paper On The Proposal For ITS On The Procedures To Be Followed For The Approval Of The Application Of A Matching Adjustment
- Cp-14/008 Consultation Paper On The Proposal For ITS On Special Purpose Vehicles
- Cp-14/009 Consultation Paper On The Proposal For ITS With Regard To The Supervisory Approval Procedure To Use Undertaking-Specific Parameters

The stakeholder group has appreciated EIOPA's willingness to engage in discussion to explain its rationale for elements of the drafts.

Detailed comments on each of the drafts have been prepared using the approved EIOPA comment templates and are attached to this Opinion. The Opinion itself addresses some common themes which have been reflected in our detailed comments.

The IRSG will also be opining in the context of the current consultation on related guidelines, where our response is due by 29 August. We very much welcome EIOPA's commitment to development of guidelines which should be very helpful to all stakeholders. We have however deliberately not had regard to the envisaged content of these guidelines in formulating our comments, since the ITS must be formulated and evaluated on a stand-alone basis.

General Remarks

The guiding principle for our comments has been the optimisation of the position of insurance consumers and other insurance stakeholders. For consumers a sound solvency framework requires consideration of the optimal balance between security and competitiveness of insurers and insurance products. Absolute security in all eventualities would make insurance unaffordable for many and cause damage to the real economy but consumers should be able to enter into contracts with a very high level of confidence that insurer commitments will be honoured. We have also to consider carefully both the costs and the benefits of regulation – procedures should not be unnecessarily complex or slow. Finally we believe the long-term health of insurance markets and their capacity to serve customers requires proportionality of regulation in the interest of fair competition.

We are willing to believe that in principle these ITS are justified in the interests of achieving necessary harmonisation of supervisory processes across the European Union. We are obliged to take this to some extent on faith as Level 2 measures (draft delegated acts) have yet to be definitively approved and published. In our detailed comments we have sought to emphasise that there is little point in ITS simply repeating the expected Level 2 requirements but that the emphasis should be on how these are to be satisfied in practice in a practical manner. It seems at least possible that consumers and industry will be best served by some further review of ITS at the point at which draft delegated acts are finally agreed.

For reasons for which in fairness neither EIOPA nor national supervisors can be blamed, the timetable for implementation of Solvency 2 is extremely tight. We regard it as important that ITS should not exacerbate this pressure which could have unfortunate

consequences for the insurance consumers and for the industry in the form of high costs and even impairment of public confidence. For this reason we have consistently emphasised that supervisory approval should be timely and should be no more complicated than is objectively justified.

While numbers of undertakings likely to seek approval for solo or group internal models as the basis for their Solvency Capital Requirement are small (and tending to diminish) and fairly predictable, the same is not true for certain other approval processes. Particularly where approval is effectively a continuation of established sound actuarial or financial management practices, we think it likely that several hundreds of insurance undertakings will seek approval for each of:

- Ancillary own funds items
- Matching adjustment
- Undertaking-specific parameters.

We therefore think it likely that consumers and industry will be best served by keeping such approval processes straightforward and pragmatic and building on established practice.

We welcome what we understand to be a strong commitment on the part of EIOPA to describing in guidelines how it envisages undertakings and supervisors can implement proportionality – a matter on which the draft ITS are substantially silent. Many of our comments are directed at allowing greater flexibility to undertakings and supervisors for transparent exercise of professional judgement as to what may be proportionate having regard to the nature, scale and complexity of their firm and of its market context.

Perhaps most importantly, we have sought to have regard to considerations of public confidence. Solvency 2 is surely intended to sustain and enhance that confidence and it is important that the process of implementation does not even inadvertently impair it. This is a principal reason why we have emphasised the importance of timely supervisory responses, avoidance of excessively bureaucratic procedure and avoiding disruption to established administrative law or practice in relation to – for example – how silence or lack of action on the part of any national authority is to be interpreted.

Conclusions

We appreciate the pressures on EIOPA to produce for European Commission approval a wide range of ITS to an exacting timetable. This is particularly challenging when other elements of the Solvency 2 framework, notably the draft delegated acts, have not yet been definitively agreed.

Nevertheless we believe that consumers can be better served by reconsidering the draft ITS, particularly those in relation to matching adjustment, undertaking-specific parameters and ancillary own funds items. Reconsideration should have regard particularly to simplification of required content and processes and to much more timely supervisory decision-making as set out in the attached detailed comments.