

CONSULTATION
PAPER

CONSULTATION PAPER

on the proposal for Regulatory Technical Standards on relevant insurance and reinsurance undertakings with respect to the host Member State's market

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eiopa

European Insurance and
Occupational Pensions Authority

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RESPONDING TO THIS PAPER

EIOPA welcomes comments on the consultation paper on the proposal for Regulatory Technical Standards on relevant insurance and reinsurance undertakings with respect to the host Member State's market.

Comments are most helpful if they:

- ▶ respond to the question stated, where applicable;
- ▶ contain a clear rationale; and
- ▶ describe any alternatives EIOPA should consider.

Please provide your comments to EIOPA via EU Survey ([link](#)) by 2 January 2025 23:59 CET.

Contributions not provided via EU Survey or after the deadline will not be processed. In case you have any questions please contact Solvencyllreview@eiopa.europa.eu.

Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third-party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

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

Declaration by the contributor

By sending your contribution to EIOPA you consent to publication of all non-confidential information in your contribution, in whole/in part – as indicated in your responses, including to the publication of the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/1725. More information on how personal data are treated can be found in the privacy statement at the end of this material.

¹ [Public Access to Documents.](#)

Next steps

EIOPA will revise the proposal in view of the stakeholder comments received. EIOPA will publish a report on the consultation including the revised proposal and the resolution of stakeholder comments.

1. BACKGROUND AND RATIONALE

1.1. AMENDMENTS TO THE SOLVENCY II DIRECTIVE

The European Commission proposed amendments to Directive 2009/138/EC² (Solvency II Directive) in September 2021.³ The provisional agreement of the European co-legislators on the amendments to the Solvency II Directive⁴ includes a new Article 152ab on enhanced supervisory cooperation and information exchange between home and host supervisory authorities in relation to significant-cross-border activities. Cooperation shall be commensurate with the risks entailed by the significant cross-border activities and shall cover at least the system of governance, outsourcing and distribution partnerships, business strategy and claims handling, and consumer protection. The home supervisory authority, in addition to reporting obligation in case of deteriorating financial conditions or a risk of non-compliance with the capital requirements, has an obligation to inform the host supervisory authority at least on annual basis on the Solvency Capital Requirement and the Minimum Capital Requirement, the amounts of eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement and on potential concerns technical provisions or capital requirements. In addition, there is a possibility for the host supervisory authority to address a duly justified information request to the home supervisory authority, provided that it is related to the solvency, the system of governance or the business model of the undertaking.

The definition of significant-cross-border activities introduced with Article 152aa refers to the insurance and reinsurance activities carried out in a given host Member State under the right of establishment or freedom to provide services by an insurance or reinsurance undertaking which is not classified as a small and non-complex undertaking, and which meets any of the following requirements:

- (a) the total annual gross written premium income corresponding to the activities carried out by the undertaking in that host Member State under the right of establishment and under the freedom to provide services exceeds EUR 15 000 000;
- (b) the activities carried out under the right of establishment or under the freedom to provide services are considered by the supervisory authority of the host Member State to be of relevance with respect to the host Member State's market.

1.2. MANDATE FOR DRAFT REGULATORY TECHNICAL STANDARDS

The supervisory authority of the host Member State is empowered to consider the activities carried out under the right of establishment or under the freedom to provide services being of relevance with

² 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 (Solvency II), OJ L 335, 17.12.2009, p. 1–155

³ [Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision](#)

⁴ See the [corrigendum of the text of the provisional agreement as adopted by the European Parliament on 23 April 2024](#).

respect to the host Member State's market, on the basis of conditions and criteria specified in Regulatory Technical Standards (RTS). The supervisory authority of the host Member State shall notify the supervisory authority of the home Member State stating the reasons thereof.

In accordance with Article 152aa paragraph 2 of the Solvency II Directive the RTS shall further specify the conditions and criteria to be used when determining which insurance or reinsurance undertakings are of relevance with respect to the host Member State's market.

1.3. APPROACH TO THE RTS

The draft RTS set out in this consultation paper aims at defining the criteria and conditions to identify relevant cross-border activities based on both qualitative and quantitative information, without introducing thresholds. The Directive already prescribes a quantitative threshold that serves as a benchmark in identifying cross-border activities as significant, while it attributes to the supervisory authority of the host Member State the possibility to consider cross-border activities as relevant to its market on different grounds. This approach enhances supervisory judgement and allows to conduct more targeted assessments, enabling supervisors to consider the specific circumstances of each undertaking and reflecting the unique aspects of the activities conducted in their markets.

As a result, under this approach, the draft RTS aims to specify the relevance of cross-border activities with respect to the host Member State's market based on two criteria: first, on the basis of concentrations of the insurance or reinsurance undertaking's cross-border activities carried out in the host Member State's market; secondly, on the basis of the impact of those activities to the insurance market and the policyholders and beneficiaries in the host Member State. The proposed criteria would allow to consider different levels of granularity of cross-border activities of the undertaking compared to total undertaking's activity or to the whole insurance market of the host Member State, including specific segments, lines of business, insurance risks or type of insurance products, while taking into account the level of substitutability and the potential detriment to policyholders and beneficiaries in the host Member State's market.

The conditions and criteria in accordance with Article 152aa (2) are specified in Article 1 of the draft RTS.

2. DRAFT TECHNICAL STANDARDS



EUROPEAN COMMISSION

Brussels, dd.mm.yyyy
C(20..) yyy final

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

of []

COMMISSION DELEGATED REGULATION (EU) No .../... supplementing Directive 2009/138/EC of the European Parliament and of the Council with regard to regulatory technical standards on relevant insurance and reinsurance undertakings with respect to the host Member State's market 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) ⁽¹⁾ and in particular Article 152aa (2), second subparagraph thereof

Whereas:

- (1) Article 152aa of Directive 2009/138/EC considers as significant those activities carried out in a given host Member State under the right of establishment and freedom to provide services, where the total annual gross written premium income corresponding to those activities exceeds EUR 15 000 000, or when those activities are considered by the supervisory authority of the host Member State as being of relevance with respect to its market. In this context, it is necessary to specify the conditions and criteria to be used by supervisory authorities when determining which insurance or reinsurance undertakings are of relevance with respect to the host Member State's market.
- (2) The assessment of relevance with respect to the host Member State's market should be based on two criteria: first, on the basis of concentrations of the insurance or reinsurance undertaking's cross-border activities carried out in the host Member State's market; secondly, on the basis of the impact of those activities to the insurance market and to the policyholders and beneficiaries in the host Member State. This assessment should consider different granularity of cross-border activities of the undertaking compared to the undertaking's total activity or to the whole insurance market of the host Member State, including specific segments, lines of business, insurance risks or type of insurance products. In addition, the assessment of relevance should take into account the level of substitutability and the potential detriment to policyholders and beneficiaries in the host Member State's market.
- (3) The conditions and criteria in this Regulation should provide the supervisory authority of the host Member State with a framework for identifying insurance or reinsurance undertakings relevant to their market, while ensuring the flexibility to exercise judgment within the parameters of the specified conditions and criteria.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.
- (5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Conditions and criteria for determining the relevance of the activities with respect to the host Member State's market

1. For the purposes of determining the relevance of the activities carried out by an insurance or reinsurance undertaking under the right of establishment or under the freedom to provide services with respect to the host Member State's market, the supervisory authority of that host Member State shall consider the following conditions and criteria:

- (a) whether the insurance or reinsurance undertaking's activities are concentrated in the following situations:
 - (i) share of the insurance or reinsurance undertaking's activities in the host Member State, measured as the annual gross written premium income corresponding to the activities carried out by the undertaking in that host Member State, compared to the undertaking's total annual gross written premium income; or
 - (ii) the market share held by the insurance or reinsurance undertaking in the host Member State's market, measured either in terms of whole insurance market, life insurance market, non-life insurance market or reinsurance market; or
- (b) whether the activities carried out by the insurance or reinsurance undertaking has a significant impact with respect to:
 - (i) specific lines of business, insurance risks or insurance products considered important by the supervisory authority of the host Member State due to specificities of the national insurance market, including but not limited to compulsory insurance; or
 - (ii) the protection of policyholders and beneficiaries in the host Member State.

2. For the purposes of point (a)(ii) of paragraph 1, the market share shall be measured as a percentage of the annual gross written premium income or the gross technical provisions corresponding to the relevant activities carried out by the undertaking in that host Member State, compared to the total of the annual gross written premium income or gross technical provisions for activities in the host Member State's insurance market, life insurance market, non-life insurance market or reinsurance market as appropriate.

3. For the purposes of point (b) of paragraph 1, the significance of the impact shall be assessed with regard to the following factors:

- (a) the relative market share of specific line of business, insurance risk or insurance product in the host Member State's market;
- (b) the level of substitutability in the host Member State's market; or
- (c) the potential detriment to policyholders and beneficiaries in the host Member State's market.

4. For the purposes of point (a) of paragraph 3, the supervisory authority of the host Member State shall use any quantitative criteria normally used for determining market shares of specific line of business, insurance risk or insurance product including the level of premiums or technical provisions, the number of policyholders or insured persons, the number of policies, the sum insured, or the number of insured vehicles.

5. For the purposes of point (b) of paragraph 3, the supervisory authority of the host Member State shall take into account the notion of substitutability as referred to in Article 5(2) of [IRRD].

6. For the purposes of point (c) of paragraph 3, the supervisory authority of the host Member State shall use any quantitative or qualitative criteria normally used for determining potential detriment to policyholders and beneficiaries including the level of affected policies, higher than average level of complaints, commission rates or gross written premium growth in the previous financial year.

Article 2

Entry into force

This Regulation shall enter into force on 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]

[For the Commission

On behalf of the President]

[Position]

ANNEX: IMPACT ASSESSMENT

In accordance with Article 29 of the EIOPA Regulation⁵, EIOPA carries out, where relevant, analyses of costs and benefits during the policy development process. The analysis of costs and benefits is undertaken according to an impact assessment methodology.

This impact assessment covers the draft RTS on relevant insurance and reinsurance undertakings with respect to the host Member State's market. It is based on a qualitative assessment done by EIOPA.

In drafting these RTS, EIOPA sticks to the general objectives of the Solvency II Directive, as agreed by the legislators in 2009. These general objectives are:

- ▶ adequate protection of policyholders and beneficiaries, being the main objective of supervision;
- ▶ financial stability;
- ▶ proper functioning of the internal market.

In view of the specific purpose of these technical standards, the following more specific objectives were identified:

- ▶ effective and efficient supervision of cross-border business;
- ▶ enhanced cooperation and coordination between competent authorities.

POLICY ISSUE: DEFINE THE APPROPRIATE APPROACH TO CALIBRATE CRITERIA AND CONDITIONS

This policy issue includes three policy options related to the approach to be used to define criteria and conditions for determining the relevance of the activities carried out under the right of establishment or under the freedom to provide services with respect to the host Member State's market.

Policy option 1: No change

This option means that no RTS are in place. It is a hypothetical baseline that is only introduced as a benchmark against which the impact of the other policy options is compared.

This option is not considered as a viable option given the specific mandate given to EIOPA in the context of Article 152aa paragraph 2 of the Solvency II Directive.

⁵ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC; OJ L 331, 15.12.2010, p. 48–83.

Policy option 1		
Costs	Policyholders	Lacking the definition of common criteria and conditions to identify cross-border activities of relevance for the host Member State's market, cooperation and information-sharing would not be strengthened, ultimately affecting consumer rights and undermining the protection of policyholders across the Union.
	Industry	No material impact.
	Supervisors	Supervisors would not be able to make use of an instrument that may be relevant to identify activities of relevance for their market, by taking into account national specificities. Furthermore, Supervisors would dispose of excessive discretion, leading to detailed case-by-case assessments that could increase their administrative burden.
	Other	No material impact.
Benefits	Policyholders	No material impact.
	Industry	No material impact.
	Supervisors	No material impact.
	Other	No material impact.

Policy option 2: Adopting criteria and conditions based on quantitative thresholds

This option aims at defining criteria and conditions based on strictly defined absolute and relative thresholds resulting in a quantitative approach that would set benchmarks among undertakings operating in different Member States.

Implementing quantitative thresholds offers a clear and objective benchmark for assessing the relevance of cross-border activities. Such approach would foster full supervisory convergence, offering supervisors common standards and promote consistency in supervisory assessments. By applying standard benchmarks, similar activities across different Member States can be considered as relevant for the purpose of enhanced information sharing in the same manner.

Nonetheless, setting criteria and conditions that operate as benchmarks runs the risk of establishing thresholds that do not capture the specificities of individual markets or the emergence of peculiar cases. Indeed, especially in the case of cross-border activities, where the size of the markets and the type of products offered therein can significantly vary from one Member State to the other, the rigid nature of these benchmarks could result in the misclassification of activities that do not fit neatly into predefined categories, potentially leading to unfair or inappropriate regulatory outcomes. Hence, it may be difficult to identify suitable quantitative thresholds across different Member States.

Policy option 2		
Costs	Policyholders	Supervisors may excessively rely on quantitative thresholds, leading to overlook at the qualitative aspects of the cross-border activities that are equally important for ensuring consumer protection.
	Industry	No material impact.
	Supervisors	Rigid benchmarks may not capture all relevant nuances of different business models and market conditions, leading to potential misclassification and inappropriate regulatory responses. Moreover, Supervisors may excessively rely on quantitative thresholds, leading to overlook at the qualitative aspects of the cross-border activities that are equally important for ensuring consumer protection.
	Other	Not seen as fully aligned with the mandate..
Benefits	Policyholders	Benchmarks would provide criteria and conditions giving policyholders confidence that supervisory assessments are objective and consistent.
	Industry	No material impact.
	Supervisors	By introducing criteria and conditions that serve as a benchmark, supervisors will be facilitates in assessing compliance and establishing enhanced cooperation mechanisms. Moreover, having benchmark criteria and conditions streamlines the supervisory process and facilitates peer reviews among different undertakings and analysis through time.
	Other	No material impact.

Policy option 3: Adopting criteria and conditions without thresholds

This option aims at defining the criteria and conditions to identify relevant cross-border activities based on both qualitative and quantitative information, without introducing thresholds.

Such approach enhances supervisory judgement and allows to conduct more targeted assessments, enabling supervisors to consider the specific circumstances of each undertaking and reflecting the unique aspects of the activities conducted in their markets while ensuring supervisory convergence.

This option is also deemed to be more in line with the rationale of Article 152aa paragraph 2 of the Solvency II Directive. The Directive already prescribes a quantitative threshold that serves a benchmark in identifying cross-border activities as significant, while it attributes to the supervisory authority of the host Member State the possibility to consider cross-border activities as relevant to its market on different grounds.

The use of criteria and conditions that are not strict benchmarks also allows a higher degree of proportionality, allowing for supervisory authority to adequately consider the cross-border activities of undertakings under the right of establishment and freedom to provide services vis-à-vis the specificities of their markets.

As a result, under this approach, the draft RTS aims to define the relevance with respect to the host Member State's market, on the one hand, in the form of potential concentrations of the insurance or

reinsurance undertaking’s activities carried out under the right of establishment or under the freedom to provide services in the host Member State’s market, and on the other, on the basis of the impact of those activities to the insurance market and the policyholders and beneficiaries in a given host Member State. Such an assessment would allow to reach different levels of granularity, in relation to total cross-border activities, specific segments, lines of business, insurance risks or type of insurance products, while taking into consideration the level of substitutability and the potential detriment to policyholders and beneficiaries in the host Member State’s market.

It is also acknowledged that by avoiding defining criteria and conditions that would serve as a benchmark, the degree of supervisory convergence among authorities may be hindered, ultimately leading to unlevel playing field among Member States. Nonetheless, as also demonstrated by the work conducted through the existing collaboration tools put in place, EIOPA will support the supervisory authorities, fostering a collaborative environment and enhancing the supervisory convergence of practices.

Policy option 3		
Costs	Policyholders	No material impact.
	Industry	No material impact
	Supervisors	Supervisors would need to employ more supervisory judgement to assess whether the criteria and conditions lead to relevant cross-border activities.
	Other	No material impact.
Benefits	Policyholders	Criteria and conditions – even if not in the form of benchmarks – would give policyholders confidence that supervisory assessments are objective and consistent, by taking into account specificities of each market
	Industry	No material impact
	Supervisors	Broader and more qualitative criteria enable supervisors to take into account the complexities and specificities of their markets. This includes understanding consumer behaviour and emerging trends that quantitative thresholds might not capture. Moreover, this approach allows supervisors to account for these specificities, ensuring that the assessment of the relevance of the cross-border activities reflects local conditions. Supervisors remain flexible and agile to encounter all range of scenarios that might arise in the cross-border domain, leveraging on EIOPA’s expertise to foster converge of practices.
	Other	No material impact.

COMPARISON OF POLICY OPTIONS

Policy option 1 is deemed inefficient from the point of view of ensuring and fostering supervisory convergence in determining the determining the relevance of the activities carried out under the right of establishment or under the freedom to provide services with respect to the host Member State’s

market. Likewise, it is also considered as a non-viable option given the empowerment included in Article 152aa paragraph 2 of the Solvency II Directive. This consideration applies both in terms of effectiveness and efficiency.

Policy option 2 would contribute to achieve the objective of supervisory convergence among national competent authorities by defining criteria and conditions based on strictly defined absolute and relative thresholds. However, this option is considered inefficient as it would not allow supervisors to capture all relevant nuances of different business models and market conditions, leading to potential misclassification and inappropriate regulatory responses. Moreover, this option is not deemed effective as it excessively relies on quantitative thresholds, overlooking at the qualitative aspects of the cross-border activities that are equally important for ensuring consumer protection and ensuring effective and efficient supervision of cross-border business.

Policy option 3 is deemed efficient as it provides national competent authorities with criteria and conditions that allow flexibility and agility to encounter all range of scenarios that might arise in the cross-border domain. At the same time, this option is deemed effective as it introduces broader and more qualitative criteria that allows to take into account the complexities and specificities of the host Member States’ markets and enhanced cooperation and coordination between competent authorities. This leads to a better understanding of consumer behaviour and emerging trends that quantitative thresholds might not capture and finally to a more effective and efficient supervision of cross-border business.

EFFECTIVENESS (0,+,,+)		
	Effective and efficient supervision of cross-border business	Enhanced cooperation and coordination between competent authorities
Policy option 1: No change	0	0
Policy option 2: Adopting criteria and conditions based on quantitative thresholds	+	+
Policy option 3: Adopting criteria and conditions without thresholds	++	++
EFFICIENCY (0,+,,+)		
	Effective and efficient supervision of cross-border business	Enhanced cooperation and coordination between competent authorities
Policy option 1: No change	0	0
Policy option 2: Adopting criteria and conditions based on quantitative thresholds	+	++

Policy option 3: Adopting criteria and conditions without thresholds	++	++
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PREFERRED OPTION

Based on the evidence provided in the above assessment, policy option 3 is the preferred option. Besides the superior efficiency and effectiveness and cost-benefit relation, this option also provides national supervisory authorities with the right tools to enhance and apply proportionality while creating a level playing field.

With respect to the criteria and conditions, no additional burden is put on undertakings and groups in terms of increased reporting burden, because the information can be derived through the use of the information already available to supervisors in the context of the supervisory review process.

The combination of criteria and conditions defined in the RTS fosters supervisory judgement and allows to conduct more targeted assessments, enabling supervisors to consider the specific circumstances of each undertaking and reflecting the unique aspects of the activities conducted in their markets.

Privacy statement related to Public (online) Consultations

Introduction

1. **EIOPA, as a European Authority, is committed to protect individuals with regard to the processing of their personal data in accordance with Regulation (EU) No 2018/1725 (further referred as the Regulation).⁶**

Controller of the data processing

2. **The controller responsible for processing your data is EIOPA's Executive Director.**
Address and email address of the controller:
3. **Westhafenplatz 1, 60327 Frankfurt am Main, Germany**
fausto.parente@eiopa.europa.eu

Contact details of EIOPA's Data Protection Officer

4. **Westhafenplatz 1, 60327 Frankfurt am Main, Germany**
dpo@eiopa.europa.eu

Purpose of processing your personal data

5. The purpose of processing personal data is to manage public consultations EIOPA launches and facilitate further communication with participating stakeholders (in particular when clarifications are needed on the information supplied).
6. Your data will not be used for any purposes other than the performance of the activities specified above. Otherwise you will be informed accordingly.

Legal basis of the processing and/or contractual or other obligation imposing it

7. **EIOPA Regulation, and more precisely Article 10, 15 and 16 thereof.**
8. EIOPA's Public Statement on Public Consultations.

Personal data collected

⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

9. The personal data processed might include:

- Personal details (e.g. name, email address, phone number);
- Employment details.

Recipients of your personal data

10. The personal data collected are disclosed to designated EIOPA staff members.

Transfer of personal data to a third country or international organisation

11. No personal data will be transferred to a third country or international organization.

Retention period

12. Personal data collected are kept until the finalisation of the project the public consultation relates to.

Profiling

13. No decision is taken in the context of this processing operation solely on the basis of automated means.

Your rights

14. You have the right to access your personal data, receive a copy of them in a structured and machine-readable format or have them directly transmitted to another controller, as well as request their rectification or update in case they are not accurate.

15. You have the right to request the erasure of your personal data, as well as object to or obtain the restriction of their processing.

16. For the protection of your privacy and security, every reasonable step shall be taken to ensure that your identity is verified before granting access, or rectification, or deletion.

17. Should you wish to access/rectify/delete your personal data, or receive a copy of them/have it transmitted to another controller, or object to/restrict their processing, please contact [legal@eiopa.europa.eu]

18. Any complaint concerning the processing of your personal data can be addressed to EIOPA's Data Protection Officer (DPO@eiopa.europa.eu). Alternatively, you can also have at any time recourse to the European Data Protection Supervisor (www.edps.europa.eu).