

GUIDELINES AND RECOMMENDATIONS GUIDE

Scope

1. This Guide provides guidance in relation to the process for guidelines and recommendations in accordance with Article 16 of Regulation (EU) No 1094/2010 (hereinafter 'EIOPA Regulation').

Definitions

2. For the purpose of this Guide:
 - (a) Adoption refers to the date when the Board of Supervisors approved the guidelines or recommendations.
 - (b) Issuance refers to the publication date of the guidelines in all EU official languages and of the recommendation in the relevant EU official language(s) on EIOPA's website.
 - (c) Application refers to the date by when competent authorities are expected to comply with the guidelines or recommendations.
 - (d) Confirmation deadline refers to the date when competent authorities need to confirm the compliance status.

Development process

3. EIOPA develops guidelines and recommendations on its own initiative or where required by Union law. This process includes:
 - (a) impact assessment, where appropriate;
 - (b) public consultation, where appropriate;
 - (c) request for steering from the competent steering committee(s) or the resolution committee if relevant, and for feedback from the relevant working structures (e.g. expert network(s)) within EIOPA, where appropriate;
 - (d) request for advice from the relevant EIOPA Stakeholder Group, where appropriate;
 - (e) adoption by the Board of Supervisors;
 - (f) translation;
 - (g) publication.

Date of application

4. Guidelines and recommendations may specify a date of application. Competent authorities and financial institutions, where relevant, are expected to comply with the guidelines or recommendations by its date of application.

5. If no application date is specified, competent authorities and financial institutions, where relevant, are expected to comply with the guidelines or recommendations by the confirmation deadline, which is two months after the issuance of the guidelines or recommendations.

Translation and publication

6. Guidelines and recommendations are published in their original version (English) on EIOPA's website after their adoption.
7. EIOPA provides the draft translated guidelines and recommendations to the competent authorities following the adoption by the Board of Supervisors and prior to the publication of the translations. Upon receipt of the draft translated guidelines or recommendations, competent authorities may submit corrections to the translation within one month.
8. Guidelines are translated into all official EU languages, and recommendations into the relevant official EU language(s), and published on EIOPA's website.
9. Published guidelines and recommendations include a unique identifier and the date of adoption, along with references to any original guidelines or recommendations that they replace.

Comply-or-explain mechanism for competent authorities

10. In accordance with Article 16 of the EIOPA Regulation, competent authorities are required to make every effort to comply with guidelines or recommendations. Competent authorities to whom guidelines or recommendations apply should comply by incorporating them into their regulatory or supervisory framework in an appropriate manner.
11. Guidelines or recommendations are not applicable to a competent authority if it concerns financial institutions or financial instruments that do not exist in the jurisdiction of the Member State due to prohibition under national law, provided the prohibition complies with Union law. If only part of the guidelines or recommendations is not applicable, the final status needs to reflect the compliance status of the applicable provisions (i.e. comply, intend to comply, or not comply).
12. A competent authority is considered to intend-to-comply under the following circumstances:
 - (a) When guidelines or recommendations pertain to financial institutions or financial instruments that do not currently exist in the jurisdiction of the competent authority, but which are not prohibited under national law, and the competent authority notifies EIOPA of its intention to comply with an explanation of the circumstances. This will be considered as intending to comply until the relevant financial institutions or financial instruments are established and the competent authority notifies EIOPA thereof.
 - (b) When legislative, regulatory, or internal proceedings have been initiated to implement measures necessary for compliance with the guidelines or recommendations. If the

competent authority notifies EIOPA of its intention to comply, along with an explanation of the ongoing process, it will be considered as intending to comply until the proceedings are completed and EIOPA is duly notified.

13. A competent authority is considered to comply with the guidelines or recommendations if it complies with all individual provisions within that guidelines or recommendations. If it fails to comply with one or more individual provisions, it is considered non-compliant. If the authority complies with some provisions and intends to comply with other provisions, it will be considered as intend to comply. The compliance overview table published by EIOPA will report the status of compliance with the guidelines or recommendations. The compliance tables published by EIOPA and referred in the compliance overview table will note the individual provisions with which the competent authority is compliant, intends to comply and is non-compliant.

Confirmation by competent authorities

14. After being informed by EIOPA about the publication of translations and confirmation deadline, competent authorities need to send a confirmation to EIOPA by the confirmation deadline, specifying whether they:
- (a) comply with the guidelines or recommendations, including either a summary or an electronic link to the implementing measures published in the relevant jurisdiction. In certain cases, the provision of links to published competent authorities communications or the provision of formal statements confirming compliance may also be acceptable, provided they offer sufficient clarity and transparency;
 - (b) intend to comply with the guidelines or recommendations, including the intended date of compliance and details of the measures being undertaken to ensure compliance with the guidelines or recommendations;
 - (c) do not comply with the guidelines or recommendations, including a reasoned explanation for non-compliance; or
 - (d) consider the guidelines or recommendations not to be applicable, with a reasoned explanation for why the guidelines or recommendations are not applicable to them.
15. If the status of compliance varies between individual provisions of the guidelines or recommendations, the competent authority is to specify the status for each provision (i.e. comply, intend to comply, do not comply, or not applicable). When multiple provisions share the same status and justification, they may be grouped together with a single explanation to avoid repetition.
16. The format and method for the confirmation is specified by EIOPA.
17. After the confirmation deadline, EIOPA notifies competent authorities regarding the confirmations received and publishes the confirmations on its website. If a competent authority fails to submit a confirmation by the deadline, it will be considered non-compliant and will be

reported as such until a confirmation is received specifying that they comply or intend to comply or that they consider the guidelines or recommendations not to be applicable.

18. Any change in compliance status needs to be reported to EIOPA. For example, if a competent authority intends to comply by a certain date, an update should be provided once compliance is achieved shortly after such date. If guidelines or recommendations initially deemed not applicable later become applicable, an update is also required. An updated confirmation is required in such instances. Changes in compliance status are published by EIOPA in a timely manner.

Publication of reasons for non-compliance

19. When providing the confirmation of their compliance status specifying that they do not comply, competent authorities are to inform EIOPA if they consider that the reasons for non-compliance should not be published, together with a rationale for this.
20. The decision whether to publish the reasons for non-compliance is taken by EIOPA's Chairperson. The Chairperson may consult the Chair of the relevant Working Group when taking such a decision. The Chairperson's decision will be submitted to the Board of Supervisors for their final decision in the case of disagreement with the competent authority regarding the publication of the reasons for non-compliance. The competent authority concerned will receive an advanced notice of the publication as foreseen in Article 16 (3).

Follow up of compliance

21. The Chairperson reports to the Board of Supervisors annually about the compliance status of guidelines and recommendations, including those competent authorities that are non-compliant and their reasons. EIOPA can propose to the Board of Supervisors further action for decision.

Review

22. Guidelines and recommendations should be subject to a review as established in Article 29(1)(d) of the EIOPA Regulation, enabling EIOPA to propose the necessary amendments to ensure an effective, consistent and updated application of their content.
23. Guidelines and recommendations should be consolidated to incorporate any amendments resulting from a review and subsequently translated indicating the date of adoption of the revised Guidelines or Recommendations. The revised Guidelines or recommendations should undergo the above Comply or Explain process on the provisions that have been amended.

Errata

24. Factual errata are sent for information and non-objection to the Board of Supervisors and published in all EU official languages on EIOPA's website. Corrigendum of translations shall be

published on EIOPA's website in the language of the version of the document the translation of which has been corrected.

Report by financial institutions

25. Where guidelines or recommendations require financial institutions to report whether they comply, the process is to be specified in the guidelines or recommendations.