

CONSULTATION  
PAPER

# CONSULTATION PAPER

on the proposal for shortening EIOPA  
Guidelines under Solvency II

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## RESPONDING TO THIS PAPER

EIOPA welcomes comments on the consultation paper proposal for shortening EIOPA Guidelines under Solvency II.

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 send your comments to EIOPA via [EUSurvey](#) by 8 July 2026, 23:59 CET.

Contributions not provided via EUSurvey or after the deadline will not be processed. In case you have any questions please contact [SolvencyIIreview@eiopa.europa.eu](mailto:SolvencyIIreview@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.<sup>1</sup>

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Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published.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

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<sup>1</sup> [Public Access to Documents](#)

## CONSULTATION PAPER OVERVIEW AND NEXT STEPS

The Solvency II review includes several mandates for EIOPA to draft new instruments like technical standards, guidelines and reports. In addition, EIOPA has a duty to review the existing EIOPA Guidelines to ensure that the text is up to date and in line with the revised Solvency II Directive<sup>2</sup>.

Another objective of the review is to simplify and shorten the guidelines, in particular where the guidelines are relevant for insurance and reinsurance undertakings.

In light of the high number of EIOPA Guidelines, EIOPA adopted an approach that prioritises certain EIOPA Guidelines, which are more affected by the new framework, to be reviewed sequentially. This approach led, as a first step, to the review of 12 (set of) EIOPA Guidelines, 9<sup>3</sup> of which have been streamlined, in most cases well beyond the 25% benchmark:

Title of the Guidelines	Current number of GLs	Number of GLs after revision	Reduction	Status
<b>Guidelines on undertaking-specific parameters</b>	14	11	-21%	Final report
<b>Guidelines on treatment of market and counterparty risk exposures in the standard formula</b>	9	6	-33%	Final report
<b>Guidelines on treatment of related undertakings, including participations</b>	9	6	-33%	Final report
<b>Guidelines on ring fenced funds</b>	17	12	-29%	Consultation paper
<b>Guidelines on valuation of technical provisions (only risk margin Guidelines)</b>	3	2	-33%	Consultation paper
<b>Guidelines on supervision of branches of third-country insurance undertakings</b>	61	39	-36%	Final report
<b>Guidelines on financial stability reporting</b>	22	16	-27%	Final report
<b>Guidelines on reporting and disclosure</b>	39	22	-44%	Consultation paper
<b>Guidelines on group solvency</b>	27	10	-63%	Consultation paper
<b>Total</b>	<b>201</b>	<b>124</b>	<b>-38%</b>	

Since the Solvency II review programme started, the political focus on financial services regulation has shifted. On 8 April 2025, EIOPA [published](#) its approach to support the objective of simplifying regulation and reducing administrative burdens. In this publication, EIOPA communicated its ambition to shorten

<sup>2</sup> Directive 2009/138/EC as amended by the Directive 2025/2 of 27 November 2024

<sup>3</sup> The 3 Guidelines not affected by the shortening's objective, as primary addressed to the NCAs, are: Guidelines on supervisory review process, Guidelines on exchange of information within colleges and Guidelines on methods for determining the market share for reporting

all existing Level 3 texts that are relevant for the insurance industry by reducing, to the extent possible, the number of articles by 25%. In total, this ambition led to the shortening of 13 further (set of) guidelines that are relevant for the insurance industry (294 single guidelines in total).

The aim of the shortening exercise is to streamline 13 (set of) guidelines by at least 25% as minimum, although with some flexibility depending on the nature and the length of the document. Furthermore, when possible, the option to repeal the whole guideline instrument was also considered.

In order to achieve this ambition before the entry into force of the new Solvency II regime, it was agreed to prioritise the deletion of selected guidelines with an overall objective to streamline the guidelines by at least 25%. Although some proposals for new/amended guidelines were put forward and discussed, at this stage no major gaps requiring immediate intervention or uncontroversial amendments were identified.

EIOPA is aware of the limited scope of the shortening exercise and that new/amended guidelines may be welcomed in the future to better align with the revised regulatory framework. However, additional amendments will be potentially considered in a second phase, as part of the on-going fitness check of the consistency and effectiveness of the rulebook.

Following up the shortening of the (set of) 13 EIOPA Guidelines, National Competent Authorities (NCAs) are expected to review and update their national framework to eliminate the deleted guidelines and continue ensuring a level playing field and a single rule book. The full list of EIOPA Guidelines within the scope of the shortening exercise, covered by this public consultation, and the corresponding shortening proposal are shown in the table below:

Topic (pillar 1,2)	Title of the Guideline	GL proposed for deletion	Total number of current GL	Deletion rate
<b>P1/SCR</b>	Guidelines on the use of internal models	13	64	20%
<b>P1/SCR</b>	Guidelines on application of outwards reinsurance	12	40	30%
<b>P1/SCR</b>	Guidelines on application of the life underwriting risk module	3	5	60%
<b>P1/SCR</b>	Guidelines on basis risk	2	3	67%
<b>P1/SCR</b>	Guidelines on health catastrophe risk sub-module	1	8	13%
<b>P1/SCR</b>	Guidelines on look-through approach	2	8	25%
<b>P1/SCR</b>	Guidelines on loss-absorbing capacity of technical provisions and deferred taxes	6	22	27%
<b>P1/other</b>	Guidelines on the implementation of the long-term guarantee measures	7	9	78%
<b>P1/other</b>	Guidelines on recognition/valuation of assets and liabilities other than technical provisions	3	12	25%
<b>P1/other</b>	Guidelines on classification of own funds	7	27	26%
<b>P1/other</b>	Guidelines on ancillary own funds	4	6	67%

<b>P2</b>	Guidelines on own risk and solvency assessment	5	20	25%
<b>P2</b>	Guidelines on system of governance	18	70	26%
<b>Total</b>		<b>83</b>	<b>294</b>	<b>28%</b>

Regarding the approach followed for the shortening exercise, two types of deletion were identified: (1) guidelines that are redundant (i.e. repetition of L1/L2 provisions, so called ‘type 1’ deletion) and (2) guidelines that provide limited added value (‘type 2’ deletion), in order to achieve the minimum target of the 25% simplification.

In a nutshell, the rationale for shortening the above mentioned (set of) 13 EIOPA Guidelines is as follows:

#### Guidelines on Pillar 1 topics

- a) *Guidelines on the use of internal models*: It is proposed to delete 13 out of 64 Guidelines (20%). From those 13 Guidelines, 4 (2, 4, 11, 14) are considered redundant (type 1 deletion) and the other 9 (3, 28, 29, 30, 46, 48, 60, 62, 63) are considered not to add value hence not necessary (type 2 deletion).

The type 1 deletion Guidelines are from the Application and Use test chapters whereas the type 2 deletion Guidelines are from the Application, Calibration, Documentation, External models and data and Internal models for groups – Functioning of colleges.

For type 1 deletions, Articles 120, 223, 226, 343 and 349 of Commission Delegated Regulation (EU) No 2015/35 make these GLs redundant. For type 2 deletions, most GLs describe well known processes and are not necessary.

- b) *Guidelines on application of outwards reinsurance*: it is proposed to delete 12 Guidelines (30%), of which 3 GL (GL 17, 18, 40) are considered redundant (type 1 deletion) and 9 GL (GL 26, 28, 29, 30, 34, 35, 36, 37, 38) are considered not necessary (type 2 deletion);
- c) *Guidelines on application of the life underwriting risk module*: it is proposed to delete 3 Guidelines (60%), of which 3 Guidelines (GL 1, 2, 3) are considered not necessary (type 2 deletion);
- d) *Guidelines on basis risk*: it is proposed to delete 2 Guidelines (66%) as both (GL 1 and GL 3) are considered redundant (type 1 deletion). The relevant content has been incorporated into the recently amended Solvency II Delegated regulation<sup>4</sup>. As important parts of the content of GL 2 did not get integrated into the revised level 2 text, it is proposed to keep GL 2. EIOPA is currently in the process of checking whether it makes more sense to keep GL 2 as the only GL on basis risk or whether it is better to integrate GL 2 in another set of (existing) GL;

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<sup>4</sup> Commission Delegated Regulation (EU) 2026/269 of 29 October 2025 amending Delegated Regulation (EU) 2015/35

- e) *Guidelines on health catastrophe risk sub-module*: it is proposed to delete Guideline 7 (13%) which is considered redundant (type 1 deletion);
- f) *Guidelines on look-through approach*: it is proposed to delete 2 Guidelines (25%) as both (GL 1 and GL 2) are considered not necessary (type 2 deletion);
- g) *Guidelines on loss-absorbing capacity of technical provisions and deferred taxes*: it is proposed to delete 6 Guidelines (27%), of which 3 Guidelines (GL 1, 10, 12) are considered redundant (type 1 deletion) and 3 Guidelines (GL 13, 14, 19) are considered not necessary (type 2 deletion);
- h) *Guidelines on the implementation of the LTG measures*: it is proposed to delete 7 Guidelines (78%: GL3, 4, 5, 6, 7, 8, 9), which clarify the use the transitional measures, as although still applicable until the end of 2031, market practices are already established and new use of transitional measures are no longer possible or are very rare). Following this approach only two Guidelines would remain (GL1 and 2);
- i) *Guidelines on recognition and valuation of assets and liabilities other than technical provisions*: it is proposed to delete 3 Guidelines (25%), of which 1 Guideline (GL 7<sup>5</sup>) is considered redundant (type 1 deletion), as the hierarchy of the valuation methods for related undertakings is laid down clearly in Article 13 of Commission Delegated Regulation (EU) No 2015/35, and 2 Guidelines (GL 2 and 12) are considered not necessary (type 2 deletion). The decision tree reported in the Explanatory Text of GL 7 became a new Annex of the Guideline;
- j) *Guidelines on classification of own funds*: it is proposed to delete 7 Guidelines (25.9%), of which 4 Guidelines (GL 17, 21, 24, 26) are considered redundant (type 1 deletion) and 3 Guidelines (GL 2, 12, 27) are considered not necessary (type 2 deletion). The type 1 deleted guidelines refer to practices that are well integrated in the supervision of NCAs, and do not really add content compared to the level 1 and level 2 provisions. GL 2 and 12 have been deleted as the amendments to the Level 2 provision replace the content of the guidelines. GL 27 has been deleted as the transitional OF items are no longer eligible as the transitional period was 10 years, expiring on 1 January 2026;
- k) *Guidelines on ancillary own funds*: it is proposed to delete 4 Guidelines (66.6%), of which 2 Guidelines (GL 5, 6) are considered redundant (type 1 deletion) and 2 GL (GL 1, 2) are considered not necessary (type 2 deletion). GL 5 has been deleted as it does not add content compared to the text of Article 62(1)(d) of Commission Delegated Regulation (EU) No 2015/35, while GL 6 refers to practices integrated in the supervision of NCAs. GLs 1 and 2 do not add value to the existing provisions in Commission Delegated Regulation (EU) 2015/35. The remaining two Guidelines will be merged into the Guidelines on classification of own funds;

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<sup>5</sup> The decision tree reported in the Explanatory Text of GL 7 could become a new Annex of the GL.

Guidelines on Pillar 2 topics

- l) *Guidelines on own risk and solvency assessment*: it is proposed to delete 5 Guidelines (25%), of which 2 GL (GL 8 and 14) are considered redundant (type 1 deletion). GL12 is deleted; only its second sentence is retained and merged into GL10 as methodological clarification. This deletion therefore removes the first sentence of GL12 (type 1 deletion). In addition, 2 Guidelines (GL 2 and 6) can be merged with other GL and are considered redundant (type 1 deletion). For type 1 deletions, Article 262 of Commission Delegated Regulation (EU) No 2015/35 and Article 45 of the Solvency II Directive make these Guidelines redundant.
- m) *Guidelines on system of governance*: it is proposed to delete 18 Guidelines (25.7%), of which 11 Guidelines (GL 2, 3, 8, 10, 16, 19, 39, 41, 46, 48, 70) are considered redundant (type 1 deletion) and 7 GL (GL 5, 15, 26, 30, 35, 40, 43) are considered not necessary (type 2 deletion). 11 guidelines (2, 3, 8, 10, 16, 19, 39, 41, 46, 48, 70) are considered not necessary as the combined reading of existing provisions of Solvency II Directive and Commission Delegated Regulation (EU) No 2015/35 already incorporates their main regulatory content. 2 guidelines (15, 30) are deleted as their content is already embedded in other existing guidelines. Guideline 35 has been deleted as the referenced articles in Solvency II Directive have been repealed. The remaining guidelines (5, 26, 40, 43) have been integrated into Level 1 legislation through the recent amendments to the Solvency II Directive and Commission Delegated Regulation (EU) No 2015/35.

The amendments to the EIOPA Guidelines are solely for clarification and streamlining purposes with no intention to reduce supervisory expectations. They do not provide new interpretations or applications of the legal framework. Therefore, the revisions are not expected to have a material impact on policyholders, the insurance industry or NCAs. Consequently, this consultation paper does not include an impact assessment of the proposed changes.

**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.

Regarding the comply-or-explain process of the NCAs<sup>6</sup>, EIOPA intends to update it by relying on existing information in order to avoid additional requests to NCAs, except in limited cases where a new fast-track CoE may be required.

The revised Guidelines will be applicable as of 30 January 2027.

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<sup>6</sup> In accordance with Article 16 of the EIOPA Regulation.

# GUIDELINES ON PILLAR 1

## GUIDELINES ON THE USE OF INTERNAL MODELS

### INTRODUCTION

1. According to Article 16 of Regulation (EU) 1904/2010 (EIOPA Regulation)<sup>7</sup>, EIOPA issues these Guidelines on the use of internal models.
2. These Guidelines relate to Articles 162 to 171 of Directive 2009/138/EC
3. (Solvency II)<sup>8</sup>, in particular Articles 112, 113, 115, 116, 120 to 126 and 231 thereof as further developed by Title I, Chapter VI and Title II, Chapter II of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>9</sup>. These Guidelines also take into account Commission Implementing Regulation (EU) 2015/460 concerning the approval of an internal model<sup>10</sup> and Commission Implementing Regulation (EU) 2015/461 concerning the process to reach a joint decision for group internal models<sup>11</sup>.
4. The EIOPA Guidelines on the use of internal models aim to provide guidance on what supervisory authorities and insurance or reinsurance undertakings should consider in order to enable supervisory authorities to approve and continue to allow the use of an internal model for the calculation of the Solvency Capital Requirement and to enable insurance and reinsurance undertakings to use an internal model for the calculation of its Solvency Capital Requirement in compliance with the Solvency II requirements as further specified in Commission Delegated Regulation 2015/35.
5. The Guidelines also aim to increase convergence of supervisory practices with regard to the assessment of internal models. In the case of internal models for groups, there should be appropriate level of communication between supervisory authorities within the colleges, in particular between the supervisory authorities involved.
6. The Guidelines are addressed to supervisory authorities under Solvency II.
7. All the Guidelines apply, unless otherwise explicitly stated, to the use of:

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<sup>7</sup> 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)

<sup>8</sup> 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)

<sup>9</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

<sup>10</sup> Commission Implementing Regulation (EU) 2015/460 of 19 March 2015 laying down implementing technical standards with regard to the procedure concerning the approval of an internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 76, 20.3.2015, pp. 13–18).

<sup>11</sup> Commission Implementing Regulation (EU) 2015/461 of 19 March 2015 laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ L 76, 20.3.2015, pp. 19–22).

- An internal model, full or partial, submitted for decision to use or currently used for the calculation of the Solvency Capital Requirement of an insurance or reinsurance undertaking.
  - An internal model for a group, full or partial, as defined below, submitted for decision to use or currently used for the calculation of the Solvency Capital Requirement.
8. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on the use of internal models.
9. For the purpose of the Guidelines following definitions apply:
- *“Internal model(s) for a group (or for groups)”* should be understood as both an internal model that is applied to be used for the calculation only of the consolidated group Solvency Capital Requirement (under Article 230 of Solvency II) and an internal model that is applied to be used for the calculation of the consolidated group Solvency Capital Requirement as well as the Solvency Capital Requirement of at least one related insurance undertaking included in the scope of this internal model for the calculation of the consolidated group Solvency Capital Requirement (referred as group internal model under Article 231 of Solvency II in the Guidelines).
  - The concept of *“richness of the probability distribution forecast”* is determined mainly in two dimensions: the undertaking’s extent of knowledge about the risk profile as reflected in the set of events underlying the probability distribution forecast and the capability of the calculation method chosen to transform this information into a distribution of monetary values that relate to changes in basic own funds. The concept of richness should not be reduced to the granularity of the representation of the probability distribution forecast because even a forecast in form of a continuous function might be of low richness.
  - The *“reference risk measure”* should be understood as the Value-at-Risk of the basic own funds subject to a confidence level of 99.5% over a one year period as set out in Article 101(3) of Solvency II.
  - *“Analytical closed formulae”* should be understood as direct mathematical formulae that link the risk measure chosen by the undertaking to the reference one as defined above.
  - *“t=0”* should be understood as the date of which the Solvency Capital Requirement computation is made by the undertaking according to its internal model.
  - *“t=1”* should be understood as one year after the date of which the Solvency Capital Requirement computation is made by the undertaking according to its internal model.
10. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

## GUIDELINES

## Chapter 1: Application

### Guideline 1 – Pre-application

11. Supervisory authorities should consider putting in place a pre-application process in order to form a view on how prepared an insurance or reinsurance undertaking is to submit an application for the use of an internal model for the calculation of the Solvency Capital Requirement under Solvency II and to meet the internal models requirements set out in Solvency II.

### Guideline 5 - Technical specifications in the case of an application for the use of group internal models under Article 231 of Solvency II

15. In case of an application for the use of a group internal model under Article 231 of Solvency II, the applicant should explicitly state in the application to what extent the technical specifications of the group internal model may differ when the internal model is used for the group Solvency Capital Requirement calculation and the calculation of the Solvency Capital Requirement of related undertakings, including:
  - a) the treatment of intra-group transactions for the calculation of both the Solvency Capital Requirement of related undertakings and where applicable the group Solvency Capital Requirement;
  - b) the list of parameters within the internal model that may be set differently for different calculations performed with the group internal model, for the purposes of the calculation of the group Solvency Capital Requirement and the calculation of individual Solvency Capital Requirements; and
  - c) the description of group specific risks only relevant in the group Solvency Capital Requirement calculation.

## Chapter 2: Model changes

### Guideline 6 - Scope of the policy for model changes

16. The insurance or reinsurance undertaking, when establishing the policy for changing the model, should ensure that this policy covers all relevant sources of change that would impact its Solvency Capital Requirement and at least the changes:
  - a) in the system of governance of the undertaking;
  - b) in the undertaking's compliance with the requirements to use the internal model;
  - c) in the appropriateness of the technical specifications of the undertaking's internal model; and
  - d) in the risk profile of the undertaking.
17. The undertaking should also ensure that the policy for changing the model:
  - a) specifies when a change to the internal model shall be considered as major or minor and when a combination of minor changes shall be considered a major change.

- b) sets out the governance requirements in relation to changes to the internal model, including internal approval, internal communication, documentation and validation of changes.
18. The insurance and reinsurance undertaking should not cover the inclusion of new elements, such as the inclusion of additional risks or business units, as part of the changes to the internal model pursuant to the policy for changing the internal model. The inclusion of new elements in the internal model should be subject to supervisory approval following the procedure described in Article 7 of the Implementing Technical Standard on Approval Processes for Internal Models.
  19. The insurance or reinsurance undertaking should take into account the update of the parameters of the internal model as a potential source of changes to the internal model.

#### **Guideline 7 - Defining a major change**

20. Whilst the quantitative impact of a model change on the Solvency Capital Requirement or on individual components of the Solvency Capital Requirement may be one of the indicators the insurance or reinsurance undertaking decides to use to identify major changes, the undertaking should develop and use a number of other key qualitative and quantitative indicators to define a major change.

#### **Guideline 8 – Report of minor and major changes as a combination of minor changes**

21. The insurance or reinsurance undertaking should report minor changes to the internal model to the supervisory authorities quarterly or more frequently where appropriate. Minor changes to the internal model should be communicated in a summarised report that should describe both the quantitative and qualitative impacts of changes and the approximate cumulative quantitative and qualitative effects of the changes on the approved internal model.
22. The insurance or reinsurance undertaking should use the latest internal model approved by supervisory authorities as the reference for evaluating whether a combination of minor changes is considered as a major change, unless otherwise agreed with supervisory authorities.

#### **Guideline 9 – Policy for changing the model for group internal models under Article 231 of Solvency II**

23. In the case of a group internal model under Article 231 of Solvency II, the participating undertaking and the related undertakings applying to use a group internal model to calculate their individual Solvency Capital Requirement should develop one policy for changing the model.
24. The participating undertaking and the related undertakings applying to use a group internal model to calculate their individual Solvency Capital Requirement should ensure that the policy for changing the model includes a specification of major and minor changes with regard to the group, as well as each of the related undertakings included in the application to use the group internal model to calculate their individual Solvency Capital Requirement.
25. The participating undertaking and the related undertakings applying to use a group internal model to calculate their individual Solvency Capital Requirement should ensure that any change that is major for a related undertaking included in the application is classified as a major change within the policy.

### **Guideline 10 – Extension of use and extension of the scope of group internal models under Article 231 of Solvency II**

26. The following extensions of the group internal model should be submitted by the applicant to the group supervisor following the same process as for a major change to the internal model as set out in Article 7 of the EIOPA Implementing Technical Standard on Internal Model Approval Processes:

- a) the extension to calculate the Solvency Capital Requirement of a related undertaking currently included in the scope of the group internal model for the calculation of the group Solvency Capital Requirement but which is currently not using the group internal model for the calculation of its Solvency Capital Requirement;
- b) the extension to cover new elements at the level of the group; and
- c) the extension to cover new elements at the level of a related undertaking currently using the group internal model for the calculation of its Solvency Capital Requirement, including the extension related to elements already used at the level of the group or of other related undertakings.

### **Chapter 3: Use test**

#### **Guideline 12 - Use test and changes to the internal model**

28. In the process of improving the quality of the internal model, when a major change has been internally approved by the administrative, management or supervisory body, the insurance and reinsurance undertaking should be able to demonstrate compliance with the use test taking into consideration:

- a) the different components of the use test.
- b) the different uses of their system of governance.

29. The insurance or reinsurance undertaking should monitor and be able to demonstrate that any time lag between identifying that a change to the internal model is needed and the actual implementation of the change is appropriate. In the case of an application for a major change during the approval period, the insurance and reinsurance undertaking should ensure that the use of the internal model in its decision making process is appropriate.

#### **Guideline 13 – Understanding of the internal model**

30. The insurance or reinsurance undertaking should consider different approaches for ensuring the understanding of the internal model by the administrative, management or supervisory body and by relevant users of the internal model for decision-making purposes.

31. With the aim of assessing their understanding of the internal model, supervisory authorities should consider interviewing persons from the administrative, management or supervisory body and persons who effectively run the insurance or reinsurance undertaking.

32. Supervisory authorities should also consider reviewing the documentation of the minutes of the board meetings or appropriate decision-making bodies to assess the insurance or reinsurance undertaking's compliance with the use test requirements.

### **Guideline 15 – Use test specificities for group internal models under Article 231 of Solvency II**

35. The participating undertaking and the related undertakings applying to use a group internal model under Article 231 of Solvency II to calculate their individual Solvency Capital Requirement should cooperate to ensure that the design of the internal model is aligned with their business. They should provide evidence that the internal model governance provides that:
- a) their individual Solvency Capital Requirement is calculated with the frequency required by Article 102 of Solvency II and whenever it is needed in the decision-making process;
  - b) they can propose changes to the group internal model, especially for components that are material to them or following a change in their risk profile and taking into account the environment in which the undertaking is operating;
  - c) the related undertakings possess the adequate understanding of the internal model for the parts of the internal model which cover the risks of that undertaking.
36. The insurance or reinsurance undertakings applying to use a group internal model to calculate their Solvency Capital Requirement should ensure that the design of the internal model is aligned with their business and their riskmanagement system, including the production of outputs, at group level and at related undertaking level, that are granular enough to allow the group internal model to play a sufficient role in their decision-making processes.

## **Chapter 4: Assumption setting and expert judgement**

### **Guideline 16 – Materiality in assumptions setting**

37. The insurance or reinsurance undertaking should set assumptions and use expert judgment, in particular taking into account the materiality of the impact of the use of assumptions with respect to the following Guidelines on assumption setting and expert judgement.
38. The insurance or reinsurance undertaking should assess materiality taking into account both quantitative and qualitative indicators and taking into consideration extreme losses conditions. The insurance or reinsurance undertaking should overall evaluate the indicators considered.

### **Guideline 17 – Governance of assumptions setting**

39. The insurance or reinsurance undertaking should ensure that all assumption setting and the use of expert judgement in particular, follows a validated and documented process.
40. The insurance or reinsurance undertaking should ensure that the assumptions are derived and used consistently over time and across the insurance or reinsurance undertaking and that they are fit for their intended use.

41. The insurance or reinsurance undertaking should approve the assumptions at levels of sufficient seniority according to their materiality, for most material assumptions up to and including the administrative, management or supervisory body.

#### **Guideline 18 - Communication and uncertainty in assumptions setting**

42. The insurance or reinsurance undertaking should ensure that the processes around assumptions, and in particular around the use of expert judgement in choosing those assumptions, specifically attempt to mitigate the risk of misunderstanding or miscommunication between all different roles related to such assumptions.
43. The insurance or reinsurance undertaking should establish a formal and documented feedback process between the providers and the users of material expert judgement and of the resulting assumptions.
44. The insurance or reinsurance undertaking should make transparent the uncertainty of the assumptions as well as the associated variation in final results.

#### **Guideline 19 - Documentation of assumptions setting**

45. The insurance or reinsurance undertaking should document the assumption setting process and, in particular, the use of expert judgement, in such a manner that the process is transparent.
46. The insurance or reinsurance undertaking should include in the documentation the resulting assumptions and their materiality, the experts involved, the intended use and the period of validity.
47. The insurance or reinsurance undertaking should include the rationale for the opinion, including the information basis used, with the level of detail necessary to make transparent both the assumptions and the process and decisionmaking criteria used for the selection of the assumptions and disregarding other alternatives.
48. The insurance or reinsurance undertaking should make sure that users of material assumptions receive clear and comprehensive written information about those assumptions.

#### **Guideline 20 - Validation of assumptions setting**

49. The insurance or reinsurance undertaking should ensure that the process for choosing assumptions and using expert judgement is validated.
50. The insurance or reinsurance undertaking should ensure that the process and the tools for validating the assumptions and in particular the use of expert judgement are documented.
51. The insurance or reinsurance undertaking should track the changes of material assumptions in response to new information and analyse and explain those changes as well as deviations of realizations from material assumptions.
52. The insurance or reinsurance undertaking, where feasible and appropriate, should use validation tools such as stress testing or sensitivity testing.
53. The insurance or reinsurance undertaking should review the assumptions chosen, relying on independent internal or external expertise.

54. The insurance or reinsurance undertaking should detect the occurrence of circumstances under which the assumptions would be considered false.

## **Chapter 5: Methodological consistency**

### **Guideline 21 - Consistency check points**

55. The insurance or reinsurance undertaking should ensure consistency between the methods used to calculate the probability distribution forecast and the methods used for the valuation of assets and liabilities in the balance sheet for solvency purposes.
56. The insurance or reinsurance undertaking should check consistency at the following steps of the calculation of the probability distribution forecast, in case that they are relevant to the model part under consideration:
- a) the consistency of the transition from the valuation of assets and liabilities in the balance sheet for solvency purposes to the internal model for the purpose of Solvency Capital Requirements calculations;
  - b) the consistency of the valuation of assets and liabilities in the internal model at the valuation date with the valuation of assets and liabilities in the balance sheet for solvency purposes;
  - c) the consistency of the projection of risk factors and their impact on the forecast monetary values with the assumptions on those risk factors used for the valuation of assets and liabilities in the balance sheet for solvency purposes;
  - d) the consistency of the re-valuation of assets and liabilities at the end of the period with the valuation of assets and liabilities in the balance sheet for solvency purposes.

### **Guideline 22 - Aspects of consistency**

57. The insurance or reinsurance undertaking, when assessing consistency, should take at least the following aspects into account:
- a) the consistency of the actuarial and statistical techniques applied in the valuation of assets and liabilities in the balance sheet for solvency purposes, and in the calculation of the probability distribution forecast;
  - b) the consistency of data and parameters that are used as input for the respective calculations;
  - c) the consistency of the assumptions underlying the respective calculations, in particular assumptions on contractual options and financial guarantees, on future management actions and on expected future discretionary benefits.

### **Guideline 23 - Consistency assessment**

58. The insurance or reinsurance undertaking should conduct regular consistency assessments on a quantitative basis whenever possible and proportionate.
59. The insurance or reinsurance undertaking, in its consistency assessment, should:

- a) identify and document any deviation between the calculation of the probability distribution forecast and the valuation of assets and liabilities in the balance sheet for solvency purposes;
- b) assess the impact of the deviations, both in isolation and in combination;
- c) justify that the deviations do not result in an inconsistency between the calculation of the probability distribution forecast and the valuation of assets and liabilities in the balance sheet for solvency purposes.

## Chapter 6: Probability distribution forecast

### Guideline 24 - Knowledge of the risk profile

- 60. To ensure that the set of events of the probability distribution forecast underlying the internal model is exhaustive, the insurance or reinsurance undertaking should put in place processes that enable it to maintain sufficient and current knowledge of its risk profile.
- 61. In particular, the insurance or reinsurance undertaking should aim to maintain the knowledge of risk drivers and other factors which explain the behaviour of the variable underlying the probability distribution forecast, so that the probability distribution forecast can reflect all relevant characteristics of its risk profile.

### Guideline 25 - Probability distribution forecast richness

- 62. In assessing the appropriateness of the actuarial and statistical techniques used to calculate the probability distribution forecast Article 229 of Commission Delegated Regulation 2015/35, the insurance and reinsurance undertaking should consider the capability of the techniques to process the knowledge of the risk profile as an important criterion.
- 63. The insurance or reinsurance undertaking should choose techniques that generate a probability distribution forecast that is rich enough to capture all relevant characteristics of its risk profile Article 229(e) of Commission Delegated Regulation 2015/35 and to support decision-making Article 226 of Commission Delegated Regulation 2015/35.
- 64. The insurance or reinsurance undertaking, according to Article 229(g) of Commission Delegated Regulation 2015/35 and as part of this methodological assessment, should consider the reliability of adverse quantiles resulting from the probability distribution forecast.

### Guideline 26 – Assessment of the richness of the probability distribution forecast

- 65. To form a view according to Guideline 25, supervisory authorities should take into account at least:
  - a) the risk profile of the undertaking and to what extent it is reflected by the probability distribution forecast;
  - b) the current progress in actuarial science and the generally accepted market practice Article 229(a) of Commission Delegated Regulation 2015/35;

- c) with respect to the level of probability distribution forecast richness, any measures that the insurance or reinsurance undertaking puts in place to ensure compliance with each of the internal model tests and standards set out in Articles 120 to 126 of Solvency II;
- d) for a particular risk under consideration, the way in which the techniques chosen and the probability distribution forecast obtained by the insurance or reinsurance undertaking interact with other risks in the scope of the internal model as regards the level of richness of the probability distribution forecast Article 232 of Commission Delegated Regulation 2015/35;
- e) the nature, scale and complexity of the risk under consideration as set out in Article 29(3) of Solvency II.

### **Guideline 27 – Probability distribution forecast enrichment**

- 66. The insurance or reinsurance undertaking should ensure that the effort to generate a rich probability distribution forecast does not impair the reliability of the estimate of adverse quantiles resulting from the probability distribution forecast.
- 67. The insurance or reinsurance undertaking should take care not to introduce into the probability distribution forecast unfounded richness which does not reflect the original knowledge of its risk profile (see also Guideline 24).
- 68. The insurance or reinsurance undertaking should ensure that the methodology followed to enrich the probability distribution forecast complies with the statistical quality standards regarding methods, assumptions and data Articles 229, 230 and 231 of Commission Delegated Regulation 2015/35. Where these techniques involve the use of expert judgement, the undertaking should take into account the relevant Guidelines on assumptions setting and expert judgement.

## **Chapter 8: Profit and loss attribution**

### **Guideline 31 – Definition of profit and loss**

- 73. The insurance or reinsurance undertaking should consider profit and loss as changes over the relevant period in:
  - a) basic own funds; or
  - b) other monetary amounts used in the internal model to determine changes in basic own funds, such as the actual change in economic capital resources.

To this end the profit and loss attribution should exclude movements attributable to the raising of additional own funds, the repayment or redemption of those funds and the distribution of own funds.
- 74. When it uses a variable other than the basic own funds in its internal model, the insurance or reinsurance undertaking should use this variable for the purposes of profit and loss attribution.
- 75. The undertaking should identify through the profit and loss attribution how changes in the risk drivers relate with the movement in the variable underlying the probability distribution forecast.

## Chapter 9: Validation

### Guideline 32 – Validation policy and validation report

76. The insurance or reinsurance undertaking should establish, implement and maintain a written validation policy which specifies at least:
- a) the processes and methods to validate the internal model and their purposes;
  - b) the frequency of regular validation for each part of the internal model and the circumstances that trigger additional validation;
  - c) the persons who are responsible for each validation task; and
  - d) the procedure to be followed in the event that the model validation process identifies problems with the reliability of the internal model and the decision-making process to address those concerns.
77. The insurance or reinsurance undertaking should document in a validation report the results of the validation as well as the resulting conclusions and consequences from the analysis of the validation.
78. The insurance or reinsurance undertaking should include in the validation a reference to the validation data sets as mentioned in Guideline 42 as well as the sign-off from the main participants in the process.

### Guideline 33 – Scope and purpose of the validation process

79. The insurance or reinsurance undertaking, when specifying the purpose of the validation, should clearly set out the specific purpose of the validation for each part of the internal model.
80. The insurance or reinsurance undertaking should cover both qualitative and quantitative aspects of the internal model within the scope of the validation.
81. When considering the scope of the validation, in addition to considering the validation of the various parts of the internal model, the insurance or reinsurance undertaking should consider the validation in its entirety and in particular the appropriateness of the calculated probability distribution forecast to ensure that the level of regulatory capital will not be materially misstated.

### Guideline 34 – Materiality in validation

82. The insurance or reinsurance undertaking should consider the materiality of the part of the internal model being validated when using materiality to decide on the intensity of the validation activities.
83. The insurance or reinsurance undertaking should consider the materiality of the parts of the internal model not only in isolation but also in combination when deciding how they should be validated appropriately.
84. The insurance or reinsurance undertaking should consider sensitivity testing when determining materiality in the context of validation.

### **Guideline 35 – Quality of the validation process**

85. The insurance or reinsurance undertaking should set out all the known limitations of the current validation process.
86. Where there are limitations to the validation of parts which are covered by the validation process, the insurance or reinsurance undertaking should be aware of them and document these limitations.
87. The insurance or reinsurance undertaking should ensure that the assessment of the quality of the validation process explicitly states the circumstances under which the validation is ineffective.

### **Guideline 36 – Governance of validation process**

88. The insurance or reinsurance undertaking should have in place appropriate governance around the communication and internal reporting of the results of the validation it carries out.
89. The insurance or reinsurance undertaking should form and communicate internally an overall opinion based on the findings of the validation process.
90. The insurance or reinsurance undertaking should pre-define criteria in order to determine whether the results, or part of the results, of the validation, are required to be escalated within this undertaking.
91. The insurance or reinsurance undertaking should clearly define the escalation path in such a way that the validation process remains independent from the development and operation of the internal model.

### **Guideline 37 – Roles in validation process**

92. If parties other than the risk-management function contribute to specific tasks in the validation process, the insurance or reinsurance undertaking should ensure that the risk-management function fulfils its overall responsibility as set out in Article 44 of Solvency II and Article 269(2)(a) of Commission Delegated Regulation 2015/35, including the responsibility to ensure the completion of the various tasks within the validation process.
93. The insurance or reinsurance undertaking should formally explain the role of each party in the validation process defined.

### **Guideline 38 – Independence of the validation process**

94. The insurance or reinsurance undertaking should demonstrate that its riskmanagement function, in order to provide an objective challenge to the internal model, ensures that the validation process is done independently from the development and operation of the model. The risk management function of the undertaking should ensure that the validation tasks are set out and completed in a way that creates and maintains the independence of the validation process as set out in Article 241(2) of Commission Delegated Regulation 2015/35.
95. The insurance or reinsurance undertaking should decide on the parties which contribute to the tasks related to the validation process, taking into account the nature, scale and complexity of the risks that this undertaking faces, the function and the skills of people to be involved and how it ensures the independence of the validation process.

### **Guideline 39 – Validation specificities for group internal models under Article 231 of Solvency II**

96. The participating undertaking and the related undertakings included in the application to use the group internal model under Article 231 of Solvency II for the calculation of their Solvency Capital Requirement, should establish a single validation policy to cover the validation process both at group and individual level.
97. The participating undertaking and the related undertakings should design the validation process of the internal model in the context of the calculation of both the consolidated group Solvency Capital Requirement and the Solvency Capital Requirement of related undertakings included in the application to use a group internal model. The participating undertaking and the related undertakings should explicitly set out this consideration in the validation policy established for the group internal model.

### **Guideline 40 – Application of validation tools**

98. The insurance or reinsurance undertaking should consider using quantitative or qualitative validation tools besides those referred to in Article 242 of Commission Delegated Regulation 2015/35.
99. The insurance or reinsurance undertaking should understand the validation tools it uses and choose the appropriate set of validation tools in order to ensure an effective validation process. The insurance or reinsurance undertaking should consider at least the following characteristics when selecting the validation tools:
- a) characteristics and limitations of the validation tools;
  - b) nature: validation tools being qualitative, quantitative or a combination of both;
  - c) knowledge required: the extent of knowledge required by the persons performing the validation;
  - d) information required: potential restrictions to the amount or the type of information available for external versus internal validation;
  - e) cycle of validation: validation tools relevant to cover every key assumption made at different stages of the internal model from development, to implementation and to operation.
100. The insurance or reinsurance undertaking should document in the validation report which parts of the internal model are being validated by each of the validation tools used and why these validation tools are appropriate for the particular purpose by describing at least:
- a) the materiality of the part of the model being validated;
  - b) the level at which the tool is applied from individual risks, modelling blocks, portfolio, business unit to aggregated results;
  - c) the purpose of this validation task;
  - d) the expected outcome from the validation.

### **Guideline 41 – Stress tests and scenario analysis**

101. The insurance or reinsurance undertaking should use stress tests and scenario analysis as part of the validation of the internal model.

102. The insurance or reinsurance undertaking should ensure that the stress tests and scenario analysis it uses cover the relevant risks and are monitored over time.

#### **Guideline 42 – Validation data sets**

103. The insurance or reinsurance undertaking should ensure that the selected data and expert judgement used in the validation process effectively allow it to validate the internal model under a wide range of circumstances that have occurred in the past or could potentially occur in the future.

### **Chapter 10: Documentation**

#### **Guideline 43 - Control procedures of documentation**

104. In order to ensure the on-going quality of the documentation according to Article 243(3) of Commission Delegated Regulation 2015/35, the insurance or reinsurance undertaking should have in place at least:

- a) an effective control procedure for internal model documentation;
- b) a version control procedures for internal model documentation;
- c) a clear referencing system for internal model documentation which should be used in a documentation inventory required by Article 244(a) of Commission Delegated Regulation 2015/35.

#### **Guideline 44 - Documentation of methodologies**

105. The insurance or reinsurance undertaking should produce documentation which is detailed enough to evidence detailed understanding of the methodologies and techniques used in the internal model, including at least:

- a) the underlying assumptions;
- b) the applicability of such assumptions given the undertaking's risk profile;
- c) any shortcomings of the methodology or of the technique.

106. The insurance or reinsurance undertaking, when documenting the theory, assumptions and mathematical and empirical basis underlying any methodology used in the internal model, in accordance with Article 125(3) of Solvency II, should include, if available, the material steps of the development of the methodology, as well as any other methodologies which were considered but not subsequently used by the insurance or reinsurance undertaking.

#### **Guideline 45 - Circumstances under which the internal model does not work effectively**

107. The insurance or reinsurance undertaking should include in its documentation an overall summary of the material shortcomings of the internal model, consolidated in a single document, containing at least the aspects referred to in Article 245 of Commission Delegated Regulation 2015/35.

### **Guideline 47 - User manuals or process descriptions**

109. The insurance or reinsurance undertaking should have in place, as part of the documentation of the internal model, user manuals or process descriptions for operation of the internal model which should be sufficiently detailed to allow an independent knowledgeable third party to operate and run the internal model.

### **Guideline 49 – Documentation of software and modelling platforms**

111. The insurance or reinsurance undertaking, in its documentation, should provide information about the software, modelling platforms and hardware systems used in the internal model.

112. When using software, modelling platforms and hardware systems, the insurance or reinsurance undertaking should provide in the documentation sufficient information to be able to assess and justify their use, and enable supervisory authorities to assess their appropriateness.

## **Chapter 11: External models and data**

### **Guideline 50 – External data**

113. The insurance or reinsurance undertaking, given the nature of external data, should be able to demonstrate an appropriate level of understanding of the specificities of external data used in the internal model including any material transformation, rescaling, seasonality and any other processing inherent in the external data.

114. In particular, the insurance or reinsurance undertaking should at least:

- a) understand the attributes and limitations or other peculiarities of the external data;
- b) develop processes for identifying any missing external data and other limitations;
- c) understand the approximations and processing made for missing or unreliable external data;
- d) develop processes to run timely consistency checks including comparisons with other relevant sources to the extent that data are reasonably available.

### **Guideline 51 – Understanding of the external model**

115. The insurance or reinsurance undertaking should be able to demonstrate that all parties involved in the use of the external model have a sufficiently detailed understanding of parts of the external model relevant to them including assumptions, technical and operational aspects.

116. The insurance or reinsurance undertaking should give particular attention to the aspects of the external model that are more relevant to its risk profile.

### **Guideline 52 – Reviewing the choice of external model and data**

117. The insurance or reinsurance undertaking should periodically review its justification for selecting a particular external model or set of external data.

118. The insurance or reinsurance undertaking should be satisfied that it is not overly reliant on one provider and should have in place plans to mitigate the impact of any failures of the provider.

119. The insurance or reinsurance undertaking should pay attention to any updates of the external model or of the data that allows the undertaking to better assess its risks.

### **Guideline 53 – Integration of external models within the internal model framework**

120. The insurance or reinsurance undertaking should be able to demonstrate that the approach for incorporating the external model into the internal model framework is appropriate; including the techniques, data, parameters, assumptions selected by the undertaking and the external model outputs.

### **Guideline 54 – Validation in the context of external models and data**

121. The insurance or reinsurance undertaking should perform its own validation of the aspects of the external model that are relevant to its risk profile and of the process for incorporating the external model and data within its own processes and internal model.

122. The insurance or reinsurance undertaking should assess the appropriateness of the selection or the non-selection of features or options which are available for the external model.

123. As part of the validation the insurance or reinsurance undertaking should consider appropriate information and in particular the analysis performed by the vendor or other third party, and, when doing so, the insurance or reinsurance undertaking should ensure at least that:

- a) the independence of the validation is not compromised;
- b) it is consistent with the validation process the insurance or reinsurance undertaking sets out and is clearly laid out in the validation policy;
- c) any implicit or explicit bias in the analysis performed by the vendor or other third party is taken into account.

### **Guideline 55 - Documentation in the context of external models and data**

124. The insurance or reinsurance undertaking should ensure that the documentation of external models and data meets the documentation standards.

125. The insurance or reinsurance undertaking should produce documentation on at least the following:

- a) the aspects of the external model and external data that are relevant for its risk profile;
- b) the integration of the external model or external data within its own processes and internal model;
- c) the integration of data, in particular inputs, for the external model, or outputs from the external model, within its own processes and internal model;
- d) the external data used in the internal model and its source and use.

126. If, as part of its own documentation, the insurance or reinsurance undertaking leverages on the documentation produced by the vendors and service providers, the insurance or reinsurance undertaking should ensure that its ability to meet the documentation standards is not compromised.

### **Guideline 56 - Responsibility of the undertaking in the context of external models and data**

127. The insurance or reinsurance undertaking should keep its responsibility for discharging its obligations related to its internal model and for the role of external model or data in the internal model and any other requirements.

### **Guideline 57 - Role of service providers when using external models and data**

128. The insurance or reinsurance undertaking should put in place an outsourcing agreement when it chooses not to operate the external model directly.

129. Similarly, the insurance or reinsurance undertaking should put in place an outsourcing agreement when it chooses to mandate a service provider to perform some tasks related to the external data.

130. The insurance or reinsurance undertaking should, when putting in place an outsourcing agreement, comply with the requirements from Article 49 of Solvency II and Article 274 of Commission Delegated Regulation 2015/35.

## **Chapter 12: Internal models for groups - Functioning of colleges**

### **Guideline 58 - Assessing the scope of the internal model**

131. When assessing the appropriateness of the scope of the internal model, the group supervisor, the other supervisory authorities involved as defined in Article 343(2) of Commission Delegated Regulation 2015/35 and other supervisory authorities identified by the college in accordance with Article 344(2) of Commission Delegated Regulation 2015/35 should consider at least:

- a) the significance of related undertakings within the group with respect to the risk profile of the group;
- b) the risk profile of related undertakings within the group compared to the overall group risk profile;
- c) if applicable, a transitional plan by the group to extend the scope of the model at a later stage and the timeframe to do so;
- d) the appropriateness of the standard formula or another internal model approved or in the process of approval for the calculation of the Solvency Capital Requirement of any related insurance or reinsurance undertaking included in the scope of the internal model;
- e) the appropriateness of the standard formula or another internal model approved or in the process of approval for the calculation of the Solvency Capital Requirement of any related insurance or reinsurance undertaking within the group but not included in the scope of the internal model for the group.

132. When assessing the appropriateness of the exclusion of related undertakings within the group from the scope of the internal model, the supervisory authorities referred to in the previous paragraph should assess whether the exclusion of the undertakings could lead to:

- a) an improper allocation of own funds based on individual undertaking Solvency Capital Requirements rather than on its contribution to the risk profile of the group;

- b) inconsistencies that would derive from the use of the internal model to calculate the group solvency capital requirement and the use of the standard formula or a different internal model, approved or in the process of approval, by any related undertaking within the group to calculate its Solvency Capital Requirement;
- c) weaknesses in risk management of the group and related undertakings within the group resulting from the limited scope of the internal model; or
- d) an inadequate group Solvency Capital Requirement in relation to the risk profile of the group.

### **Guideline 59 - Internal model work plan for the assessment and the approval process of internal models for groups**

133. The group supervisor, in consultation with the other supervisory authorities involved, should set up an internal model work plan and the communication rules to follow among these authorities during the assessment and the approval process of internal models for groups.

134. When appropriate, the group supervisor, in consultation with the other supervisory authorities involved, should update the internal model work plan.

135. In relation to the assessment of the internal model, the group supervisor should ensure that the internal model work plan covers the timeline, main steps and deliverables for this assessment. In the case of a group internal model under Article 231 of Solvency II, the group supervisor and the other supervisory authorities concerned should consider including in the internal model work plan specific provisions between them. The group supervisor should ensure that the internal model work plan, at least:

- a) establishes when and how to consult and involve in the assessment the other supervisory authorities involved referred to in Article 343(2) of Commission Delegated Regulation 2015/35;
- b) establishes when and how to allow the other supervisory authorities within the college of supervisors referred to in Article 344(2) of Commission Delegated Regulation 2015/35 to participate in the assessment;
- c) identifies the priorities for the assessment, taking into account the scope of the internal model, the specificities of each related undertaking within the group, the risk profile of the group and related undertakings within the group, and the available and relevant information about the internal model;
- d) establishes when and how to report the outcomes of the assessment made by the supervisory authorities involved to the other supervisory authorities involved.

136. In relation to the decision on an application to use a group internal model under Article 231 of Solvency II, the group supervisor, in consultation with the other supervisory authorities concerned, should ensure that the internal model work plan covers the timeline for all the steps and deliverables for reaching a joint decision as set out in the EIOPA Implementing Technical Standard on the Process to Reach a Joint Decision for Group Internal Models.

### **Guideline 61 - Joint on-site examinations carried out during the assessment of internal models for groups**

138. The group supervisor and the other supervisory authorities involved should be able to request and discuss when and how to organize joint on-site examinations to verify any information concerning the assessment of an internal model for a group, with the aim of ensuring the effectiveness of the process.
139. The supervisory authorities requesting a joint on-site examination should inform the group supervisor by indicating the scope and purpose of this examination, taking into account the objectives of this examination in relation to the assessment as defined by the supervisory authorities involved.
140. The group supervisor should then notify the other supervisory authorities involved, EIOPA, and, where relevant, other members and participants of the college that may be affected or interested in the participation or in the outcome of the joint on-site examination.
141. Once the supervisory authorities participating in the joint on-site examination have been identified, they should discuss and agree the final scope, purpose, structure and allocation of tasks of the on-site examination, including who is leading the on-site examination.
142. The group supervisor should be kept informed on the progress and findings of the joint on-site examination.
143. The supervisory authority leading the on-site examination, if other than the group supervisor, should provide the relevant documentation to the group supervisor. The group supervisor should make the relevant documentation available to the supervisory authorities involved, to the other supervisory authorities participating in the joint on-site examination and to EIOPA. The group supervisor should provide the other college members and participants with a list of the relevant documentation received and provide them with the documents upon specific request.
144. On the basis of a report stating the main findings of the joint on-site examination, the supervisory authority leading the on-site examination should discuss with the supervisory authorities involved the outcome of the joint onsite examination and the actions to be taken.
145. The group supervisor should notify the other college members and participants about the outcome and actions as part of the agreed communication within the college.

### **Guideline 64 - Assessment of major changes to group internal models under Article 231 of Solvency II**

152. In relation to the assessment of the application for approval of a major change to a group internal model under Article 231 of Solvency II, the group supervisor and the other supervisory authorities concerned should decide whether to delegate the assessment of changes at the level of a related undertaking to the relevant supervisory authority concerned.

### **COMPLIANCE AND REPORTING RULES**

153. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.

154. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
155. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
156. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## FINAL PROVISION ON REVIEWS

157. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

DELETED: Guideline 2 - Information to be submitted in an application for the use of group internal models under Article 231 of Solvency II

~~1.9. In the case of an application for the use of a group internal model under Article 231 of Solvency II, the applicant should include for each related undertaking that applies to use the group internal model for the calculation of its Solvency Capital Requirement the information set out in Article 2 of the EIOPA Implementing Technical Standard on Internal Models Approval Processes which is specific to this related undertaking, unless this information is already covered in the documents submitted by the participating insurance or reinsurance undertaking.~~

~~1.10. The applicant should also explain, for each related undertaking included in the application to use the group internal model for the calculation of its Solvency Capital Requirement, to what extent the development, implementation or validation of the group internal model components which are necessary for the calculation of the Solvency Capital Requirement of the related undertaking, are performed by another related undertaking within the group.~~

### Explanatory text:

Type 1 – Essentially part of ITS 2015/460, see recital 7 and article 2 number 4 of the ITS.

DELETED: Guideline 3 - Request for further information in the case of an application for the use of internal models for groups

~~1.11. In the case of an application for the use of an internal model for a group, a request for further information from a related undertaking by the supervisory authorities involved as defined in Article 343(2) of Commission Delegated Regulation 2015/35 supervising this undertaking, should first be made to the group supervisor. The group supervisor should then forward the request to the related undertaking, or provide the supervisory authority involved requesting the information with the relevant documents if they have already been provided to the group supervisor.~~

~~1.12. In the case of an application for the use of a group internal model under Article 231 of Solvency II, any supervisory authority concerned as defined in Article 347(3) of Commission Delegated Regulation 2015/35, should be able to directly request further information from the related undertaking it supervises in order to assess the compliance of the group internal model with the internal models requirements in respect of the Solvency Capital Requirement of this related undertaking. In such case, this supervisory authority concerned should inform promptly the group supervisor about such request for information.~~

**Explanatory text:**

Type 2 – While the modalities for requesting further information could not be found in L1, L2 regulation, this guideline describes the process of going through the group supervisor. However, this practice is well understood by insurance undertakings and NSAs. This guideline facilitates communication for new IM undertakings/groups but is not essential.

~~DELETED: Guideline 4 - Intention to extend the scope of an application for the use of internal models for groups~~

~~1.13. In the case of an application for the use of an internal model for a group, as part of the justification of the scope of the internal model described in Articles 343(5) or 347(6) of Commission Delegated Regulation 2015/35, the applicant should describe in the application the intention, if any, to extend the scope of the internal model in the future in order to include, for the purposes of the calculation of the group Solvency Capital Requirement, any of the related undertakings within the scope of group supervision but which are not included according to the current application in the scope of the internal model for the calculation of the group Solvency Capital Requirement.~~

~~1.14. In the case of an application for the use of a group internal model under Article 231 of Solvency II, as part of the justification of the scope of the internal model, the applicant should also describe the intention, if any, to extend in the future the scope of the internal model in order to include the calculation of the Solvency Capital Requirement of any related undertaking which is not included in the scope of the current application for the calculation of its Solvency Capital Requirement with the group internal model.~~

**Explanatory text:**

Type 1 – DR Article 343-5-a-(iv) states that "regarding the scope of the model, the participating undertaking shall provide information on any future plans to extend the use of the internal model to calculate the Solvency Capital Requirement of any related insurance or reinsurance undertaking;". DR article 349 "3. In the joint decision, the supervisory authorities concerned may require the applicant to submit a realistic transitional plan to extend the scope of the group internal model.". Guideline not essential.

~~DELETED: Guideline 11 – Incentive to improve the quality of the internal model~~

~~1.27. The insurance or reinsurance undertaking should ensure that the internal model is used in its risk management system and decision-making processes in a way that creates incentives to improve the quality of the internal model itself.~~

**Explanatory text:**

Type 1 – This is introductory guideline to the concept of “Use test”. Article 120 of SII states the model shall be widely used for risk management and decision making, that the ASMB shall be responsible for continuous adaptation for the risk profile. Because the risk profile is constantly evolving, the ASMB responsibility and involvement should ensure that the IM is not forgotten within the insurance undertaking after the success of the application process. Art 226 of DR gives further details. The Use Test concept is developed further by the following guideline, so this is not essential.

~~DELETED: Guideline 14 – Support of decision-making~~

~~1.33. The insurance or reinsurance undertaking should ensure and should be able to demonstrate that the internal model is used for decision-making.~~

~~1.34. In particular, when calculating the notional Solvency Capital Requirement for a ring-fenced fund, the insurance or reinsurance undertaking should comply with Article 81 of Commission Delegated Regulation 2015/35 and explain how it ensures consistency between these outputs as required by Article 223 of Commission Delegated Regulation 2015/35.~~

**Explanatory text:**

Type 1 – First point regarding importance of IM in decision making is already planned by article 120 of the directive. The particular case of ring-faced funds is planned by article 81 with support of art 223. Guideline basically saying that articles 120, 81 and 223 need to be respected without adding much more.

~~DELETED: Guideline 28 - Knowledge of approximations under extreme loss conditions~~

~~1.69. When an undertaking uses approximations instead of using the reference risk measure directly, the insurance or reinsurance undertaking should challenge and justify the reliability of the output of these approximations over time and, under extreme loss conditions, according to its risk profile.~~

~~1.70. In particular, when the insurance or reinsurance undertaking uses analytical closed formulae to recalibrate its capital requirement from the internal risk measure to the reference one, the insurance or reinsurance undertaking should demonstrate that the assumptions underlying the formulae are realistic and are also valid under extreme losses conditions.~~

**Explanatory text:**

Type 2 – Please note that the calibration GL only refer to the use of a risk measure deviating from the reference risk measure as e.g. defined in para 1.7. Nowadays, all undertakings use the reference risk measure. Accordingly, the calibration guidelines have long since ceased to play a role in practice.

DELETED: Guideline 29 - Use of another underlying variable

~~1.71. The insurance or reinsurance undertaking, if it uses the variation of an underlying variable different from the basic own funds to derive the value of basic own funds for the calculation of the Solvency Capital Requirement, should demonstrate that:~~

~~a) it is able to reconcile the difference between the basic own funds and the underlying variable at t=0;~~

~~b) it understands the difference between the basic own funds and the underlying variable in any situation up to and including t=1, especially under extreme losses conditions, according to the undertaking risk profile.~~

**Explanatory text:**

Type 2 – No added value.

DELETED: Guideline 30 - Management actions if using a time period longer than one year

~~1.72. If the insurance or reinsurance undertaking chooses in its internal model a time period longer than one year, the insurance or reinsurance undertaking should take into account management actions in the context of the Solvency Capital Requirement calculation, and should ensure that such management actions have effects on the balance sheet for solvency purposes between t=0 and t=1.~~

**Explanatory text:**

Type 2 – No added value.

DELETED: Guideline 46 - Appropriateness of documentation to addressees

~~1.108. The insurance or reinsurance undertaking should consider having documentation of the internal model that consists of more than one level of documentation for the internal model, commensurate with the different uses and target audiences.~~

**Explanatory text:**

Type 2 – No need for a guideline here. This will be taken care of internally by the undertaking and it's only a suggestion.

DELETED: Guideline 48 - Documentation of model output

~~1.110. The insurance or reinsurance undertaking should retain, as part of the documentation of the internal model, the outputs of the model that are relevant to satisfy the requirements of Article 120 of Solvency II.~~

**Explanatory text:**

Type 2 – The guideline contains a matter of course. Accordingly, no use in supervisory practice is known to NCAs.

DELETED: Guideline 60 - Concerns about the process

~~1.137. Whenever a supervisory authority involved identifies a substantial point of concern regarding the approval process, it should share its concern with the group supervisor and the other involved authorities as soon as feasible.~~

**Explanatory text:**

Type 2 – Requirements in Article 231 of the SII Directive 2009/198 are already sufficiently clear. It mentions that they need to cooperate. This is common sense.

DELETED: Guideline 62 - Sharing of reviews of internal models for groups

~~1.146. The supervisory authorities involved should share and discuss the main findings of their off-site and on-site activities related to the internal model with the group supervisor and the other supervisory authorities involved.~~

~~1.147. The supervisory authorities involved should share the approach they are following in the review of the elements of the internal model with the group supervisor and the other supervisory authorities involved.~~

~~1.148. If, as a result of this sharing, the supervisory authorities involved identify substantial differences in the approaches followed, they should discuss and they should agree on a process to develop consistent approaches when they consider appropriate to have this alignment.~~

~~1.149. When they deem appropriate, the supervisory authorities involved should consider sharing the tools and techniques they are using for the review of the elements of the internal model with the other supervisory authorities involved.~~

**Explanatory text:**

Type 2 – Requirements in Article 248 of the SII Directive 2009/198 are already sufficiently clear. This is all about cooperation within the group and it is common sense.

DELETED: Guideline 63 - Involvement of third country supervisory authorities during the assessment of internal models for groups

~~1.150. The group supervisor and the other supervisory authorities involved should decide whether and which third country supervisory authorities should be consulted.~~

~~1.151. Before consulting the third country supervisory authority, the group supervisor, with the support of the other supervisory authorities involved, should take appropriate steps to ensure that the legislative provisions on the confidentiality of information of the jurisdiction where the third country supervisory authority is situated are equivalent to the professional secrecy requirements resulting from Solvency II.~~

**Explanatory text:**

Type 2 – The reference to this in a GL is unnecessary because the point is not specific to IM, i.e., it must also be taken into account in assessments/cooperation in other fields, and after 10 years of SII and of group model assessments, a practice should have been established in this regard.

## GUIDELINES ON APPLICATION OF OUTWARDS REINSURANCE

### INTRODUCTION

1. According to Article 16 of Regulation (EU) 1904/2010 (EIOPA Regulation)<sup>12</sup>, EIOPA issues these Guidelines on the non life catastrophe risk sub module.
2. These Guidelines relate to Article 105(2) of Directive 2009/138/EC (Solvency II)<sup>13</sup> and to Articles 119 to Article 135, Article 209 and Article 214 of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>14</sup>.
3. In particular, these Guidelines are intended to ensure a common, uniform and consistent application of the non life catastrophe risk sub module, including treatment of undertakings' outwards reinsurance arrangements.
4. The present Guidelines make reference to the "flowchart for the non life underwriting risk" which represents the different sub modules that compose the non life catastrophe risk sub module of the Solvency Capital Requirement standard formula, according to Commission Delegated Regulation 2015/35.
5. These Guidelines are addressed to supervisory authorities under Solvency II.
6. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on application of outwards reinsurance.
7. For the purpose of these Guidelines, the following definitions have been developed:
  - a) 'Gross loss' means:
    - i. For risk mitigation being applied in a sub module which has no dependency on other sub modules, the loss calculated according to the formula in this sub module;
    - ii. For risk mitigation being applied in a sub module which does have a dependency on other sub module(s), the loss calculated according to the formula in this sub module but using, as inputs to the formula, the results from each sub module net of risk mitigation applied (if any) in the sub modules on which this sub module depends.
  - b) 'Aggregating catastrophe event' means a catastrophe event which accumulates and affects a group of policies together. Separate policy impacts cannot be readily identified.
  - c) 'Risk catastrophe event' means an event which affects policies which can be identified specifically or a single policy.
  - d) Gross event: specification of the event with the resolution required to be able to apply the outwards reinsurance programme. This is the term applied to the gross loss after disaggregation.

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<sup>12</sup> 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)

<sup>13</sup> 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)

<sup>14</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

- e) Catastrophe sub module branches: branches of one of the four main non life catastrophe risk sub modules described in Article 119 of Commission Delegated Regulation 2015/35
  - f) Outwards reinsurance/outwards reinsurance protections: reinsurance arrangements where an undertaking cedes risk to a reinsurer.
  - g) Inwards reinstatement premium: any reinstatement premium which may be payable to an undertaking.
  - h) Clash cover: a reinsurance liability excess of loss contract relating to two or more coverages or policies, issued by the undertaking to be involved in a loss for coverage to apply. The attachment point of the reinsurance contract is usually above the limits of any one policy.
  - i) 1 in 200 year catastrophe event: a catastrophe event corresponding to a Value at Risk measure with a 99.5% confidence level as defined in Article 104 (4) of Solvency II. Component: a self contained calculation unit of the non life catastrophe sub module for which a Solvency Capital Requirement (SCR) can be determined. This may be at sub module level or lower granularity e.g. region or EEA / non EEA regions for the natural catastrophe perils.
8. If not defined in these Guidelines the terms have the meaning defined in the legal acts referred to in the introduction.
- 9.

## GUIDELINES

### Section I: Order of operation of the Guidelines

#### Guideline 1 – Order of operation of Guidelines

10. Undertakings should apply the sections of these Guidelines sequentially to assess their outwards reinsurance in respect of catastrophe risk.

### Section II: Specification of events

#### Guideline 2 – Level of detail required to specify the catastrophic event

11. Based on Articles 119 to 135, undertakings should specify appropriate 1 in 200 year catastrophe events in enough detail to be able to apply the risk mitigation techniques.

#### Guideline 3 – Specification of catastrophes as aggregating catastrophe events or risk catastrophe events

12. Undertakings should specify the losses defined in the various catastrophe risk sub modules as either “aggregating catastrophe events” or “risk catastrophe events” in which case undertakings should also specify whether these events are affecting specific known policies or not.
13. For each non life catastrophe risk sub module, undertakings should specify the type of event as follows:
- a) Earthquake, windstorm, hail, flood and subsidence sub modules specified as aggregating catastrophe event.
  - b) Motor liability sub module specified as risk catastrophe event affecting a single policy.

- c) Liability, Aviation, Marine and Fire sub modules specified as risk catastrophe event affecting known policies
- d) Credit and suretyship sub module as specified by Guidelines 13 and 14.
- e) Non proportional property reinsurance sub module as specified by Guideline 11.

#### **Guideline 4 – Specification of number of events for natural catastrophe sub modules in respect of EEA regions**

14. Undertakings should consider the number of events for EEA regions gross losses as single or double events affecting one or more regions, and not assume that multiple events occur in each region.

#### **Guideline 5 – Specification of number of events for natural catastrophe sub modules in respect of non EEA regions**

15. For non-EEA regions where the number of aggregating catastrophe events that generate the gross loss has not been defined, undertakings should follow a similar approach to that applied under Guideline 4, for each specific sub module.

#### **Guideline 6 – Catastrophe event selection**

16. Where a number of 1 in 200 year catastrophe events can be defined, undertakings should derive events which are consistent with their risk profile and select the event which results in the highest catastrophe charge after the application of the risk mitigation techniques.

#### **Guideline 7 – Size of liability losses**

17. To determine the size of the individual claims on which the calculation of the loss in basic own funds according to Article 133 of Commission Delegated Regulation 2015/35 is based, undertakings should follow the process below:

- a) Within each risk group, the  $n_i$  risks with the largest limits should be identified. For this purpose a "risk" consists of all policies written as part of a programme with the same or closely affiliated coverage and the same insured policy holder (where the insured policy holder is the policy holder of the insurance contract) that are in force at the same time.
- b) The resulting  $n_i$  limits should each be multiplied by 1,15.
- c) The  $n_i$  values calculated in (b), should be aggregated and deducted from
- d)  $L_{(liability, i)}$  and any difference should be allocated proportionally using the actual limits of the  $n_i$  values.
- e) The final resulting  $n_i$  values should be considered as individual claims from a single event, each associated with the risk from which they have been derived.

18. Undertakings should then be able to identify for each of the  $n_i$  claims which reinsurance covers apply, given the nature of the associated risk.

19. Undertakings should be prepared to demonstrate to the supervisory authority that their purchasing of outwards reinsurances has not been materially influenced by whether the risk would be one identified under this process.

### Section III: Disaggregating the gross loss

#### Guideline 8 – Disaggregating the gross loss to individual countries or other components

20. Undertakings should use one of the methods specified below to disaggregate the gross loss to individual components where the gross impact on individual policies has not been identified so that outwards reinsurance protections can be applied:
- a) Max method: The gross loss is allocated to the component which is the largest contributor of the gross loss pre diversification.
  - b) Spread method: The gross loss is spread across relevant components in proportion to their contribution to the gross loss pre diversification; alternatively an approach using correlation matrices to share the loss may be adopted similar to that proposed for allocating the SCR to Lines of Business.
  - c) Blend method: This method selects the maximum (on the basis of largest net capital charge) of the Max and the Spread methods above.

#### Guideline 9 – Disaggregating the gross loss for Natural catastrophe sub modules in relation to EEA scenarios

21. Undertakings should use the methods defined below to disaggregate the gross loss for natural catastrophe sub modules, in relation to EEA scenarios.
22. When disaggregating the gross loss to regions, undertakings should use the Blend method for the windstorm and flood risk sub modules and the Max method to disaggregate the earthquake and hail risk sub modules.
23. When disaggregating the gross loss to business units, companies and lines of business, undertakings should use the Spread method.
24. If the undertaking has a risk profile such that the method specified above is not appropriate, the undertaking should select a more suitable approach and justify it to the supervisor.

#### Guideline 10 – Disaggregating the gross loss for Natural Catastrophes for non EEA regions

25. Undertakings should apply to the non EEA regions, methods which are consistent with the methods applied for EEA perils in Guideline 9 to allocate the gross loss.
26. If the undertaking has a risk profile such that this approach is not appropriate, the undertaking should select a more suitable approach and justify it to the supervisor.

#### Guideline 11 – Disaggregating the gross loss for Natural Catastrophes for Non Proportional Property

27. Undertakings should apply the Max method for the non proportional property reinsurance sub module to allocate the loss to a region. Undertakings should then estimate the exposure to the highest peril in this region and the number of events specified as in the relevant aggregating catastrophe event(s) that applies to the underlying contracts. Where two aggregate catastrophe events are defined, this should imply that both events occur within the same region.
28. If the undertaking has a risk profile such that this approach is not appropriate, the undertaking should select a more suitable approach. This approach should be justified to the supervisor.

### **Guideline 12 – Specifying the gross loss for man made sub modules: motor vehicle, marine, aviation, fire and liability risks**

29. Undertakings should identify the particular policies impacted by the gross liability risk event by applying Guidelines 34 to 39. For the marine, aviation and fire scenarios the undertaking should identify the gross risks affected and hence which reinsurances apply (including per risk excess of loss protections) to the claims.
30. For motor vehicle liability risk, the undertaking should assume that the risk catastrophe event specified in Commission Delegated Regulation 2015/35 arises from a single loss event. The undertaking should assume that the loss occurs in the region and/or business unit which generates the highest contribution to the gross loss pre diversification.
31. When applying the risk specific protections the undertaking should be able to satisfy their national supervisor that the purchase of outwards reinsurances has not been materially influenced by whether the risk is one identified as the gross event or a contribution to this gross event.

### **Guideline 13 – Disaggregating the gross loss for Credit and suretyship large buyer scenario**

32. In determining the largest credit exposures, undertakings should take account of exposure accumulations to entities within a group.

### **Guideline 14 – Disaggregating the gross loss for Credit and suretyship recession scenario**

33. Where undertakings need to allocate the recession gross loss to different territories, industries, product types, or more generally to the respective scope of applicability of the reinsurance arrangement in order to apply their reinsurance protections, they should allocate the gross loss pro rata based on gross premium volumes.

## **Section IV: Application of outwards reinsurance**

### **Guideline 15 – Outwards reinsurance applicability**

34. Undertakings should apply each outwards reinsurance protection to one of the levels specified below:
  - a) different zones within a single region single sub module branch;
  - b) different regions within a single sub module branch;
  - c) EEA/non EEA grouping within a single sub module; different catastrophe sub modules branches within a catastrophe sub module;
  - d) different catastrophe sub modules e.g. as could be the case for stop loss and aggregate covers across man made and natural catastrophe sub modules.
35. Undertakings can also apply line of business and business unit specific coverages.
36. Where a reinsurance protection covers other risks not captured by the catastrophe risk sub module (e.g. a line of business stop loss), the undertaking should allow for these other risks when calculating the benefit of the protection under the catastrophe risk module.
37. Undertakings should apply outwards reinsurance consistently with Articles 209 to 214 of Commission Delegated Regulation 2015/35. Undertakings should ensure there is no double counting of reinsurance recoveries Article 209 paragraph 1(e) of Commission Delegated Regulation

2015/35. Undertakings should ensure that the total recovery from risk mitigation methods that is allowed for in their calculation of net losses does not exceed the total amount possible under the terms of their risk transfer programme.

#### **Guideline 16 – Inwards reinstatement premiums**

38. Undertakings may allow for the receipt of inwards reinstatement premiums where it can be demonstrated to the supervisor that these will be triggered by the gross event specified in the catastrophe sub module.
39. Undertakings should allow within their calculations of the gross loss for the additional exposures to any second or subsequent events that result from this inwards reinstatement premium.

#### **Guideline 19 – Proportional reinsurance**

40. For quota shares, surplus reinsurance and proportional facultative contracts, undertakings should do a pro rata allocation of the gross event across these reinsurance contracts.
41. Where the undertaking's proportional reinsurance contract is subject to an "event limit" or similar, the gross loss allocated to that contract cannot exceed such limit and any excess should be added back to the "net retained" share of loss.

#### **Guideline 20 – Non proportional reinsurance per risk**

42. For risk excess of loss and non proportional facultative contracts, undertakings should only use this non proportional reinsurance under the standard formula if the gross event allows identification of the known policies of the underlying policies exposed. Guideline 3 specifies the sub modules where this should be the case.

#### **Guideline 21 – Non-proportional reinsurance per event**

43. Undertakings should only apply non proportional reinsurance to defined gross events if the loss can be split appropriately.
44. The undertaking should take due care to allow for less common contract features such as franchises and for part placements or coinsurance.

#### **Guideline 22 – Non-indemnity contracts and Basis Risk**

45. Undertakings should not apply non indemnity contracts under the standard formula unless it can be demonstrated that the level of basis risk is not material by virtue of the definition of the scenario.

#### **Guideline 23 – Application of aggregate contracts and clash covers**

46. Undertakings should consider at which level to apply the aggregate reinsurance contracts within the calculation of the non-life catastrophe SCR. The choice should be driven by the substance of the risk mitigation mechanism and where reinsurance recoveries are expected if the gross event were to occur.

47. Where undertakings are estimating reinsurance recoveries from clash contracts they should demonstrate to the supervisor that the contracts would respond to the catastrophe events defined in the standard formula.
48. Undertakings should ensure that no double counting of reinsurance recoveries occurs and must be able to explain and demonstrate the logic of application to their supervisor.

#### **Guideline 24 – Treatment of shared reinsurance covers**

49. Where shared reinsurance covers exist, the undertaking should follow the principles in Guideline 32.

#### **Guideline 25 – Treatment of outputs from lower aggregation levels**

50. Undertakings should differentiate between reinstatement costs and reinsurance recoveries when aggregating SCRs across the non life catastrophe sub modules. If reinsurance at a given level does not apply to this combined amount then it will be necessary to split the costs as appropriate. In this case the spread method should be used.

### **Section V: Re aggregating the net losses**

#### **Guideline 27 – Re aggregating the net losses to derive the SCR for catastrophe risk for the undertaking**

51. Where undertakings have allocated a diversified gross loss to a more granular level (i.e. “the gross event”) in order to estimate their reinsurance recoveries, undertakings should add up the net components to derive the SCR.
52. Where undertakings have SCR output from different levels of the calculation, undertakings should combine the net components to derive the non-life catastrophe SCR.

#### **Technical Annex I describes how to apply this Guideline. Section VII: Particular considerations for solo undertakings which are part of groups**

#### **Guideline 31 – Treatment of internal reinsurance arrangements**

53. For solo undertakings, the undertaking should treat outwards reinsurance arrangements which may exist with other group undertakings (“internal reinsurance”) in the same way as they would treat arrangements with external third parties.

#### **Guideline 32 – Estimating the reinsurance recovery that would be due to a solo undertaking in respect of a group reinsurance contract for aggregating catastrophe events**

54. When estimating the reinsurance recovery due on an aggregate reinsurance contract, (i.e. a contract which protects against accumulated aggregate losses from several group undertakings) each solo undertaking should separately follow the steps below:
- a) Determine the gross 1 in 200 year catastrophe loss for the solo undertaking;
  - b) Determine the gross 1 in 200 year catastrophe loss for the group;
  - c) Estimate reinsurance recoveries on the group reinsurance contract;

- d) Allocate reinsurance recoveries according to contractual agreements where these exist, otherwise estimate the reinsurance recoveries due to the solo as the ratio of gross losses (a)/(b) multiplied by the amount estimated in (c).

### **Guideline 33 – Estimating the reinsurance recovery that would be due to a solo undertaking in respect of a group reinsurance contract for risk catastrophe events**

- 55. When estimating the reinsurance recovery due on an risk specific contract (i.e. a contract which protects against specific risk(s)) solo undertakings should follow the steps below:
  - a) Determine whether the specific risk(s) triggering the 1 in 200 year loss for the solo is the same as the specific risk(s) triggering the 1 in 200 year loss at the group level;
  - b) If there is some overlap, estimate reinsurance recoveries due to the solo on the group reinsurance contract.

## **Section VIII: Allocation of Insurance Policies to Liability Risk Groups for the Man Made Liability Catastrophe Risk Sub Module**

### **Guideline 39 – Allocation and Unbundling**

- 56. Where insurance or proportional reinsurance of liability are sold on a packaged basis, including covers that fall into more than one of the above risk groups, undertakings should unbundle and allocate the premiums for each cover to the most appropriate risk group for that cover.
- 57. Undertakings should be able to provide supporting evidence and rationale for such allocations.
- 58. Undertakings should apply proportionality considerations when applying the unbundling guidance above.

## **COMPLIANCE AND REPORTING RULES**

- 59. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities are required to make every effort to comply with guidelines and recommendations.
- 60. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 61. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
- 62. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## **FINAL PROVISION ON REVIEWS**

- 63. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

~~DELETED: Guideline 17 – Other impacts on basic own funds as a result of the trigger of the outwards reinsurance contract~~

~~Undertakings should allow for reinstatement premiums or other additional cash flows which may result from the trigger of the outwards reinsurance protection.~~

### **Explanatory text:**

Type 1 - Redundant, as shocks on Own Funds are calculated on the basis of all cash flows, including those triggered from the reinsurance contract.

~~DELETED: Guideline 18 – Order of operation of reinsurance protections~~

~~Undertakings should apply reinsurance protections in the order specified in their contractual agreements as they apply to the underlying risk~~

### **Explanatory text:**

Type 1 - Redundant, as shocks on Own Funds are calculated on the basis of all cash flows in the appropriate order.

~~DELETED: Guideline 26 – Treatment of other contracts not specified here~~

~~Undertakings should apply the principles incorporated in the Guidelines above to other reinsurance contracts or features not explicitly captured here.~~

### **Explanatory text:**

Type 2

~~DELETED: Section VI Documentation and Validation (Guidelines 28 to 30)~~

~~DELETED: Guideline 28 – Documentation and validation of catastrophe events selected~~

~~For the “Other” non life catastrophe sub module undertakings should explain the catastrophe events selected to their supervisor within regular supervisory report according to Article 309 (5) (a) of Commission Delegated Regulation 2015/35. The explanation should contain details of key decision points, discussion of alternatives which could be selected for these key decision points and rationale for the final selections.~~

~~Undertakings should also include details of any challenge that has occurred internally to devise suitable catastrophe events within their documentation.~~

~~DELETED: Guideline 29 – Documentation of disaggregation methodology~~

~~Undertakings should document the disaggregation mechanism used in order to apply the reinsurance programme by sub module. This should include the rationale for the selected approach, discussion of possible alternatives where there are multiple reasonable methods available and the calculations performed in order to achieve the disaggregation.~~

~~DELETED: Guideline 30 – Documentation of netting down and re aggregation procedures~~

~~Undertakings should document the process used to net down the gross event.~~

~~This includes a description of~~

- ~~a) — the undertaking’s reinsurance programme;~~
- ~~b) — the netting down calculations;~~
- ~~c) — details of the allocation of any recoveries to the relevant insurance submodules;~~
- ~~d) — details of how the re aggregation to derive the SCRnICAT was performed.~~

~~Undertakings should also demonstrate in their documentation that there is no double counting of reinsurance recoveries assumed.~~

~~Where undertakings have assumed adjustable premium features (e.g. inwards and outwards reinstatement premiums), the documentation should justify the methodology and assumptions used to derive these.~~

**Explanatory text:**

Type 2 – The Section is only on Documentation, too detailed and not providing guidance for the application of outwards reinsurance itself.

~~DELETED: Guidelines 34 – Liability Risk Group 1~~

~~Undertakings should, for the liability risk group 1 referred to in Annex XI of Commission Delegated Regulation 2015/35 include the policies for professional malpractice liability insurance which provide coverage to professional practitioners against potential liability claims.~~

~~Undertakings should include in this risk group a range of liability products including:~~

- ~~(a) — Medical malpractice liability insurance including specialist or general practitioners, hospitals and other healthcare providers when they bear medical malpractice liability;~~

- ~~(b) Errors and omissions (E&O) or professional indemnity insurance or other malpractice policies where there are third parties to whom the insured owes a duty of care;~~
- ~~(c) Coverage for failure to perform and associated financial loss arising from the services provided by a company;~~
- ~~(d) Coverage for breach of warranty or intellectual property;~~
- ~~(e) Coverage for all bodily injury liability or property damage (whether material or financial) and the associated damages and defence costs insurance resulting from errors or negligence of a professional in the course of its activity.~~

**Explanatory text:**

Type 2 – The principle-based definitions of liability risk groups are in the Delegated Regulation, and the application of these definitions lead immediately to these guidelines.

~~DELETED: Guideline 35 – Liability Risk Group 2~~

~~Undertakings should, for the liability risk group 2 referred to in Annex XI of Commission Delegated Regulation 2015/35 include the policies for employers' liability which provide coverage for any liability that might be imposed on an employer if an employee is injured in the course of his or her employment.~~

~~Undertakings should include in this risk group obligations which cover:~~

- ~~(a) The provision of preventive or curative medical treatment or care relating to accident at work, industrial injury or occupational diseases;~~
- ~~(b) Financial compensation for such treatment;~~
- ~~(c) Financial compensation for accident at work, industrial injury or occupational diseases.~~

**Explanatory text:**

Type 2 – The principle-based definitions of liability risk groups are in the Delegated Regulation, and the application of these definitions lead immediately to these guidelines.

~~DELETED: Guideline 36 – Liability Risk Group 3~~

~~Undertakings should, for the liability risk group 3 referred to in Annex XI of Commission Delegated Regulation 2015/35 include the policies for directors and officers liability insurance which provide coverage for liability and defence costs to the directors and officers of a company, or to the organization(s) itself, in the event they suffer losses as a result of a lawsuit for alleged wrongful acts while acting in their capacity as directors and officers for the organization, including the coverage of defence costs arising out of criminal and regulatory investigations and/or trials.~~

~~Undertakings should include in this risk group the policies for management liability and employment practice liability.~~

**Explanatory text:**

Type 2 – The principle-based definitions of liability risk groups are in the Delegated Regulation, and the application of these definitions lead immediately to these guidelines.

~~DELETED: Guideline 37 – Liability Risk Group 4~~

~~Undertakings should, for the liability risk group 4 referred to in Annex XI of Commission Delegated Regulation 2015/35 include the policies which cover all liabilities arising from negligent acts and/or omissions resulting in bodily injury and/or property damage to third parties other than:~~

- ~~(a) Those included in motor vehicle liability and marine, aviation and transport~~
- ~~(b) Those included in liability risk groups 1,2,3 and 5 of Annex XI of Commission Delegated Regulation 2015/35;~~
- ~~(c) Third party liability coverage provided to individual householders, individuals in a private capacity (including when hunting) and self-employed crafts persons or ‘artisans’;~~
- ~~(d) Third party liability coverage provided in respect of damage or injury caused by domestic pets.~~

**Explanatory text:**

Type 2 – The principle-based definitions of liability risk groups are in the Delegated Regulation, and the application of these definitions lead immediately to these guidelines.

~~DELETED: Guideline 38 – Liability Risk Group 5~~

~~Undertakings should, for the liability risk group 5 referred to in Annex XI of Commission Delegated Regulation 2015/35 include non proportional reinsurance policies for all liability risk groups defined in that Annex.~~

**Explanatory text:**

Type 2 – The principle-based definitions of liability risk groups are in the Delegated Regulation, and the application of these definitions lead immediately to these guidelines.

~~DELETED: Guideline 40 – Deeming of reinsurance~~

~~Where the intra-group reinsurance inures to the benefit of any of an undertaking's external reinsurance, the participating undertaking should 'deem' the internal reinsurance in place for the purpose of calculating the impact of the external reinsurance~~

**Explanatory text:**

Type 1 – Redundant. Shocks on Own Funds are calculated on the basis of all cash flows coming from the contracts as they are.

## GUIDELINES ON APPLICATION OF THE LIFE UNDERWRITING RISK MODULE

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>15</sup>, EIOPA issues these Guidelines on application of the life underwriting risk module.
2. The Guidelines relate to Article 105 (3) of Directive 2009/138/EU (Solvency II)<sup>16</sup> as well as to Articles 137, 138 and 139 of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>17</sup>.
3. These Guidelines aim at facilitating convergence of practice across Member States and support undertakings in calculating their capital requirement for life underwriting risk under Solvency II.
4. These Guidelines include guidance on which rates should be shocked to calculate the capital requirement for the life underwriting risk module referred to in Article 105 (3) of Solvency II. They focus on the:
  - (a) mortality risk sub-module referred to in Article 105 (3) (a) of Solvency II and in Article 137 of Commission Delegated Regulation 2015/35;
  - (b) longevity risk sub-module referred to in Article 105 (3) (b) of Solvency II and in Article 138 of Commission Delegated Regulation 2015/35;
  - (c) disability-morbidity risk sub-module referred to in Article 105 (3) (c) of Solvency II and in Article 139 of Commission Delegated Regulation 2015/35.
5. Guideline 5 provides guidance on how undertakings should calculate the capital requirement for disability-morbidity risk in the case of a contract that allows for multiple states of disability. It aims at supporting undertakings in identifying properly which transition rates need to be shocked when calculating technical provisions under stress.
6. These Guidelines are addressed to supervisory authorities under Solvency II.
7. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on application of the life underwriting risk module. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

### GUIDELINES

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<sup>15</sup> 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)

<sup>16</sup> 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)

<sup>17</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

#### Guideline 4 – Decrease in disability-morbidity recovery rates

12. Undertakings should apply the decrease in disability and morbidity recovery rates referred to in Article 139 (c) of Commission Delegated Regulation 2015/35 irrespective of the time unit of the rate (annual, monthly, etc.).
13. Notwithstanding the above paragraph, undertakings should not apply the decrease to recovery rates with a value of 1, which merely reflects the fact that the benefit payments end after a contractually fixed period.

#### Guideline 5 – Multi-status guarantees

14. Where rates of transition between several health statuses enter into the calculation of technical provisions, undertakings should consider all rates of transition from one status to a more severe one as disability and morbidity rates and all rates of transition from one status to a less severe one (including the status “healthy”) as disability and morbidity recovery rates for the purpose of calculating the capital requirement for disability-morbidity risk referred to in Article 139 of Commission Delegated Regulation 2015/35, irrespective of the current status of the policyholder for which a technical provision is calculated.
15. Only the persistency rates should be adjusted to ensure that after the shock, the sum of transition rates from one state to others still adds up to 1.

#### COMPLIANCE AND REPORTING RULES

16. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16 (3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
17. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
18. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
19. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

#### FINAL PROVISION ON REVIEWS

20. These Guidelines will be subject to a review by EIOPA.

#### EXPLANATORY TEXT

DELETED: Guideline 1 – Increase in mortality rates

~~1.9 Undertakings should apply the increase in mortality rates referred to in Article 137 of Commission Delegated Regulation 2015/35 irrespective of the time unit of the rates (annual,~~

~~monthly, etc.) and where the increase in mortality rates leads to an increase in technical provisions without the risk margin. After the increase, rates should not exceed a value of 1.~~

**Explanatory text:**

The guideline is deleted as it adds very limited value compared to Article 137 of Commission Delegated Regulation 2015/35, which already states that the increase in mortality rates shall apply to the rates used for the calculation of technical provisions. Irrespective of the time unit of the rates used for the calculation of the technical provisions, such rates should be stressed for the calculation of the capital requirement for mortality risk. Finally, Rates greater than 1 would have no additional impact on the technical provisions as the resulting probability of death used to project cash flows of technical provisions would be naturally capped at 1.

DELETED: Guideline 2 – Decrease in mortality rates

~~1.10. Undertakings should apply the decrease in mortality rates referred to in Article 138 of Commission Delegated Regulation 2015/35 irrespective of the time unit of the rates (annual, monthly, etc.) and where the decrease in mortality rates leads to an increase in technical provisions without the risk margin.~~

**Explanatory text:**

The guideline is deleted as it adds very limited value compared to Article 138 of Commission Delegated Regulation 2015/35, which already states that the decrease in mortality rates shall apply to the rates used for the calculation of technical provisions. Irrespective of the time unit of the rates used for the calculation of the technical provisions, such rates should be stressed for the calculation of the capital requirement for longevity risk.

DELETED: Guideline 3 – Increase in disability-morbidity inception rates

~~1.11. Undertakings should apply the increase in disability and morbidity rates referred to in Article 139 (a) and (b) of Commission Delegated Regulation 2015/35 irrespective of the time unit of the rate (annual, monthly, etc.). After the increase disability and morbidity rates should not exceed a value of 1.~~

**Explanatory text:**

The guideline is deleted as it adds very limited value compared to Article 139 of Commission Delegated Regulation 2015/35, which already states that the increase in disability-morbidity inception rates shall apply to the rates used for the calculation of technical provisions. Irrespective of the time unit of the rates used for the calculation of the technical provisions, such rates should be stressed for the calculation of the capital requirement for disability-morbidity risk.

## GUIDELINES ON BASIS RISK

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>18</sup>, EIOPA issue these Guidelines on basis risk.
2. The Guidelines relate to Article 104 and 105 of Directive 2009/138/EC (Solvency II)<sup>19</sup>.
3. These Guidelines are aimed at facilitating convergence of practice across Member States and at supporting undertakings in calculating their capital requirement for market risk under Solvency II.
4. These Guidelines concern undertakings and professionals responsible for the treatment of the risk mitigation techniques in the calculation of the Solvency Capital Requirement with the standard formula.
5. The aim is to increase consistency and convergence of professional practice relating to the treatment of risk mitigation techniques in the calculation of the Solvency Capital Requirement for all types and sizes of undertakings.
6. These Guidelines are addressed to supervisory authorities under Solvency II.
7. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on basis risk.
8. If not defined in these Guidelines the terms have the meaning defined in the legal acts referred to in the introduction.

### GUIDELINES

#### **Guideline 2 – Financial risk-mitigation techniques: assessment criteria of material basis risk**

9. Before allowing for financial risk-mitigation techniques in the calculation of the Solvency Capital Requirement with the standard formula, undertakings should assess inter alia:
  - (a) the materiality of the basis risk with reference to the exposure covered by the risk-mitigation technique and the risk exposure of the undertaking without considering other balance sheet items, unless there is a continuous and consistent connection between other balance sheet items and the risk exposure of the undertaking;
  - (b) the similarity of the nature of the exposures by taking into account at least the type and terms and conditions of the instruments or arrangements involved and the rules governing the markets where their prices are quoted or which provide the data for their valuation;
  - (c) the changes in the value of the exposures under a comprehensive set of risk scenarios, including all scenarios considered in the relevant modules or sub-modules of the standard formula, by at least taking into account:
    - (i) the degree of symmetry among both exposures;

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<sup>18</sup> 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)

<sup>19</sup> 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)

- (ii) any non-linear dependencies under the scenario;
  - (iii) any relevant asymmetry of the behaviours in case of risk sub- modules where both upward and downward stresses are applied;
  - (iv) the levels of diversification of each respective exposure;
  - (v) any relevant risks not captured explicitly in the standard formula;
  - (vi) the whole distribution of pay-outs applying to the risk-mitigation technique.
10. The risk-mitigation technique should be considered to result in material basis risk where the above assessment does not provide sufficient evidence that the changes in value of the exposure covered by the risk-mitigation technique mirrors all material changes in value of the risk exposure of the undertaking.
11. Where the terms and conditions of a risk-mitigation technique specify a cap on the maximum loss protection as a proportion of the initial exposure, undertakings should apply the assessment only to the proportion covered by the risk-mitigation technique when determining whether the basis risk is material.

## COMPLIANCE AND REPORTING RULES

12. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
13. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
14. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
15. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## FINAL PROVISION ON REVIEWS

16. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

DELETED: Guideline 1 – Risk mitigation techniques with no material basis risk

~~1.9. Undertakings should consider that a risk mitigation technique does not result in material basis risk where the following conditions are met:~~

~~(a) the exposure covered by the risk mitigation technique is sufficiently similar in nature to the risk exposure of the undertaking;~~

~~(b) the changes in value of the exposure covered by the risk-mitigation technique closely mirror the changes in value of the risk exposure of the undertaking under a comprehensive set of risk scenarios, including scenarios that are consistent with the confidence level set out in Article 101(3) of Solvency II.~~

**Explanatory text:**

Guideline 1 is deleted because its content is incorporated into the amended Level 2 text. This demonstrates the continued relevance of the content of Guideline 1, but at the same time makes the guideline redundant. To streamline and simplify the convergence instruments, and to avoid duplication while maintaining all essential information, Guideline 1 is therefore removed.

AMENDED: Guideline 2 – Financial risk-mitigation techniques: assessment criteria of material basis risk

1.10. Before allowing for financial risk-mitigation techniques in the calculation of the Solvency Capital Requirement with the standard formula, undertakings should assess inter alia:

(a) the materiality of the basis risk with reference to the exposure covered by the risk-mitigation technique and the risk exposure of the undertaking without considering other balance sheet items, unless there is a continuous and consistent connection between other balance sheet items and the risk exposure of the undertaking;

(b) the similarity of the nature of the exposures referred to in Guideline 1 by taking into account at least the type and terms and conditions of the instruments or arrangements involved and the rules governing the markets where their prices are quoted or which provide the data for their valuation;

(c) the changes in the value of the exposures under a comprehensive set of risk scenarios, referred to in Guideline 1 including all scenarios considered in the relevant modules or sub-modules of the standard formula, by at least taking into account:

(i) the degree of symmetry among both exposures;

(ii) any non-linear dependencies under the scenario;

(iii) any relevant asymmetry of the behaviours in case of risk sub-modules where both upward and downward stresses are applied;

(iv) the levels of diversification of each respective exposure;

(v) any relevant risks not captured explicitly in the standard formula;

(vi) the whole distribution of pay-outs applying to the risk-mitigation technique.

1.11. The risk-mitigation technique should be considered to result in material basis risk where the above assessment does not provide sufficient evidence that the changes in value of the exposure

covered by the risk-mitigation technique mirrors all material changes in value of the risk exposure of the undertaking.

1.12. Where the terms and conditions of a risk-mitigation technique specify a cap on the maximum loss protection as a proportion of the initial exposure, undertakings should apply the assessment only to the proportion covered by the risk-mitigation technique when determining whether the basis risk is material.

**Explanatory text:**

Given that Guideline 1 is deleted, the text of Guideline 2 is amended to remove all references to Guideline 1. This ensures that the content remains accurate.

~~DELETED: Guideline 3 – Insurance risk-mitigation techniques with no material basis risk~~

~~1.13. Before allowing for an insurance risk-mitigation technique in the calculation of the Solvency Capital Requirement with the standard formula, undertakings should identify whether reinsurance or special purpose vehicle arrangements behave differently than the insurance policies of the undertaking under a comprehensive set of risk scenarios due to differences in terms and conditions.~~

~~1.14. Undertakings should consider basis risk arising from a currency mismatch to be material where the exposure covered by the insurance risk-mitigation technique is denominated in a different currency than the risk exposure of the undertaking, unless the currencies involved are pegged within a sufficiently narrow corridor or the fixed exchange rate is provided in the reinsurance contract.~~

~~1.15. If there is material basis risk stemming from a currency mismatch as referred to in paragraph 1.14, undertakings should not allow for the risk-mitigation technique in the calculation of the Solvency Capital Requirement unless the provisions of Article 86 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC apply.~~

**Explanatory text:**

Guideline 3 is deleted because its content is incorporated into the amended Level 2 text. This demonstrates the continued relevance of the content of Guideline 3, but at the same time makes the guideline redundant. To streamline and simplify the convergence instruments, and to avoid duplication while maintaining all essential information, Guideline 3 is therefore removed.

## GUIDELINES ON HEALTH CATASTROPHE RISK SUB-MODULE

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>20</sup>, EIOPA issue these Guidelines on the health catastrophe risk sub-module.
2. These Guidelines relate to Article 105 (4) of Directive 2009/138/EC (Solvency II)<sup>21</sup>, as well as to Articles 160 to 163 and Annex VI of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>22</sup>.
3. These Guidelines aim at facilitating convergent practices across Member States and at helping undertakings to appropriately identify and compute the quantities involved in the calculation of the health catastrophe capital requirement in different possible cases and situations.
4. The calculations for the determination of the capital requirement for the health catastrophe risk sub-module should be consistent with the design and calibration of the underlying scenarios.
5. Insurance and reinsurance undertakings may face different situations depending on the characteristics of their products and the national legislations.
6. These Guidelines are addressed to supervisory authorities under Solvency II.
7. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on the health catastrophe risk sub-module.
8. For the purpose of these Guidelines the following definition has been developed:
  - ‘Single claim’ means a claim following the occurrence of one particular event to one identified insured person.
9. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

### GUIDELINES

#### **Guideline 1 – General provisions for the calculation of Health Catastrophe capital charges**

10. Where the determination of the cause of a catastrophe scenario is necessary in the calculations of the capital requirements for the health catastrophe risk submodule and the effects described in the scenarios can have different causes, undertakings should use in the calculation the cause resulting in the highest loss in basic own funds. In particular, undertakings should not exclude the scenario where some potential causes of the catastrophe scenario are excluded by policy terms and conditions (e.g. terrorism).

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<sup>20</sup> 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)

<sup>21</sup> 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)

<sup>22</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

## Guideline 2 – Calculation of the sum insured for accidental death benefits

11. Where an insurance contract provides for benefits in case of death, irrespective of the cause, and for additional benefits in case of death caused by an accident, undertakings should take only the additional benefits into account when calculating the value of the benefits referred to in Article 161 (3)(b) and Article 162 (4) (c) of Commission Delegated Regulation 2015/35, provided the following conditions are met:
  - (a) the benefits have been unbundled;
  - (b) the risks related to the benefits in case of death irrespective of the cause are properly captured in the life underwriting risk module.
12. Where additional recurring benefit payments are provided for in case of death caused by an accident, undertakings should base the calculation of the value of the benefits payable on best estimate parameters (mortality table and discount rate curve) taking into account relevant demographic characteristics. Undertakings should also reflect in the calculation the contractual duration of the recurring benefit payments.
13. Where no or insufficient demographic data is available undertakings should use realistic assumptions on the demographic parameters based on public or internal statistics in the calculation of the value of the benefits. Undertakings should be able to justify these assumptions to the satisfaction of the supervisory authority.
14. In the calculation of the value of the benefits, undertakings should account for expected increases in the amount of recurring benefit payments and claims management expenses.

## Guideline 3 – Calculation of the sum insured for permanent disability benefits

15. Where benefits for disability can be paid either as a single payment or as recurring payments, undertakings should follow a three step approach to determine the value of the benefits referred to in Article 161 (3) (b) and Article 162 (4) (c) of Commission Delegated Regulation 2015/35:
  - (a) Step 1: determination of the expected proportion of benefit payments in the form of a single payment.
  - (b) Step 2: determination, for each insured person, of the benefits in the case of a single payment and the best estimate of the recurring benefits.
  - (c) Step 3: calculation of the average between the two values determined in step 2 weighted by the proportion calculated in step 1.
16. Notwithstanding paragraph 1 of this Guideline, when the choice between a single payment and recurring payments is at the discretion of the beneficiary, the undertaking should use the maximum of the two values instead of the weighted average.
17. Undertakings should justify the assumptions underlying the calculation of the proportions referred to in paragraph 1. Where undertakings cannot justify the calculation of the proportions to the satisfaction of the supervisory authority, they should calculate the value of the benefits as the maximum between the single payment and the best estimate of the recurring benefits.

18. Where the amount of the disability benefit payments depends on the degree of disability of injured persons, undertakings should calculate the value of the benefits for all persons in the following way:
  - (a) derive a distribution of the degrees of disability amongst injured persons;
  - (b) calculate the claim costs associated with each degree of disability;
  - (c) apply the distribution of degrees to the associated claim costs accordingly.
19. Undertakings should justify the assumptions underlying the calculation of the distribution of degrees referred to in paragraph 4. Where undertakings cannot justify the calculation of the proportions to the satisfaction of the supervisory authority, they should use for all insured persons the maximum claim cost across all degrees of disability.
20. In the calculation of the best estimate of the recurring benefit payments for the event type “Permanent disability caused by an accident”, undertakings should assume that payments are made over the full benefit period specified in the terms and conditions of the policy, but that exits due to mortality may occur.
21. For the calculation undertakings should make realistic assumptions on the mortality rates for permanently disabled people based on public or internal statistics. Undertakings should be able to justify these assumptions.
22. In the calculation of the value of benefits, undertakings should account for expected increases in the amount of recurring benefit payments and claims management expenses.

#### **Guideline 4 – Calculation of the sum insured for ten year disability and twelve month disability benefits**

23. Where the beneficiary can receive either a single payment or recurring benefit payments in the case of the event types “Disability that lasts 10 years caused by an accident” or “Disability that lasts 12 months caused by an accident”, undertakings should apply the same approach as set out in Guideline 3.
24. Where the amount of the disability benefit payments depends on the degree of disability of injured persons, undertakings should apply the same approach as set out in Guideline 3 paragraph 4 and 5.
25. When calculating the best estimate of the recurring benefit payments for the event type “Disability that lasts 10 years caused by an accident” or “Disability that lasts 12 months caused by an accident”, undertakings should exclude any exit cause and take into account all future payments between:
  - (a) the end of any deferred period;
  - (b) the end of the 10 years or 12 months period or, if this is earlier, the end of the coverage period.
26. In the calculation undertakings should account for expected increases in the amount of recurring benefit payments and claims management expenses.

**Guideline 5 – Calculation of the sum insured for medical treatment caused by accident**

27. Undertakings should calculate the average amounts in the case of the event type “Medical treatment caused by an accident” as the benefits for medical treatment caused by an accident observed during prior years, including related expenses, divided by the number of single claims corresponding to these benefits.
28. Undertakings should ensure that the observation period is long enough to minimise statistical errors.
29. For the calculation of the average amounts, undertakings should adjust past data for the inflation rate of medical payments.
30. Where a medical treatment is expected to last more than one year, undertakings should take into account the expected inflation rate of medical payments.
31. Undertakings should appropriately discriminate between benefits paid for medical treatment caused by an accident and other benefits on the basis of past observations. Where necessary, undertakings should complement this analysis by expert judgement. Undertakings should base all estimations on public or internal statistics. Undertakings should be able to justify these assumptions to the satisfaction of the supervisory authority.

**Guideline 6 – Calculation of the sum insured in the accident concentration risk sub-module**

32. For the calculation of the value of the benefits referred to in Article 162 (4) (c) of Commission Delegated Regulation 2015/35, undertakings should apply the same principles as set out in Guidelines 2 to 4.
33. Where an insured person is covered by two or more contracts with benefit payments in the case of the event type e and which are not mutually exclusive, undertakings should add up the benefit payments for the different contracts to determine  $SI(e,i)$  as referred to in Article 162 (4) (c) of Commission Delegated Regulation 2015/35.

**Guideline 8 – Calculation of the best estimate of medical expense amounts**

34. Undertakings should calculate the best estimate of amounts payable for healthcare utilisation as referred to in Article 163 of Commission Delegated Regulation 2015/35 as the product of:
  - (a) the expected number of healthcare treatments  $h$  for an insured person;
  - (b) the expected average claim cost for a single healthcare treatment  $h$  where the expected number of healthcare treatments has at least a value of 1.
35. Undertakings should make an accurate estimation, based on their own experience, of:
  - (a) the expected number of uses of each healthcare treatment  $h$ ;
  - (b) the average claim cost for a single use of each healthcare treatment  $h$ .
36. When undertakings can justify that past experience does not allow for an accurate estimation, they should use as the expected number of healthcare treatments for the healthcare utilisation type “Hospitalisation” and “No formal medical care sought” a value of 1 and for healthcare utilisation type “Consultations with a medical practitioner” a value of 2.

37. Undertakings should adjust the estimation of the average claim cost for the inflation rate of medical payments, and complement it if necessary by expert judgement. The observation period should be long enough to avoid statistical errors.

### COMPLIANCE AND REPORTING RULES

38. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities are required to make every effort to comply with guidelines and recommendations.
39. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
40. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
41. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

### FINAL PROVISION ON REVIEWS

42. These Guidelines will be subject to a review by EIOPA.

### EXPLANATORY TEXT

DELETED: Guideline 7 – Calculation of the income protection pandemic exposure

~~1.33. Where the contract provides for recurring benefit payments, undertakings should calculate the best estimate of the benefit payments in case of a permanent work disability caused by an infectious disease as referred to in Article 163 (2) (b) of Commission Delegated Regulation 2015/35, in the same way as set out in Guideline 3 for the best estimate of the benefit payments in case of the event type “Permanent disability caused by an accident”.~~

#### **Explanatory text:**

The guidelines is deleted as Article 163(2) (b) that already clarifies what is required in case the contract provides for recurring benefit payments.

## GUIDELINES ON LOOK-THROUGH APPROACH

### INTRODUCTION

1. According to Article 16 of Regulation (EU) (EIOPA Regulation)<sup>23</sup> EIOPA issues these Guidelines on the look-through approach.
2. The Guidelines relate to Articles 104 and 105 of Directive 2009/138/EC (Solvency II)<sup>24</sup>.
3. These Guidelines aim at increasing consistency and convergence of professional practice in the application of the look-through approach for all types and sizes of solo undertakings using the standard formula across Member States.
4. These Guidelines aim at supporting undertakings in calculating their market risk related Solvency Capital Requirements under Solvency II.
5. Only cases that do not already qualify as risk-mitigation techniques are considered for potential application of the look-through approach. Where insurance or reinsurance undertakings use risk-mitigation techniques the assumption is that the underlying risks are understood and have already been looked-through.
6. These Guidelines are addressed to supervisory authorities under Solvency II.
7. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on the look-through approach.
8. If not defined in these Guidelines the terms have the meaning defined in the legal acts referred to in the introduction.

### GUIDELINES

#### Guideline 3 – Investments in real estate

9. Undertakings should cover the following investments in the property risk submodule:
  - (a) land, buildings and immovable property rights;
  - (b) property investment held for the own use of the undertaking.
10. For equity investments in a company exclusively engaged in facility management, real estate administration, real estate project development or similar activities, undertakings should apply the equity risk sub-module.
11. Where undertakings invest in real estate through collective investment undertakings or other investments packaged as funds, they should apply the look-through approach.

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<sup>23</sup> 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).

<sup>24</sup> 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).

**Guideline 4 – Data groupings**

12. With reference to the groupings referred to in Article 84 (3) of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>25</sup>, where assets covered in the spread and interest rate risk submodules are grouped according to duration bands, undertakings should ensure that the durations assigned to the bands are demonstrably prudent.
13. Where groupings across different credit quality steps are used, undertakings should ensure that the credit quality steps assigned to the groups are demonstrably prudent.

**Guideline 5 – Data groupings and concentration risk**

14. Where in accordance with Article 84 (3) of Commission Delegated Regulation 2015/35, any grouping is applied to the single name exposures of the underlying assets of collective funds for calculating the market risk concentration charge and it cannot be demonstrated that the groups into which the fund is split do not contain any of the same single name exposures, undertakings should assume that all assets for which the actual single name exposure is not identified belong to the same single name exposure.
15. The above paragraph is not applicable where exposure limits to single name exposures exists according to which the fund is managed.
16. Undertakings should aggregate exposures to groups referred to in paragraph 1.16 across all collective funds in which they are invested and reconcile the exposures to each group with the exposures of the known single names in their asset portfolio.

**Guideline 6 – Indirect exposure to catastrophe risk**

17. When calculating the Solvency Capital Requirement in respect of indirect exposures to catastrophe risks, such as investments in bonds for which repayment is contingent on the non-occurrence of a given catastrophe event, undertakings should take into account any credit and catastrophe exposures.
18. Catastrophe exposures should be treated in the relevant catastrophe submodules as though the underlying catastrophe exposure is directly held by the undertaking.

**Guideline 7 – Catastrophe bonds issued by the undertaking**

19. Where an undertaking issues catastrophe bonds which do not meet the requirements for risk-mitigation techniques set out in Articles 208 to 215 of Commission Delegated Regulation 2015/35, their treatment in the standard formula should not result in a capital relief in respect of the catastrophe features of these bonds.
20. Undertakings should treat these catastrophe bonds in the calculation of the Solvency Capital Requirement as though the repayment schedule was not contingent on the non-occurrence of a catastrophe event.

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<sup>25</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

### Guideline 8 – Longevity bonds

21. Where undertakings buy longevity bonds which do not meet the requirements for risk-mitigation techniques set out in Articles 208 to 215 of Commission Delegated Regulation 2015/35, they should calculate the capital charge in respect of mortality and spread risk as set out in paragraphs 1.24 to 1.28.
22. The capital charge of the standard formula mortality sub-module should be based on a notional portfolio of term assurance contracts:
  - (a) paying out the given sum on death;
  - (b) based on a representative sample of the reference population underlying the longevity index;
  - (c) where the term of each term assurance contract is equal to the term of the coupon payment.
23. The notional portfolio should be constructed by undertakings in such a way that under best estimate assumptions the total benefit payments sum to the coupon payable.
24. The capital charge of the spread risk sub-module should be based on a bond or a loan with the same market value, duration and credit quality step as the longevity instrument.
25. Where undertakings sell longevity bonds they should calculate the capital charge in respect of the longevity sub-module as though the notional portfolio consists of endowment contracts, paying out the required sum at survival to a given age, which collectively produce cash-flows equivalent to those of the bond.
26. Undertakings should not consider longevity bonds which do not meet the requirements for risk-mitigation techniques set out in Articles 208 to 215 of Commission Delegated Regulation 2015/35 to increase in value when the stresses in the life underwriting risk module are applied.

### COMPLIANCE AND REPORTING RULES

27. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
28. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
29. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
30. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

### FINAL PROVISION ON REVIEWS

31. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

DELETED: Guideline 1 – Money market funds

~~1.9 Undertakings should apply the look-through approach to money market funds.~~

### **Explanatory text:**

Guideline 1 is considered to offer limited added value within the current framework. In light of ongoing efforts to enhance clarity, efficiency, and overall coherence, and with the objective of streamlining and simplifying the set of convergence instruments, it is therefore proposed that this guideline be formally removed.

DELETED: Guideline 2 – Number of iterations

~~1.10 Undertakings should perform a sufficient number of iterations of the lookthrough approach, where appropriate (e.g. where a fund is invested in other funds) to capture all material risk.~~

### **Explanatory text:**

Guideline 2 is considered to offer limited added value within the current framework. In light of ongoing efforts to enhance clarity, efficiency, and overall coherence, and with the objective of streamlining and simplifying the set of convergence instruments, it is therefore proposed that this guideline be formally removed.

## GUIDELINES ON LOSS-ABSORBING CAPACITY OF TECHNICAL PROVISIONS AND DEFERRED TAXES

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>26</sup>, EIOPA issues these Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes.
2. The Guidelines relate to Articles 103(c) and 108 of Directive 2009/138/EU (Solvency II)<sup>27</sup> as well as to Article 83 and Articles 205 to 207 of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>28</sup>.
3. The following Guidelines are intended to establish consistent, efficient and effective supervisory practices and to ensure the common, uniform and consistent application of Union law on the calculation of the adjustments for the loss-absorbing capacity of technical provisions and deferred taxes to the Solvency Capital Requirement.
4. Guidelines 1 to 14 apply, on a solo basis, to insurance and reinsurance undertakings using the standard formula and where relevant, also to groups using the standard formula.
5. Guidelines 15 to 22 apply to groups using the standard formula and when method 1 is used, either exclusively or in combination with method 2. When method 2 is used exclusively, Guidelines 15 to 22 do not apply since the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes is not done additionally at group level. When the combination of methods is used, the Guidelines apply only to the consolidated part of the group.
6. The Guidelines do not cover the valuation of technical provisions or deferred tax assets and liabilities in the Solvency II balance sheet, as these are covered by Article 15 of Commission Delegated Regulation 2015/35.
7. The term “deferred taxes” is used in Solvency II in two contexts: firstly to describe items on the Solvency II balance sheet and secondly, in connection with the calculation of tax adjustments to the Solvency Capital Requirement. In order to avoid confusion, the following Guidelines introduce the term “notional deferred taxes” for items used in the calculation of the adjustment.
8. These Guidelines are addressed to supervisory authorities under Solvency II.
9. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on loss-absorbing capacity of technical provisions and deferred taxes.
10. For the purpose of these Guidelines, the following definition has been developed:
  - Notional deferred taxes’ refers to the sum of the products of all relevant and material tax rates and all relevant and material changes in temporary differences between Solvency II valuation and the valuation for tax purposes resulting from the instantaneous loss referred

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<sup>26</sup> 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).

<sup>27</sup> 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).

<sup>28</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

to in Article 207(1) of Commission Delegated Regulation 2015/35. In the simplest case, where there is only one tax rate and all losses contribute to a change of temporary differences, the notional deferred taxes would be represented by the product of a uniform tax rate and the loss referred to in Article 207(1) of Commission Delegated Regulation 2015/35. “Notional deferred taxes” do not represent the difference between pre- and post-stress deferred taxes<sup>29</sup>. An undertaking should assess which amount of the notional deferred taxes could be recognized in the Solvency II balance sheet after suffering the loss in the stress.

11. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

## GUIDELINES

### Section I: Adjustment for the loss-absorbing capacity of technical provisions

#### Guideline 2 – Method for determining the capital requirement of sub-modules in the calculation of the Basic Solvency Capital Requirement

12. Without prejudice to Guideline 1, where the calculation of a module or submodule of the Basic Solvency Capital Requirement is based on the impact of a scenario supervisory authorities should allow undertakings to determine its capital requirement based on the respective capital requirement derived for calculating the net Basic Solvency Capital Requirement in the following way:

- a) calculate the value of future discretionary benefits taking into account the impact of the scenario;
- b) calculate the difference between the value of future discretionary benefits in the current Solvency II balance sheet and the value referred to in a);
- c) add the difference in b) to the capital requirement for the module or sub-module derived for calculating the net Basic Solvency Capital Requirement.

#### Guideline 3 – Stress impact on future discretionary benefits in the net calculation

13. When determining the impact of a scenario on future discretionary benefits included in technical provisions referred to in Article 206(2)(b) of Commission Delegated Regulation 2015/35 undertakings should take into account:

- a) the impact of the scenario on future profits; and

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<sup>29</sup> An example for the concept of notional deferred taxes can be found in an Appendix to the Explanatory Text.

- b) the future management actions regarding the distribution of future discretionary benefits in response to the scenario.

14. When calculating the net Basic Solvency Capital Requirement, undertakings should allow for any stresses to the interest rate level, including any changes to the relevant risk free interest term structure used for discounting cash flows relating to future discretionary benefits.

#### **Guideline 4 – Future bonus rates**

15. Where the assumptions on future management actions following a scenario referred to in Article 206(2)(b) of Commission Delegated Regulation 2015/35 include the variation of future bonus rates, undertakings should allow in the extent of the variation for the nature and the scale of the underlying stress.

#### **Guideline 5 – Management actions**

16. Undertakings should make assumptions on future management actions regarding the distribution of future discretionary benefits that are consistent with their current business practice.
17. In the calculation of the adjustment for the loss-absorbing capacity of technical provisions undertakings should make assumptions on future management actions at a level of granularity that reflects all material and relevant legal, regulatory or contractual restrictions on the distribution of future discretionary benefits.

### **Section II: Adjustment for the loss-absorbing capacity of deferred taxes - calculation**

#### **Guideline 6 – Granularity of calculation**

18. Undertakings should perform the calculation of the adjustment for the loss absorbing capacity of deferred taxes at a level of granularity that reflects all material and relevant regulations in all applicable tax regimes.

#### **Guideline 7 – Valuation principles and approaches**

19. Undertakings should calculate the adjustment for the loss-absorbing capacity of deferred taxes by stressing the Solvency II balance sheet and determining the consequences on the tax figures of the undertaking. The adjustment should then be calculated on the basis of temporary differences between the stressed Solvency II values and the corresponding figures for tax purposes.
20. In accordance with the requirements of Article 15(1) of Commission Delegated Regulation 2015/35, undertakings should take into account all assets and liabilities that are recognized for solvency or tax purposes in the calculation of the loss-absorbing capacity of deferred taxes.
21. Notwithstanding paragraph 1.22, supervisory authorities should allow undertakings, when determining the tax consequences of the loss referred to in Article 207(1) of Commission Delegated Regulation 2015/35, to use an approach based on average tax rates, provided they are able to demonstrate that those average tax rates are determined at an appropriate level, and that such an approach avoids a material misstatement of the adjustment.

### Guideline 8 – Loss attribution

22. Where undertakings use an approach based on average tax rates, they should allocate the loss referred to in Article 207(1) of Commission Delegated Regulation 2015/35 to its causes in accordance with Article 207(5) of Commission Delegated Regulation 2015/35 if the calculation of the deferred tax adjustment on an aggregate level does not reflect all material and relevant regulations of applicable tax regimes.
23. Where the allocation set out in paragraph 1.24 does not reflect all material and relevant regulations of applicable tax regimes, undertakings should allocate the loss to balance sheet items with a sufficient level of granularity to meet this requirement.

### Guideline 9 – Arrangements for the transfer of profits or losses

24. Where an undertaking has entered into contractual agreements regarding the transfer of profit or loss to another undertaking or is bound by other arrangements under existing tax legislation in the member state (tax groups) or an arrangement whereby such transfer occurs or is considered to occur through an offset of such losses against profits of another undertaking under the applicable tax consolidation rules in the Member State (fiscal unity), the undertaking should take these agreements or arrangements into account in the calculation of the adjustment for loss-absorbing capacity of deferred taxes.
25. Where it is contractually agreed and probable that a loss will be transferred to a another undertaking or where such loss transfer occurs or is considered to occur through an offset of such losses against profits of another undertaking (“receiving undertaking”) after the undertaking (“transferring undertaking”) suffers the instantaneous loss referred to in Article 207(1) of Commission Delegated Regulation 2015/35, the transferring undertaking should only recognize the related deferred tax adjustment to the extent that the payment or other benefit will be received in exchange for the transfer of notional tax losses.
26. The transferring undertaking should only recognize the payment or benefit receivable to the extent that a deferred tax adjustment could be recognized under Guideline 10 if the loss was not transferred.
27. The transferring undertaking should only recognize payment or benefits receivable if the arrangement or contractual agreement is legally effective and enforceable by the transferring undertaking with respect to the transfer of those items.
28. If the value of payment or benefit receivable is conditional on the solvency or tax position of the receiving undertaking or that of the existing tax consolidation (fiscal unity) as a whole, the transferring undertaking should base the valuation of the payment or benefits receivable on a reliable estimate of the value that is expected to be received in exchange for loss transferred.
29. The transferring undertaking should verify that the receiving undertaking is able to honor its obligations in stressed circumstances, namely after suffering the Solvency Capital Requirement stress if the receiving undertaking is subject to Solvency II.
30. The transferring undertaking should reflect any tax payable on the payment or benefit received in the recognized amount of notional deferred taxes.

31. Where the receiving solo undertaking is subject to Solvency II it should not recognize the transferred loss in the calculation of the adjustment for the loss-absorbing capacity of deferred taxes.

### **Section III: Adjustment for the loss-absorbing capacity of deferred taxes – recognition**

#### **Guideline 11 – Avoidance of double counting**

32. Undertakings should ensure that deferred tax assets arising from the instantaneous loss defined in Article 207(1) of Commission Delegated Regulation 2015/35 are not supported by the same deferred tax liabilities or future taxable profits already supporting the recognition of deferred tax assets for valuation purposes in the Solvency II balance sheet in accordance with Article 75 of Solvency II.
33. Undertakings should follow in their recognition of notional deferred tax assets in a stressed Solvency II balance sheet the principles set out in Article 15 of Commission Delegated Regulation 2015/35.

### **Section IV: Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes at group level – General provisions**

#### **Guideline 15 – Scope**

34. The participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should only apply the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, when method 1 or the combination of methods is used, to the part of the consolidated data determined in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35

### **Section V: Adjustment for the loss-absorbing capacity of technical provisions on group level**

#### **Guideline 16 – Scenarios**

35. Where the standard formula requires the choice between alternative scenarios, the selection should be undertaken at group level. In order to derive the loss-absorbing capacity of technical provisions in the sub-modules of the group calculation, the scenario relevant for the group should be calculated for each insurance and reinsurance undertaking that is consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35, on the basis of the application of the formula in Guideline 17.

#### **Guideline 17 – Calculation of net basic Solvency Capital Requirement**

36. When determining the group loss-absorbing capacity of technical provisions at sub-module level, the participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should derive the group's net calculation of the Solvency Capital Requirement on sub-modular level based on the following formula, considering the loss-absorbency of technical provisions of each insurance and reinsurance undertaking that is

consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35, recalculated on the basis of the relevant scenario where relevant:

$$netSCR_{sub-module}^{group} = grossSCR_{sub-module}^{group} + \sum_{solo} \alpha^{solo} (grossSCR_{sub-module}^{solo} - netSCR_{sub-module}^{solo}) * \min \left( 1; \frac{FDB^{solo}}{grossSCR^{solo} - netSCR^{solo}} \right)$$

Where:

- $\alpha^{solo}$  represents the percentage used for the establishment of the consolidated accounts;
- $FDB^{solo}$  represents the total amount of FDB at the individual level adjusted for intra group transaction, if necessary, according to Article 339(2) of Commission Delegated Regulation 2015/35;
- $netSCR_{sub-module}^{group}$  and  $grossSCR_{sub-module}^{group}$  should be determined in accordance with Guideline 16;
- $netSCR^{solo}$  and  $grossSCR^{solo}$  represent the aggregated  $netSCR_{sub-module}^{solo}$  and  $grossSCR_{sub-module}^{solo}$  for each insurance and reinsurance undertaking, using either the relevant standard formula's correlation matrices or the approved internal model.

37. The value of nBSCR in Article 206(1) of Commission Delegated Regulation 2015/35 should be derived with either the aggregation matrices of the standard formula or the approved internal model. The value of future discretionary benefits in Article 206(1) of Commission Delegated Regulation 2015/35 should correspond to the part of future discretionary benefits that relates to the part of consolidated data determined in accordance with Article 335(1) (a),(b) and (c) of Commission Delegated Regulation 2015/35.

### Guideline 18 – Intragroup Transactions

38. When preparing the consolidated data, if the part of the best estimate for technical provisions related to future discretionary benefits of the individual insurance and reinsurance undertakings is adjusted for intra-group transactions, in line with Article 339(2) of Commission Delegated Regulation 2015/35, the total amount of future discretionary benefits at group level should be adjusted accordingly.

### Guideline 20 – Alternative Calculation

39. Alternatively to the calculation proposed in Guideline 17, when there is a reasonable level of homogeneity among future discretionary benefits of the participating insurance and reinsurance undertaking and insurance and reinsurance undertakings that are consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35 within the group, the participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should calculate the Loss-Absorbing Capacity of technical provisions at group level according to Guideline 21.

40. The participating insurance and reinsurance undertaking or insurance holding company should be able to prove to the group supervisor that, according to the group business and risk profile, a reasonable level of homogeneity among future discretionary benefits within the group is ensured.

## Guideline 21 – Alternative Calculation

41. In accordance with Guideline 20, the participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should calculate the adjustment for the loss-absorbing capacity of technical provisions using the following formula:

$$Adj_{TP}^{group} = \frac{SCR^{diversified*}}{\sum_{solo} \alpha^{solo} SCR^{solo*}} \times \sum_{solo} \alpha^{solo} Adj_{TP}^{solo}$$

Where:

- $Adj_{TP}^{solo}$  is the adjustment for the loss-absorbing capacity of technical provisions of each insurance and reinsurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35;
- $\alpha^{solo}$  represents the percentage used for the establishment of the consolidated accounts;
- the ratio  $\frac{SCR^{diversified*}}{\sum_{solo} \alpha^{solo} SCR^{solo*}}$  represents the proportional adjustment due to the diversification effects at group level and, in particular, at the numerator

$SCR^{diversified*}$ <sup>30</sup> is the Solvency Capital Requirement calculated on the basis of the consolidated data in accordance to Article 336(a) of Commission Delegated Regulation 2015/35 but before the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes; and the denominator  $SCR^{solo*}$  is the Solvency Capital Requirement before the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes of each insurance and reinsurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35. In line with Article 330(6) second subparagraph of Commission Delegated Regulation 2015/35 the ratio shall not exceed 100%.

## Section VI: Adjustment for the loss-absorbing capacity of deferred taxes at group level

### Guideline 22 – Calculation

42. The participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should calculate the adjustment for the loss-absorbing capacity of deferred taxes according to the following formula:

$$Adj_{DT}^{group} = \frac{SCR^{diversified}}{\sum_{solo} \alpha^{solo} SCR^{solo**}} \times \sum_{solo} \alpha^{solo} Adj_{DT}^{solo}$$

Where:

- $\alpha^{solo}$  represents the percentage used for the establishment of the consolidated accounts;
- $Adj_{DT}^{solo}$  is the solo adjustment for the loss-absorbing effect of deferred taxes of each (re)insurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35;

<sup>30</sup>  $SCR^{diversified}$  is equal to the following sum, in the case of application of the standard formula:  
 $SCR^{diversified} = BSCR^{diversified} + SCR^{diversified}_{operational}$

- $SCR^{solo^{**}}$  is the solvency capital requirement after the LAC adjustment for technical provisions and before the LAC adjustment for deferred taxes of each insurance and reinsurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35; and
- $SCR^{diversified^{**}}$ <sup>31</sup> is the solvency capital requirement calculated on the basis of the consolidated data in accordance with Article 336(a) of Commission Delegated Regulation 2015/35 after the LAC adjustment for technical provisions and before the LAC adjustment for deferred taxes.

43. In line with Article 330(6) second subparagraph of Commission Delegated Regulation 2015/35 the

ratio  $\frac{SCR^{diversified^{**}}}{\sum_{solo} \alpha^{solo} SCR^{solo^{**}}}$  shall not exceed 100%.

## COMPLIANCE AND REPORTING RULES

44. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities are required to make every effort to comply with guidelines and recommendations.
45. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
46. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
47. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## FINAL PROVISION ON REVIEWS

48. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

DELETED: Guideline 1 - Calculation of the Basic Solvency Capital Requirement

~~When calculating the impact of a scenario on the basic own funds as referred to in Article 83 of Commission Delegated Regulation 2015/35 undertakings should:~~

~~(a) keep the cash flows relating to future discretionary benefits unchanged and not discount them; and~~

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<sup>31</sup>  $SCR^{diversified^{**}}$  is equal to the following sum, in the case of application of the standard formula:  
 $SCR^{diversified} = BSCR^{diversified} + SCR_{operational}^{diversified} + Adj_{TP}^{group}$

~~(b) — where the scenario affects the risk free interest rate term structure, especially the stress on the interest rate level, rediscount only the cash flows relating to guaranteed benefits.~~

~~Undertakings should allow for the requirements set out in paragraph 1.12 when formulating future management actions as referred to in Article 83(2)(a) of Commission Delegated Regulation 2015/35.~~

**Explanatory text:**

Type 1 – Redundant with 83(1)(c) Delegated Regulation 2015/35. According to article 83.1(c) scenarios do not change “the value of future discretionary benefits (FDB) included in technical provisions (TPs)”. The value of TPs includes discounting (Article 77 SII Directive), i.e., “the value of FDB included in TPs” is necessarily discounted. Therefore, not changing the value of FDB necessarily means not re-discounting FDB in the interest rate scenario.

~~DELETED: Guideline 10 - Temporary nature~~

~~Undertakings should recognize notional deferred tax assets conditional on their temporary nature. The recognition should be based on the extent to which offsetting is permitted according to the relevant tax regimes. This may include offset against past tax liabilities or current or likely future tax liabilities.~~

**Explanatory text:**

Type 1 – Redundant with article 207(2a) Delegated Regulation 2015/35, which was introduced after the development of Guideline 10.

~~DELETED: Guideline 12 - Recognition based on future profits~~

~~If the recognition of notional deferred tax assets is supported by an assessment of future taxable profit, undertakings should recognize notional deferred tax assets to the extent it is probable that they will have sufficient future taxable profit available after suffering the instantaneous loss.~~

~~Undertakings should employ appropriate techniques to assess the temporary nature of the notional deferred tax assets and the timing of future taxable profits which meet the following requirements:~~

~~(a) — The assessment is in accordance with Article 15(3) of Commission Delegated Regulation 2015/35;~~

~~(b) — The assessment takes into account the prospects of the undertaking after suffering the instantaneous loss.~~

**Explanatory text:**

Type 1 – Redundant with articles 207(2a), (2b) and (2c) Delegated Regulation 2015/35, which were introduced after the development of Guideline 12.

~~DELETED: Guideline 13 - Relief where demonstration of eligibility is burdensome~~

~~Supervisory authorities should allow undertakings to disregard notional deferred tax assets in the calculation of the adjustment for loss-absorbing capacity where it would be too burdensome for the undertaking to demonstrate their eligibility.~~

**Explanatory text:**

Type 2

~~DELETED: Guideline 14 – Notional deferred tax liabilities~~

~~Without prejudice to Article 207(4) of Commission Delegated Regulation 2015/35 undertakings should include notional deferred tax liabilities resulting from the instantaneous loss defined in Article 207(1) of Commission Delegated Regulation 2015/35 in the calculation of the adjustment for the loss-absorbing capacity of deferred taxes~~

**Explanatory text:**

Type 2

~~DELETED: Guideline 19 - Upper limit~~

~~The adjustment for loss-absorbency of technical provisions at group level should not exceed the sum of the adjustments for loss absorbency of technical provisions of the insurance and reinsurance undertakings consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35.~~

**Explanatory text:**

Type 2 – The limit should only apply to the alternative calculation in Guideline 21. Therefore, Guideline 19 is deleted and Guideline 21 amended accordingly.

**AMENDED: Guideline 21 – Alternative Calculation**

In accordance with Guideline 20, the participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should calculate the adjustment for the loss-absorbing capacity of technical provisions using the following formula:

$$Adj_{TP}^{group} = \frac{SCR^{diversified*}}{\sum_{solo} \alpha^{solo} SCR^{solo*}} \times \sum_{solo} \alpha^{solo} Adj_{TP}^{solo}$$

Where:

-  $Adj_{TP}^{solo}$  is the adjustment for the loss-absorbing capacity of technical provisions of each insurance and reinsurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35;

-  $\alpha^{solo}$  represents the percentage used for the establishment of the consolidated accounts;

- the ratio  $\frac{SCR^{diversified*}}{\sum_{solo} \alpha^{solo} SCR^{solo*}}$  represents the proportional adjustment due to the diversification effects at group level and, in particular, at the numerator

$SCR^{diversified*}$ <sup>32</sup> is the Solvency Capital Requirement calculated on the basis of the consolidated data in accordance to Article 336(a) of Commission Delegated Regulation 2015/35 but before the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes; and the denominator is the Solvency Capital Requirement before the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes of each insurance and reinsurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35. **In line with Article 330(6) second subparagraph of Commission Delegated Regulation 2015/35 the ratio shall not exceed 100%.**

#### Explanatory text:

Type 2 – The limit in Guideline 19 should only apply to the alternative calculation in Guideline 21. Therefore, Guideline 19 is deleted and Guideline 21 amended accordingly.

AMENDED: Guideline 22 – Calculation

42. The participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company should calculate the adjustment for the loss-absorbing capacity of deferred taxes according to the following formula:

$$Adj_{DT}^{group} = \frac{SCR^{diversified}}{\sum_{solo} \alpha^{solo} SCR^{solo**}} \times \sum_{solo} \alpha^{solo} Adj_{DT}^{solo}$$

Where:

-  $\alpha^{solo}$  represents the percentage used for the establishment of the consolidated accounts;

<sup>32</sup>  $SCR^{diversified}$  is equal to the following sum, in the case of application of the standard formula:  
 $SCR^{diversified*} = BSCR^{diversified} + SCR_{operational}^{diversified}$

-  $Adj_{DT}^{solo}$  is the solo adjustment for the loss-absorbing effect of deferred taxes of each (re)insurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35;

-  $SCR^{solo**}$  is the solvency capital requirement after the LAC adjustment for technical provisions and before the LAC adjustment for deferred taxes of each insurance and reinsurance undertaking consolidated in accordance with Article 335(1)(a),(b) and (c) of Commission Delegated Regulation 2015/35; and

-  $SCR^{diversified**}$ <sup>33</sup> is the solvency capital requirement calculated on the basis of the consolidated data in accordance with Article 336(a) of Commission Delegated Regulation 2015/35 after the LAC adjustment for technical provisions and before the LAC adjustment for deferred taxes.

**In line with Article 330(6) second subparagraph of Commission Delegated Regulation 2015/35**

**the ratio  $\frac{SCR^{diversified*}}{\sum_{solo} \alpha^{solo} SCR^{solo*}}$  shall not exceed 100%.**

**Explanatory text:**

Consistently with the amendment to Guideline 21 on the calculation of loss-absorbing capacity of technical provisions, the same limit should be added for the calculation of the loss-absorbing capacity of deferred taxes when calculated with an equivalent formula.

The formula simply adds the loss-absorbing capacity of deferred taxes of all undertakings, considering the percentage used for the consolidated accounts, and corrects the amount multiplying it by a ratio based on the SCR to factor in the broader diversification benefits that usually exist a group level to acknowledge in a simplified manner that lower losses at group level might lead to lower loss-absorption from deferred taxes. However, in some specific cases this ratio might be higher than 100% and therefore a 100% cap is needed to avoid group loss-absorbing capacity of technical provisions being higher than the amounts calculated and substantiated at individual level.

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<sup>33</sup>  $SCR^{diversified**}$  is equal to the following sum, in the case of application of the standard formula:  
 $SCR^{diversified} = BSCR^{diversified} + SCR_{operational}^{diversified} + Adj_{TP}^{group}$

## GUIDELINES ON THE IMPLEMENTATION OF THE LONG-TERM GUARANTEE MEASURES

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>34</sup>, EIOPA issues these Guidelines on the implementation of the measures set out in Articles 77b, 77d, 308c and 308d of Directive 2009/138/EC (Solvency II Directive)<sup>2</sup>.
2. These Guidelines aim at ensuring convergence of practices across Member States and supporting undertakings in implementing the volatility adjustment and the matching adjustment.
3. These Guidelines are addressed to supervisory authorities under Solvency II Directive.
4. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on the implementation of the long-term guarantee measures.
5. For the purpose of these Guidelines, the expression “long term guarantee measures” refers to the adjustments and transitional measures set out in Articles 77b, 77d, 308c and 308d of Solvency II Directive.
6. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

### GUIDELINES

#### Section 1: The valuation of technical provisions with the long term guarantee measures

##### Guideline 1 – Effects of the volatility adjustment, the matching adjustment and the transitional on risk-free interest rates on policyholders’ behaviour

7. Insurance and reinsurance undertakings should avoid creating an unrealistic or distortionary link between the assumptions on policyholder behaviour referred to in Article 26 of Commission Delegated Regulation (EU) 2015/35 (hereafter the Delegated Regulation) and the use of the matching adjustment, the volatility adjustment or the transitional on the risk-free interest rates.
8. In particular, where the likelihood that policyholders will exercise contractual options is modelled dynamically using benchmark rates (e.g. market rates), insurance and reinsurance undertakings should ensure that the benchmark rates are set consistently with the relevant risk-free interest rate term structure applied for the calculation of technical provisions.

##### Guideline 2 – Interaction of the long term guarantee measures with the risk margin calculation

9. For the purposes of calculating the risk margin in accordance with Article 38 of the Delegated Regulation, insurance and reinsurance undertakings that apply the matching adjustment, the volatility adjustment, the transitional measure on the risk-free interest rates or the transitional

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<sup>34</sup>

measure on technical provisions should assume that the reference undertaking does not apply any of these measures.

## COMPLIANCE AND REPORTING RULES

10. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
11. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
12. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
13. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## FINAL PROVISION ON REVIEWS

14. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

DELETED: Guideline 3 – Combination of the matching adjustment and the transitional measure on technical provisions

~~1.11. When insurance and reinsurance undertakings apply to use both the matching adjustment and the transitional measure on technical provisions to the same insurance or reinsurance obligations, in accordance with Article 77b and Article 308d of Solvency II Directive, the amount referred to in point 2(a) of Article 308d of Solvency II Directive should be calculated with the matching adjustment.~~

### Explanatory text:

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the guideline will be deleted.

DELETED: Guideline 4 – Scope of the transitional measure on risk-free interest rates

~~1.12. Insurance and reinsurance undertakings should apply the transitional measure on risk-free interest rates to the whole of the admissible obligations.~~

### Explanatory text:

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the GL will be deleted.

~~DELETED: Guideline 5 – Interaction between the volatility adjustment, the matching adjustment and the transitional measure on the risk-free interest rates and the interest rate risk sub-module of the SCR standard formula~~

~~1.13. Insurance and reinsurance undertakings using the volatility adjustment, the matching adjustment or the transitional measure on the risk-free interest rates should ensure that the amounts of these adjustments and of the transitional adjustment referred to in Article 308c of Solvency II Directive remain unchanged after the application of the shocks to the basic interest rate term structure set out Articles 166 and 167 of the Delegated Regulation.~~

**Explanatory text:**

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the guideline will be deleted.

~~DELETED: Guideline 6 – Interaction between the volatility adjustment and/or the transitional measure on the risk-free interest rates with the spread risk submodule of the SCR standard formula~~

~~1.14. When calculating the spread risk sub-module, insurance and reinsurance undertakings applying the volatility adjustment and/or the transitional measure on the risk-free interest rates should ensure that the amounts of the volatility adjustment and/or of the transitional adjustment referred to in Article 308c of Solvency II Directive remain unchanged following the stresses applied under the spread risk sub-module set out in Articles 176(1), 178(1) and 179(1) of the Delegated Regulation.~~

**Explanatory text:**

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the guideline will be deleted.

~~DELETED: Guideline 7 – Interaction between the transitional measure on technical provisions and the calculation of the SCR standard formula~~

~~1.15. Insurance and reinsurance undertakings applying the transitional measure on technical provisions should ensure that the amount of the transitional deduction referred to in Article 308d (1) of Solvency II Directive remains unchanged in scenario based calculations of the SCR standard formula.~~

**Explanatory text:**

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the guideline will be deleted.

~~DELETED: Guideline 8 – Interaction between the transitional measure on technical provisions and the capital requirement for operational risk of the SCR standard formula~~

~~1.16. When calculating the capital requirement for operational risk, insurance and reinsurance undertakings applying the transitional measure on technical provisions should use, for the volume measures  $TP_{life}$ ,  $TP_{life-ut}$  and  $TP_{non-life}$  referred to in Article 204(4) of the Delegated Regulation, the amount of technical provisions before application of the transitional measure minus the maximum between the risk margin and the amount of the transitional deduction.~~

~~1.17. Where the amount of the transitional deduction is higher than the risk margin, the amount of the transitional deduction in excess of the risk margin should be apportioned across  $TP_{life}$ ,  $TP_{life-ut}$  and  $TP_{non-life}$  according to each component's contribution to the overall amount of the transitional deduction.~~

**Explanatory text:**

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the guideline will be deleted.

~~DELETED: Guideline 9 – Interaction between the transitional measure on technical provisions and the MCR calculation~~

~~1.18. When calculating the linear minimum capital requirement, insurance and reinsurance undertakings applying the transitional measure on technical~~

~~provisions should use, for the volume measures  $TP_{(nl,s)}$ ,  $TP_{(life,1)}$ ,  $TP_{(life,2)}$ ,  $TP_{(life,3)}$  and  $TP_{(life,4)}$  referred to in Articles 250(1) and 251(1) of the Delegated Regulation, technical provisions before application of the transitional measure minus the maximum between the risk margin and the amount of the transitional deduction.~~

~~1.19. Where the amount of the transitional deduction is higher than the risk margin, the amount of the transitional deduction in excess of the risk margin should be apportioned across  $TP_{(nl,s)}$ ,  $TP_{(life,1)}$ ,  $TP_{(life,2)}$ ,  $TP_{(life,3)}$  and  $TP_{(life,4)}$  according to each component's contribution to the overall amount of the transitional deduction.~~

**Explanatory text:**

Although transitional measures are applicable until YE 2031, best practices on the area are considered established, making the guideline redundant. For the purpose of shortening and simplifying convergence instruments the guideline will be deleted.

## GUIDELINES ON RECOGNITION/VALUATION OF ASSETS AND LIABILITIES OTHER THAN TECHNICAL PROVISIONS

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>35</sup>, EIOPA issues these Guidelines on the recognition and valuation of assets and liabilities other than technical provisions.
2. These Guidelines relate to Article 75 of Directive 2009/138/EC (er Solvency II Directive)<sup>36</sup> and to Articles 7 to 16 of Commission Delegated Regulation (EU) 2015/3537.
3. These Guidelines are intended to facilitate convergence of professional practice across Member States and support undertakings in recognizing and valuing assets and liabilities other than technical provisions.
4. The Solvency II Directive and Delegated Regulation (EU) 2015/35 generally provide for undertakings to recognize and value assets and liabilities other than technical provisions in accordance with the International Financial Reporting Standards (hereinafter “IFRS”) adopted by the European Commission in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council<sup>38</sup>, except where this is not consistent with Article 75 of the Solvency II Directive.
5. Delegated Regulation (EU) 2015/35 clearly defines in which cases the valuation methods are not consistent with the valuation approach set out in Article 75 of the Solvency II Directive, and therefore, other valuation principles or adjustments than IFRS shall be applied.
6. Article 9 (4) of Delegated Regulation (EU) 2015/35 laid down those criteria which must be met if an undertaking wishes to recognize and value an asset or a liability based on the valuation method it uses for preparing its annual or consolidated financial statements. EIOPA has intentionally not assessed which local accounting principles, used in annual or consolidated financial statements, would be consistent with Article 75 of the Solvency II Directive. EIOPA has, however, provided information on the principles laid down in the Accounting Directives.
7. These Guidelines refer to Delegated Regulation (EU) 2015/35, which specify recognition and measurement principles for the valuation of assets and liabilities other than technical provisions. Where the Guidelines refer to “valuation” it is defined as a valuation in accordance with Article 75 of the Solvency II Directive.
8. These Guidelines are addressed to supervisory authorities under the Solvency II Directive.
9. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on recognition and valuation of assets and liabilities other than technical provisions.

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<sup>35</sup> 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)

<sup>36</sup> 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)

<sup>37</sup> Commission Delegated Regulation (EU) No 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.01.2015, p. 1)

<sup>38</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1)

10. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

## GUIDELINES

### Guideline 1 – Materiality

11. When valuing assets and liabilities, undertakings should consider the materiality principle as set out in Recital 1 of Delegated Regulation (EU) 2015/35. With regard to the assessment of materiality, it should be recognised that quarterly measurements may rely on estimates and estimation methods to a greater extent than measurements of annual financial data.

### Guideline 3 – Investment property and other properties: alternative valuation methods

13. For the purposes of Article 10 of Delegated Regulation (EU) 2015/35 when valuing investment property and other properties, undertakings should select the method in accordance with Article 10(7) thereof that provides the most representative estimate of the amount for which the assets could be exchanged between knowledgeable willing parties in an arm's length transaction. In accordance with Article 10(6) of that regulation these methods should be based on the following:
- a) current prices in an active market for properties of a different nature, condition or location, or subject to different lease or other contractual terms, adjusted to reflect those differences;
  - b) recent prices of similar properties on less active markets, with adjustments to reflect any changes in economic conditions since the date of the transactions that occurred at those prices;
  - c) discounted cash flow projections based on reliable estimates of future cash flows, supported by the terms of any existing lease and other contracts and, when possible, by external evidence such as current market rents for similar properties in the same location and condition and using discount rates that reflect current market assessments of the uncertainty in the amount and timing of the cash flows.
14. In some cases, the various inputs listed above may suggest different valuations of a property. An undertaking should consider the reasons for those differences, in order to determine the most representative valuation estimate within the range of estimates.
15. When undertakings determine the valuation of the property they should take into account a market participant's ability to generate economic benefits by using the property to its highest and best use, or by selling it to another market participant that would use the asset in its highest and best use.

### Guideline 4 – Investment property and other properties: evidence supporting the valuation

16. If the balance sheet valuation is based on a formal appraisal, or other information, prior to the balance sheet date, undertakings should be able to demonstrate to their supervisory authority that all necessary adjustments have been made to reflect changes in the value between the date of a formal appraisal or other information and the balance sheet date.

### **Guideline 5 – Financial liabilities and own credit standing**

17. When valuing financial liabilities, undertakings should use techniques to determine a value for which the liabilities could be transferred, or settled between knowledgeable willing parties in an arm's length transaction, excluding any adjustment to take account of changes in the undertaking's own credit standing after initial recognition. These techniques can be based on either:
  - a) a bottom up approach; or
  - b) top down approach.
18. In a bottom up approach, undertakings should determine their own credit standing at recognition of the specific financial liability. The part of the spread of the discount curve that relates to own credit standing should be kept constant after its initial recognition. In subsequent valuations the value is calculated by determining the changes in the value stemming from changes in market conditions that affect the value of the financial liability, except for changes in market conditions that affect own credit risk.
19. When undertakings assess changes in market conditions that give rise to market risk, they should assess at least changes in the relevant risk free interest rate curve, a commodity price, a foreign exchange rate or an index of prices or rates.
20. In a top down approach, undertakings should determine the amount of change in the valuation of a financial liability that is attributable to changes in the undertaking's own credit risk and exclude it from the valuation.

### **Guideline 6 – Holdings in related undertakings: IFRS equity method**

21. When undertakings value a related undertaking's assets and liabilities using the IFRS equity method in accordance with Article 13(5) of Delegated Regulation (EU) 2015/35, and if those related undertakings use an accounting framework other than IFRS, the undertakings should make adjustments where needed to recognise and value that related undertaking's assets and liabilities in accordance with IFRS.
22. When applying Article 13(5) of Delegated Regulation (EU) 2015/35, an undertaking should be able to provide justification to its supervisory authority as to why it has not calculated the excess of assets over liabilities for related undertakings according to Article 13(4) thereof.

### **Guideline 8 - Contingent liabilities: Contingent liabilities arising from ancillary own fund item arrangements**

24. When entering into an arrangement that represents an ancillary own-fund item for the counterparty, undertakings should carefully assess whether to recognise the corresponding contingent liability as a liability in compliance with Article 11 of Delegated Regulation (EU) 2015/35.
25. Undertakings should be able to provide a justification to the supervisory authority where they have not recognised a contingent liability in circumstances where they have entered into an arrangement with another undertaking, including any other undertakings belonging to the group, and that arrangement has received approval as an ancillary own funds item.

## **Guideline 9 - Deferred taxes – recognition and valuation**

### Discounting deferred taxes

26. Undertakings should not discount deferred tax assets and liabilities.

### Setting off deferred tax assets and liabilities on the Solvency II balance sheet

27. An undertaking should offset deferred tax assets and deferred tax liabilities only if, it has a legally enforceable right to set off current tax assets against current tax liabilities; and if the deferred tax assets and the deferred tax liabilities relate to taxes levied by the same tax authority on the same taxable undertaking.

### Recognition and valuation of a net deferred tax asset

28. Where there are insufficient taxable temporary differences, which are expected to reverse in the same period as the expected reversal of the deductible temporary differences, the undertaking should consider the likelihood that taxable profits will arise in the same period as the reversal of the deductible temporary differences or in the periods into which a tax loss arising from the deferred tax asset can be carried back or forward.

29. When making projections of taxable profits and assessing the likelihood that sufficient taxable profits will arise in the future, an undertaking should:

- a) take into consideration that even a strong earnings history may not provide sufficient objective evidence of future profitability;
- b) take into consideration that the degree of uncertainty relating to future taxable profits resulting from expected new business increases as the projection horizon becomes longer, and particularly when these projected profits are expected to arise in periods beyond the normal planning cycle of the undertaking;
- c) consider that some tax rules can delay or restrict recovery of unused tax losses and unused tax credits;
- d) avoid double counting: taxable profits resulting from the reversal of taxable temporary differences should be excluded from the estimated future taxable profits where they have been used to support the recognition of deferred tax assets;
- e) ensure that when making projections of taxable profits, these projections are both credible and broadly consistent with the assumptions made for other projected cash flows. In particular, the assumptions underlying the projections should be consistent with those underlying the valuations of technical provisions and assets on the solvency balance sheet.

## **Guideline 10 - Deferred taxes – documentation**

30. Upon request, undertakings should be able to provide supervisory authorities with, at a minimum, information based on the undertakings' records:

- a) on sources of temporary differences that may lead to the recognition of deferred taxes;
- b) regarding recognition and valuation principles applied for deferred taxes;

- c) in respect of each type of timing difference and in respect of each type of unused tax loss and unused tax credit, the calculation of the amount of the deferred tax assets or liabilities recognised, as well as underlying assumptions related to that amount;
- d) describing the recognition of deferred tax assets, including at least:
  - existence of any taxable temporary differences relating to the same tax authority, the same taxable undertaking and the same type of tax which are expected to reverse in the same period as the expected reversal of the deductible temporary difference or, as the case may be, would result in taxable amounts against which the unused tax losses or unused tax credits can be utilised before they expire;
  - when there are insufficient taxable temporary differences relating to the same tax authority, the same taxable undertaking and the same type of tax, documentation demonstrating that it is probable that the entity will have sufficient taxable profit relating to the same tax authority and the same taxable undertaking and the same type of tax in the same period as the reversal of the deductible temporary difference or in the periods into which a tax loss arising from the deferred tax asset can be carried back or forward or, as the case may be, that it is probable that the undertaking will have taxable profits before the unused tax losses or unused tax credits expire.
- e) on the amount and expiry date, if any, of deductible temporary differences, unused tax losses and unused tax credits for which deferred tax assets are or are not recognised.

### **Guideline 11 - Deferred tax treatment where undertakings are excluded from group supervision**

31. Undertakings should apply the following principles for the recognition of deferred taxation where related undertakings are excluded from the scope of group supervision under Article 214(2) of the Solvency II Directive:
- a) where holdings in related undertakings are excluded from the scope of group supervision under Article 214(2)(a) of the Solvency II Directive, the deferred tax related to that excluded undertaking should not be recognised at either individual or group level;
  - b) where holdings in related undertakings are excluded from the scope of group supervision under Article 214(2)(b) or (c) of the Solvency II Directive, the deferred tax related to that related undertaking should not be recognised at group level.

### **COMPLIANCE AND REPORTING RULES**

34. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
35. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
36. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.

37. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## FINAL PROVISION ON REVIEWS

38. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

### **DELETED: Guideline 2 – Consistency in applying valuation methods**

~~1.12. Undertakings should apply valuation techniques consistently. Undertakings should also consider if as a result of a change in circumstances, including those listed below, a change in valuation techniques or their application is required on the basis that such change would result in a more appropriate measurement in accordance with Article 75 of the Solvency II Directive.~~

~~Such changes may include the following:~~

- ~~a) — new market developments that change market conditions;~~
- ~~b) — new information becomes available;~~
- ~~c) — information previously used is no longer available;~~
- ~~d) — valuation techniques improve.~~

#### **Explanatory text:**

Guideline 2 is proposed for deletion because the consistency in applying valuation methods is expected to be included in the policy and procedures for valuation of assets and liabilities mentioned in GL 52-59 of the System of Governance Guidelines.

### **DELETED: Guideline 7 – Holdings in related undertakings: alternative valuation methods**

~~1.23. Where undertakings value holdings in related undertakings using alternative valuation methods in accordance with Article 13(1)(c) of Delegated Regulation (EU) 2015/35, they should be able to explain to their supervisory authority why it is not possible to revalue the related undertaking's assets and liabilities using the default valuation method or the adjusted equity method.~~

#### **Explanatory text:**

Guideline 7 is proposed for deletion as it is redundant (type 1 deletion), as the hierarchy of the valuation methods for related undertakings is laid down clearly in Article 13 of D.R.. The decision tree currently reported in the Explanatory Text of Guideline will become an a new Annex of the Guidelines (Annex II)

**DELETED: Guideline 12 – Application of valuation methods used in annual and consolidated financial statements according to Article 9(4) of Delegated Regulation (EU) 2015/35**

~~1.32. Undertakings applying the derogation in Article 9(4) of Delegated Regulation (EU) 2015/35 should consider Guidelines 1, 2, 4, 5 and 8 to 11, as well as the comparison table in Technical Annex 1 as a reference, when determining whether the valuations are consistent with Article 75 of the Solvency II Directive. The Technical Annex is an integral part of this Guideline.~~

~~1.33. Undertakings that are within the scope of consolidation of a group preparing consolidated financial statement according to IFRS should not apply the derogation in Article 9(4) of Delegated Regulation (EU) 2015/35~~

**Explanatory text:**

Guideline 12 is proposed for deletion as the conditions for applying the local gaap for Solvency II purposes, as proportionality measure, are clearly laid down in Art. 9(4) of D.R.

*Annexes*

*Annex I - Table: Consistency of IFRS Valuation with Article 75 of the Directive (not updated)*

*New Annex II (former decision tree in the explanatory text of GL 7)*

## GUIDELINES ON CLASSIFICATION OF OWN FUNDS

### INTRODUCTION

1. According to Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>39</sup>, EIOPA issues these Guidelines on classification of own funds.
2. These Guidelines relate to Articles 89, 90, 93 to 96, 226 and 235 of Directive 2009/138/EC (Solvency II)<sup>40</sup> as well as to Articles 62 to 67, 69 to 79 and 82 of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)<sup>41</sup>.
3. The purpose of these Guidelines is to provide guidance on how the lists of own fund items and the features determining classification for each tier should be applied. The Guidelines also set out procedures relating to the classification of own funds including the prior supervisory approval of Items not on the lists of own-fund items.
4. Undertakings have different capital items in their financial statements. Most of these will correspond to the defined lists of basic own-fund items in Commission Delegated Regulation 2015/35, which do not require supervisory approval. Some, including retained earnings, will be taken into account within the reconciliation reserve, which is a single own-fund item. Other Items not on the lists will need to be approved as basic or ancillary own-funds items. All items should be assessed against the features for determining classification to judge whether they qualify as available own funds and their appropriate tier.
5. The terms of the contractual arrangement governing the own-fund item should comply with the substance not just the form specified in Solvency II and be clear and unambiguous.
6. Paid-in ordinary share capital including its related share premium account, and paid-in initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings, should form the highest quality own funds which can be relied on to absorb losses on a going-concern basis. The quality of such own funds should not be undermined.
7. The interpretation of share premium account should be based on the economic substance as different terminology may be employed in national law. Share premium account should therefore be understood as a separate account or reserve to which share premiums, the amount between the value received and the nominal value of the share at issuance or the value received at issuance and the value recognised in share capital, are transferred in accordance with national law.
8. The Guidelines clarify that in order for undertakings to always retain full flexibility in raising new own-fund items, paid-in subordinated mutual member accounts, paid-in preference shares including the related share premium account, and paid-in subordinated liabilities should not, by their contractual arrangements, prevent or hinder new own funds being raised.

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<sup>39</sup> 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)

<sup>40</sup> 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)

<sup>41</sup> Commission Delegated Regulation (EU) No 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.01.2015, p. 1)

9. Own-fund items should have sufficient maturity, depending on the tier in which they are classified. The Guidelines set out that this requirement should not be undermined by any call options prior to five years for items of all tiers as defined in Article 94 of Solvency II, irrespective of whether they relate to changes that lie within or outside the control of the undertaking. While the repurchase or buyback of any own-fund item is permitted at the option of the undertaking on or after the first possible call date, the undertaking should not create any expectation at issuance that the item will be bought back, redeemed or cancelled before the contractual maturity of the item. Since a repayment or redemption may have a substantial impact on the solvency position of the undertaking in the short and medium term, a repayment or redemption is always subject to supervisory approval. This is without prejudice to the treatment of transactions that are not deemed to be repayment or redemption as described in Articles 71(2), 73(2) and 77(2) of Commission Delegated Regulation 2015/35.
10. In order to avoid deterioration in an undertaking's solvency position, own-fund items need to provide that undertakings will be able to maintain own funds when there is non-compliance with the Solvency Capital Requirement (hereinafter "SCR") or if repayment or redemption would result in such noncompliance. The Guidelines set out that this should be independent of any contractual obligations or any notice of repayment and redemption given.
11. Since distributions cannot be made where they further weaken the solvency position of the undertaking, the Guidelines set out that alternative coupon satisfaction mechanisms should only be permissible in a restricted manner, whereby the cancellation of distributions is not undermined and there is no decrease in own funds of the undertaking.
12. Arrangements intended to stop or require payments on other items undermine full flexibility. The Guidelines make it clear that the use of dividend stoppers, capping or restricting the level or amount of distributions to be made on the item referred to in Article 69(a)(i) of Commission Delegated Regulation 2015/35, in any own-fund item, regardless of the tier, that would prevent payment on Tier 1 items is prohibited as they could discourage new providers of own funds and thus represent a hindrance to recapitalisation.
13. In order that any principal loss absorbency mechanism can achieve its purpose at the point of the trigger, the terms of the contractual arrangement should be clearly defined and legally certain, and capable of being applied without delay. The Guidelines explain that while a future write-up is generally permitted, this mechanism should not undermine the loss absorbency and should only be allowed on the basis of profits generated after restoring compliance with the SCR.
14. While called-up but not paid-in ordinary share capital may be classified as Tier 2 basic own funds, provided that the Tier 2 features are met, the Guidelines provide that this capital should only count as own funds for a limited time. This is to avoid the calling-up of capital solely for the purpose of satisfying the requirements of own funds classification without any intent that the item should become paid-in in due course.
15. These Guidelines also provide guidance in the event of non-compliance with the SCR. Non-compliance with the SCR arises when the value of own funds eligible to cover the SCR is less than the amount of the SCR. This should not be confused with a significant non-compliance with the SCR as defined in Article 71(8) of Commission Delegated Regulation 2015/35 specifically for the purposes of principal loss absorbency mechanisms. Non-compliance with the Minimum Capital

Requirement (hereinafter “MCR”) arises when the value of own funds eligible to cover the MCR is less than the amount of the MCR.

16. Ancillary own funds are contingent in that they have not been paid in, and are not recognised on the balance sheet. The need for supervisory approval of such items recognises this contingent nature. If, at some undetermined point in the future, the ancillary own funds are called up, then they cease to be contingent and become basic own-fund items represented by assets on the balance sheet.
17. Article 89 of Solvency II states that ancillary own funds may comprise any legally binding commitment received by undertakings. This might encompass many arrangements that do not fall within the categories of specific ancillary own-fund items referred to in Solvency II as long as they can be called upon to absorb losses.
18. These Guidelines describe considerations relating to the supervisory authority approval process for ancillary own-fund items, classification of ancillary own fund items and ongoing satisfaction of criteria for approval.
19. The ancillary own funds approval process envisages ongoing communication between supervisory authorities and undertakings, including before an undertaking submits a formal application for approval of an ancillary own-fund item. Where the ancillary own-fund item on call would become an Item not on the lists, and therefore two supervisory approvals are needed, such communication should include the procedural approach to be followed regarding this need for two approvals.
20. Article 226 of Solvency II permits a group to apply for approval of an ancillary own-fund item in respect of an intermediate insurance holding company or an intermediate mixed financial holding company. In such cases these Guidelines apply as though the intermediate insurance holding company or the intermediate mixed financial holding company were an insurance or reinsurance undertaking. This also applies where a group is headed by an insurance holding company or a mixed financial holding company in accordance with Article 235 of Solvency II.
21. These Guidelines are addressed to supervisory authorities under Solvency II.
22. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on classification of own funds.
23. For the purpose of these Guidelines, the following definition has been developed:
  - a) ‘Capital instrument’ means an instrument which if called up will generate an asset, often in the form of cash, while simultaneously creating corresponding interests in the insurance or reinsurance undertaking in the case of shares, or corresponding subordinated liabilities of the undertaking;
  - b) ‘Item not on the lists’ means an own-fund item not included in the lists set out in Articles 69, 72 and 76 of Commission Delegated Regulation 2015/35.
24. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

## GUIDELINES

## Section 1: Tier 1 items

### Guideline 1 – Tier 1 paid-in ordinary share capital and preference shares

25. For the purposes of Article 69(a)(i) of Commission Delegated Regulation 2015/35, undertakings should identify paid-in ordinary share capital by the following properties:
- a) the shares are issued directly by the undertaking with the prior approval of its shareholders or, where permitted under national law, its administrative, management or supervisory body (hereinafter “AMSB”);
  - b) the shares entitle the owner to a claim on the residual assets of the undertaking in the event of winding-up proceedings, which is proportionate to the amount of the items issued, and is neither fixed nor subject to a cap.
26. Where an undertaking has more than one class of shares it should:
- a) in accordance with Article 71(1)(a)(i) and (3)(a) of Commission Delegated Regulation 2015/35, identify the differences between classes which provide for one class to rank ahead of another or which create any preference as to distributions, and only consider as possible Tier 1 ordinary share capital the class which ranks after all other claims and has no preferential rights;
  - b) consider any share classes ranking ahead of the most subordinated class or which have other preferential features which prevent them from being classified as Tier 1 ordinary share capital in accordance with point (a) as potentially qualifying as preference shares and classify such items in the relevant tier according to their features.

### Guideline 3 – Tier 1 features determining classification of items referred to in Article 69(a)(i), (ii) and (iv) of Commission Delegated Regulation 2015/35

27. In the case of an item referred to in Article 69(a)(i), (ii) and (iv) of Commission Delegated Regulation 2015/35, undertakings should consider the features which may cause the insolvency or accelerate the process of the undertaking becoming insolvent as including:
- a) the holder of the own-fund item is in a position to petition for the windingup of the issuer in the event of distributions not being made;
  - b) the item is treated as a liability where a determination that the liabilities of an undertaking exceed its assets constitutes a test of insolvency under the applicable national law;
  - c) the holder of the own-fund item may, as a result of a distribution being cancelled or not being made, be granted the ability to cause full or partial payment of the amount invested, or to demand penalties or any other compensation that could result in a decrease of own funds.

### Guideline 4 – Tier 1 features determining classification of items referred to in Article 69(a)(i) and (ii) of Commission Delegated Regulation 2015/35

28. In the case of an item referred to in Article 69(a)(i) and (ii) of Commission Delegated Regulation 2015/35, for the purposes of displaying the features in Article 71(3) of Commission Delegated Regulation 2015/35 (full flexibility), undertakings should:
- a) consider distributable items as comprising retained earnings, including profit for the year ended prior to the year of distribution, and distributable reserves as defined under national

- law or by the statutes of the undertaking, reduced by the deduction of any interim net loss for the current financial year from retained earnings;
- b) determine the amount of distributable items on the basis of the individual accounts of the undertaking and not on the basis of consolidated accounts;
  - c) reflect in the determination of distributable items any restrictions imposed by national law with regard to consolidated accounts;
  - d) ensure that the terms of the contractual arrangements governing the ownfund item or any other own-fund item do not cap or restrict the level or amount of distribution to be made on the item referred to in Article 69(a)(i) of Commission Delegated Regulation 2015/35, including capping or restricting the distribution to zero;
  - e) ensure that the terms of the contractual arrangement governing the ownfund item do not require a distribution to be made in the event of a distribution being made on any other own-fund item issued by the undertaking.
29. The undertaking should identify the legal basis for the cancellation of distributions in accordance with Article 71(1)(l)(i) of Commission Delegated Regulation 2015/35 prior to classifying an item as Tier 1.

#### **Guideline 5 – Tier 1 features determining classification of items referred to in Article 69(a)(iii), (v) and (b) of Commission Delegated Regulation 2015/35**

30. In the case of an item referred to in Article 69(a)(iii), (v) and (b) of Commission Delegated Regulation 2015/35, undertakings should consider features which may cause insolvency or accelerate the process of the undertaking becoming insolvent as including:
- a) the holder of the own-fund item is in a position to petition for the windingup of the issuer in the event of distributions not being made;
  - b) the item is treated as a liability where a determination that the liabilities of an undertaking exceed its assets constitutes a test of insolvency under applicable national law;
  - c) the terms of the contractual arrangement governing the own-fund item specify circumstances or conditions which, if met, would require the initiation of insolvency or any other procedure which would prejudice the continuance of the undertaking or its business as a going concern;
  - d) the holder of the security relating to an own-fund item may, as a result of a distribution being cancelled, be granted the ability to cause full or partial payment of the amount invested, or to demand penalties or any other compensation that could result in a decrease of own funds.
31. For the purposes of displaying the features in Article 71(1)(d) of Commission Delegated Regulation 2015/35 (absorbing losses once there is non-compliance with capital requirements and not hindering recapitalisation), undertakings should ensure that the terms of the contractual arrangement governing the own-fund item or the terms of any connected arrangement:
- a) do not prevent a new or increased own-fund item issued by the undertaking from ranking ahead of, or to the same degree of subordination as, that item;
  - b) do not require that any new own-fund items raised by the undertaking are more deeply subordinated to that item in conditions of stress or other circumstances where additional own funds may be needed;
  - c) do not include terms that prevent distributions on other own-fund items;

- d) do not require that the item is automatically converted into an item that ranks more highly in terms of subordination, in conditions of stress or other circumstances where own funds may be needed, or as a result of structural changes including a merger or acquisition.
32. For the purposes of displaying the features in Article 71(1)(f)(ii) of Commission Delegated Regulation 2015/35 (repayment or redemption before 5 years), undertakings should ensure that the item does not include a contractual term providing for a call option prior to 5 years from the date of issuance, including call options predicated on unforeseen changes that are outside the control of the undertaking.
33. Subject to the satisfaction of all relevant features for determining classification and to prior supervisory approval, supervisory authorities should consider arrangements predicated on unforeseen changes, which are outside the control of the undertaking and that would give rise to transactions or arrangements which are not deemed to be repayment or redemption, to be permitted as provided for in Article 71(2) of Commission Delegated Regulation 2015/35.
34. For the purposes of displaying the features in Article 71(1)(m) of Commission Delegated Regulation 2015/35 (waiver of cancellation of distributions), undertakings should ensure that:
- a) any alternative coupon satisfaction mechanism is only included in the terms of the contractual arrangement governing the own-fund item where the mechanism substitutes any payment of the distribution in cash by providing for distributions to be settled through the issue of ordinary share capital;
  - b) any alternative coupon satisfaction mechanism achieves the same degree of loss absorbency as the cancellation of the distribution, and there is no decrease in own funds;
  - c) any distributions under an alternative coupon satisfaction mechanism occur as soon as the supervisory authority has exceptionally waived the cancellation of distributions using unissued ordinary share capital which has already been approved or authorised under national law or under the statutes of the undertaking;
  - d) any alternative coupon satisfaction mechanism does not allow the undertaking to use own shares held as a result of repurchase;
  - e) the terms of the contractual arrangement governing the own-fund item:
    - i. provide for the operation of any alternative coupon satisfaction mechanism to be subject to an exceptional waiver from the supervisory authority under Article 71(1)(m) of Commission Delegated Regulation 2015/35 on each occasion that the cancellation of the distribution is required;
    - ii. do not oblige the undertaking to operate any alternative coupon satisfaction mechanism.
35. For the purposes of displaying the features in Article 71(4) of Commission Delegated Regulation 2015/35 (full flexibility over distributions), undertakings should ensure that the terms of the contractual arrangement governing the own-fund item do not:
- a) require distributions to be made on the item in the event of a distribution being made on any other own-fund item issued by the undertaking;
  - b) require the payment of distributions to be cancelled or prevented on any other own-fund item of the undertaking in the event that no distribution is made in respect of that item;

- c) link the payment of distributions to any other event or transaction which has the same economic effect as points (a) or (b).
36. For the purposes of displaying the features in Article 71(1)(e), (5), (6) and (8) of Commission Delegated Regulation 2015/35 (principal loss absorbency mechanisms), undertakings should ensure that:
- a) the loss absorbency mechanism, including the trigger point, is clearly defined in the terms of the contractual arrangement governing the ownfund item and legally certain;
  - b) the loss absorbency mechanism can be effective at the point of the trigger, without delay and regardless of any requirement to notify holders of the item;
  - c) any write-down mechanism that does not allow for future write-up should provide that the amounts written down in accordance with 71(5)(a) of Commission Delegated Regulation 2015/35 cannot be restored;
  - d) any write-down mechanism that allows for a future write-up of the nominal or principal amount provides that:
    - i. write-up is permitted only after the undertaking has achieved compliance with the SCR;
    - ii. write-up is not activated by reference to own-fund items issued or increased in order to restore compliance with the SCR;
    - iii. write-up only occurs on the basis of profits which contribute to distributable items made subsequent to the restoration of compliance with the SCR in a manner that does not undermine the loss absorbency intended by Article 71(5) of Commission Delegated Regulation 2015/35;
  - e) any conversion mechanism provides that:
    - i. the basis on which the security relating to an own-fund item converts into ordinary share capital on significant non-compliance with the SCR is specified clearly in the terms of the contractual arrangement governing the security;
    - ii. the conversion terms do not fully compensate the nominal amount of a holding by allowing an uncapped conversion rate in the event of falls in the share price;
    - iii. in specifying a range within which the instruments will convert, the maximum number of shares the holder of the security may receive is certain at the time of issuance of the security, subject only to adjustments to reflect any share splits which occur subsequent to the issuance of those instruments;
    - iv. the conversion will result in a situation where losses are absorbed on a going-concern basis and the basic own-fund items that arise as a result of the conversion do not hinder recapitalisation;
37. Where undertakings have own-fund items with conversion mechanisms, they should ensure that sufficient shares have already been authorised in accordance with national law or the statutes of the undertaking, so that shares are available for issuance when needed.

**Guideline 6 – Tier 1 features determining classification of items referred to in Article 69(a)(i), (ii), (iii), (v) and (b) of Commission Delegated Regulation 2015/35 – immediate availability to absorb losses**

38. In the case of an item referred to in Article 69 (a)(i), (ii), (iii), (v) and (b) of Commission Delegated Regulation 2015/35, undertakings should only consider an item as immediately available to absorb losses, if the item is paid in and there are no conditions or contingences in respect of its ability to absorb losses.

**Guideline 7 – Tier 1 features determining classification of items referred to in Article 69(a)(i), (ii), (iii), (v) and (b) of Commission Delegated Regulation 2015/35 – repayment or redemption at the option of the undertaking**

39. In the case of an item referred to in Article 69(a)(i), (ii), (iii), (v) and (b) of Commission Delegated Regulation 2015/35, for the purposes of displaying the features in Article 71(1)(h) and (i) of Commission Delegated Regulation 2015/35, undertakings should:

- a) ensure that the terms of the legal or contractual arrangement governing the item, or any connected arrangement, do not provide for any incentive to redeem as set out in Guideline 19;
- b) not create any expectation at issuance that the item will be redeemed or cancelled, nor should the legal or contractual terms governing the ownfund item contain any term which might give rise to such an expectation.

40. Undertakings should treat the item as repaid or redeemed from the date of notice to holders of the item or, if no notice is required, the date of supervisory approval, and exclude the item from own funds from that date.

41. In the case of an item referred to in Article 69(a)(iii), (v) and (b) of Commission Delegated Regulation 2015/35, for the purposes of displaying the features in Article 71(1)(j) of Commission Delegated Regulation 2015/35 (suspension of repayment or redemption), undertakings should ensure that the terms of the contractual arrangement governing the own-fund item include provisions for the suspension of the repayment or redemption of the item at any point, including when notice of repayment or redemption has been given other than following an exceptional waiver as described in Guideline 15, in the event of non-compliance with the SCR or if the repayment or redemption would result in such non-compliance.

42. For undertakings that have suspended repayment or redemption in accordance with Article 71(1)(j) of Commission Delegated Regulation 2015/35, the undertakings' subsequent actions should form part of the recovery plan referred to in Article 138 of Solvency II.

**Guideline 8 – Contractual opportunities to redeem and appropriate margin**

43. In the case of a request for supervisory approval of a repayment or redemption between 5 and 10 years after the date of issuance in accordance with Article 71(1)(g) of Commission Delegated Regulation 2015/35, undertakings should demonstrate how the SCR would be exceeded by an appropriate margin following the repayment or redemption for the period of its medium-term capital management plan or, if longer, for the period between the date of redemption or repayment and 10 years after the date of issuance.

44. In assessing whether a margin is appropriate the supervisory authority should take into account:
- a) the current and projected solvency position of the undertaking, taking into account the proposed repayment or redemption and any other proposed redemptions and repayments or issuances;
  - b) the undertaking's medium-term capital management plan and Own Risk and Solvency Assessment (hereinafter "ORSA");
  - c) the volatility of the undertaking's own funds and SCR having regard to the nature, scale and complexity of the risks inherent in the business of the undertaking;
  - d) the extent to which the undertaking has access to external sources of own funds and the impact of market conditions on the ability of undertakings to raise own funds.

## Section 2: Tier 2 items

### Guideline 9 – Tier 2 list of own-fund items

45. In the case of items referred to in Article 72(a)(i), (ii) and (iv) of Commission Delegated Regulation 2015/35, undertakings should ensure that:
- a) the time period between calling on shareholders or members to pay and the item becoming paid in, is not longer than three months. During this time, undertakings should consider the own funds to be called up but not paid in and should classify them as Tier 2 basic own funds provided that all other relevant criteria are met;
  - b) for items which are called up but not paid in, the shareholder or member that owns the item is still obliged to pay the outstanding amount in the event of the undertaking becoming insolvent or entering into winding-up procedures, and that the amount is available to absorb losses.

### Guideline 10 – Tier 2 features for determining classification

46. In the case of items referred to in Article 72(a)(i) and (ii) of Commission Delegated Regulation 2015/35, for undertakings determining classification in accordance with Article 73(1)(b) of Commission Delegated Regulation 2015/35, paragraph 1.24 of Guideline 3 applies mutatis mutandis.
47. In the case of items referred to in Article 72(a)(iii), (iv) and (b) of Commission Delegated Regulation 2015/35, for undertakings determining classification in accordance with Article 73(1)(b) of Commission Delegated Regulation 2015/35, paragraph 1.27 of Guideline 5 applies mutatis mutandis.
48. For the purposes of displaying the features in Article 73(1)(c) of Commission Delegated Regulation 2015/35 (repayment or redemption before five years), undertakings should ensure that the contractual arrangement governing the own-fund item does not include a contractual term providing for a call option prior to five years from the date of issuance, including call options predicated on unforeseen changes that are outside the control of the undertaking.
49. Subject to the satisfaction of all relevant features for determining classification and to prior supervisory approval, supervisory authorities should consider arrangements predicated on unforeseen changes which are outside the control of the undertaking and that would give rise to

transactions or arrangements which are not deemed to be repayment or redemption, to be permitted as provided for in Article 73(2) of Commission Delegated Regulation 2015/35.

50. For the purposes of displaying the features in Article 73(1)(e) of Commission Delegated Regulation 2015/35 (limited incentives to redeem), undertakings should only include in the contractual terms of the arrangement governing the own-fund item or any connected arrangement, limited incentives to redeem as set out in Guideline 19.
51. Undertakings should treat Tier 2 basic own-fund items as repaid or redeemed from the date of notice to holders of the item or, if no notice is required, the date of supervisory approval, and exclude the item from own funds from that date.
52. Undertakings should ensure that the terms of the contractual arrangement governing the own-fund item:
  - a) for the purposes of displaying the features in Article 73(1)(f) of Commission Delegated Regulation 2015/35 (suspension of repayment or redemption), include provisions for the suspension of the repayment or redemption of the item at any point, including when notice of repayment or redemption has been given or at the final maturity date of the instrument other than following an exceptional waiver as described in Guideline 15, in the event of non-compliance with the SCR or if the repayment or redemption would result in such non-compliance;
  - b) for the purposes of displaying the features in Article 73(1)(g) of Commission Delegated Regulation 2015/35 (deferral of distributions), include provisions for the deferral of distributions at any point in the event of non-compliance with the SCR or if the distribution would result in such non-compliance.
53. For undertakings that have suspended repayment or redemption in accordance with Article 73(1)(f) of Commission Delegated Regulation 2015/35, the undertakings' subsequent actions should form part of the recovery plan referred to in Article 138 of Solvency II.

### Section 3: Tier 3 items

#### Guideline 11 – Tier 3 features for determining classification

54. For undertakings determining classification in accordance with Article 77(1)(b) of Commission Delegated Regulation 2015/35, paragraph 1.27 of Guideline 5 applies mutatis mutandis to Tier 3 basic own-fund items.
55. For the purposes of displaying the features in Article 77(1)(c) of Commission Delegated Regulation 2015/35 (repayment or redemption before five years), undertakings should ensure that the contractual arrangement governing the item does not include a term providing for a call option prior to the intended maturity date, including call options predicated on unforeseen changes that are outside the control of the undertaking.
56. Subject to the satisfaction of all relevant features for determining classification and to prior supervisory approval, supervisory authorities should consider arrangements predicated on unforeseen changes which are outside the control of the undertaking and that would give rise to transactions or arrangements which are not deemed to be repayment or redemption to be permitted, as provided for in Article 77(2) of Commission Delegated Regulation 2015/35.

57. For the purposes of displaying the features in Article 77(1)(e) of Commission Delegated Regulation 2015/35 (limited incentives to redeem), undertakings should only include in the contractual terms of the arrangement governing the own-fund item or any connected arrangement limited incentives to redeem as set out in Guideline 19.
58. Undertakings should treat Tier 3 basic own-fund items as repaid or redeemed from the date of notice to holders of the item or if no notice is required the date of supervisory approval, and exclude the item from own funds from that date.
59. In the case of an item referred to in Article 76(a)(i), (ii) and (b) of Commission Delegated Regulation 2015/35, undertakings should ensure that the terms of the contractual arrangement governing the own-fund item:
- a) for the purposes of displaying the features in Article 77(1)(f) of Commission Delegated Regulation 2015/35, include provisions for the suspension of the repayment or redemption of the item at any point, including when notice of repayment or redemption has been given or at the final maturity date of the instrument other than following an exceptional waiver as described in Guideline 15, in the event of noncompliance with the SCR or if the repayment or redemption would result in such non-compliance.
  - b) for the purposes of displaying the features in Article 77(1)(g) of Commission Delegated Regulation 2015/35, include provisions for the deferral of distributions at any point in the event of non-compliance with the SCR or if the distribution would result in such non-compliance.
60. For undertakings that have suspended repayment or redemption in accordance with Article 77(1)(f) of Commission Delegated Regulation 2015/35, the undertakings' subsequent actions should form part of the recovery plan referred to in Article 138 of Solvency II.

## Section 4: All basic own-fund items

### Guideline 13 – Encumbrances

61. For the purposes of displaying the features in Articles 71(1)(o), 73(1)(i) and 77(1)(h) of Commission Delegated Regulation 2015/35, undertakings should:
- a) assess whether an own-fund item is encumbered on the basis of the economic effect of the encumbrance and the nature of the item, applying the principle of substance over form;
  - b) consider encumbrances as including, but not limited to:
    - i. rights of set off;
    - ii. restrictions;
    - iii. charges or guarantees;
    - iv. holding of own-fund items of the undertaking;
    - v. the effect of a transaction or a group of connected transactions which have the same effect as any of points (i) to (iv);
    - vi. the effect of a transaction or a group of connected transactions which otherwise undermine an item's ability to meet the features determining classification as an own-fund item;

- c) consider an encumbrance arising from a transaction or group of transactions which is equivalent to the holding of own shares as including the case where the undertaking holds its own Tier 1, Tier 2 or Tier 3 ownfund items.
62. Where the encumbrance is equivalent to the holding of own shares, undertakings should reduce the reconciliation reserve by the amount of the encumbered item.
63. When determining the treatment of an own-fund item which is encumbered according to Article 71(1)(o), 73(1)(i) or 77(1)(h) of Commission Delegated Regulation 2015/35, but the item together with the encumbrance displays the features required for a lower tier, undertakings should:
- a) identify whether the encumbered item is included in the lists of own-fund items for the lower tier in Articles 72 and 76 of Commission Delegated Regulation 2015/35;
  - b) classify an item included in the lists according to the appropriate features for determining classification in Articles 73 and 77 of Commission Delegated Regulation 2015/35;
  - c) seek approval from the supervisory authority to classify any items not included in the lists in accordance with Article 79 of Commission Delegated Regulation 2015/35.
64. If an item is encumbered to the extent that it no longer displays the features determining classification, undertakings should not classify the item as own funds.

#### **Guideline 14 – Call options predicated on unforeseen changes**

65. Undertakings should consider unforeseen changes that are outside their control, referred to in paragraphs 1.29, 1.30, 1.45, 1.46, 1.52 and 1.53, as including:
- a) a change in law or regulation relevant to the undertaking’s own-fund item in any jurisdiction or the interpretation of such law or regulation by any court or authority entitled to do so;
  - b) a change in the applicable tax treatment, regulatory classification or treatment by rating agencies of the own-fund item concerned.

#### **Guideline 15 – Exceptional waiver of suspension of repayment or redemption**

66. When applying for an exceptional waiver of the suspension of repayment or redemption according to Articles 71(1)(k)(i), 73(1)(k)(i), and 77(1)(i)(i) of Commission Delegated Regulation 2015/35, undertakings should:
- a) describe the proposed exchange or conversion and its effect on basic own funds, including how the exchange or conversion is provided for in the terms of the contractual arrangement governing the own-fund item;
  - b) demonstrate how the proposed exchange or conversion is or would be consistent with the recovery plan required by Article 138 of Solvency II;
  - c) seek prior supervisory approval of the transaction in accordance with Guideline 18.

#### **Guideline 16 – Exceptional waiver of cancellation or deferral of distributions**

67. When applying for an exceptional waiver of the cancellation or deferral of distributions according to Articles 71(1)(m) and 73(1)(h) of Commission Delegated Regulation 2015/35, undertakings should demonstrate how the distribution could be made without weakening their solvency position and how the MCR would be met.

68. An undertaking seeking an exceptional waiver in respect of settlement via an alternative coupon satisfaction mechanism should take into account the amount of ordinary share capital that would need to be issued, the extent to which restoring compliance with the SCR would require the raising of new own funds, and the likely impact of the share issuance for the purposes of the alternative coupon satisfaction mechanism on the undertaking's ability to raise those own funds, and should provide such information and analysis to the supervisory authority.

### **Guideline 18 – Supervisory approval of repayment and redemption**

69. Where an undertaking seeks supervisory approval of repayment or redemption according to Articles 71(1)(h), 73(1)(d) and 77(1)(d) of Commission Delegated Regulation 2015/35 or a transaction not deemed to be a repayment or redemption according to Articles 71(2), 73(2) and 77(2) of Commission Delegated Regulation 2015/35, it should provide the supervisory authority with an assessment of the repayment or redemption taking into account:

- a) both the current and short-to-medium term impact on the undertaking's overall solvency position and how the action is consistent with the undertaking's medium-term capital management plan and its ORSA;
- b) the undertaking's capacity to raise additional own funds if needed, having regard to the wider economic conditions and its access to capital markets and other sources of additional own funds.

70. Where an undertaking is proposing a series of repayments or redemptions over a short period of time, it should inform the supervisory authority, which may consider the series of transactions as a whole rather than on an individual basis.

71. An undertaking should submit the request for supervisory approval three months prior to the earlier of:

- a) the required contractual notice to holders of the item of repayment or redemption;
- b) the proposed repayment or redemption date.

72. Supervisory authorities should ensure that the period of time within which it decides on the request for repayment or redemption does not exceed three months from the receipt of the request.

73. After receiving supervisory approval of the repayment or redemption the undertaking should:

- a) consider that it is allowed, but not obliged, to exercise any call or other optional repayment or redemption under the terms of the contractual arrangement governing the own-fund item;
- b) when excluding an item treated as repaid or redeemed with effect from the date of notice to holders of the item or if no notice is required the date of supervisory approval, reduce the relevant category of own funds and make no adjustment to or re-calculation of the reconciliation reserve;
- c) continue to monitor its solvency position for any non-compliance or potential non-compliance with the SCR, which would trigger the suspension of repayment or redemption during the period leading up to the date of repayment or redemption;
- d) not proceed with the repayment or redemption if it would lead to noncompliance with the SCR even if notice of repayment or redemption has been given to the holders of the items. Where repayment or redemption is suspended in these circumstances the undertaking may reinstate

the item as available own funds and the supervisory approval for repayment or redemption is withdrawn.

### **Guideline 19 – Incentives to redeem**

74. For the purposes of displaying the features in Articles 71(1)(i), 73(1)(e) and 77(1)(e) of Commission Delegated Regulation 2015/35, undertakings should consider incentives to redeem that are not limited as not permitted in any tier.
75. Undertakings should consider incentives to redeem that are not limited as including:
- a) principal stock settlement combined with a call option, where principal stock settlement is a term in the contractual arrangements governing an own-fund item that requires the holder of the own-fund item to receive ordinary shares in the event that a call is not exercised;
  - b) mandatory conversion combined with a call option;
  - c) an increase in the principal amount which is applicable subsequent to the call date, combined with a call option;
  - d) any other provision or arrangement which might reasonably be regarded as providing an economic basis for the likely redemption of the item.

### **Guideline 20 – Eligibility and limits applicable to Tiers 1, 2 and 3**

76. For the purposes of calculating eligible own funds in accordance with Article 82 of Commission Delegated Regulation 2015/35 for the SCR, undertakings should:
- a) consider all Tier 1 items set out in Article 69(a)(i),(ii),(iv) and (vi) of Commission Delegated Regulation 2015/35 as eligible to cover the SCR;
  - b) consider those restricted Tier 1 items in excess of the 20% limit in Article 82(3) of Commission Delegated Regulation 2015/35 as available as Tier 2 basic own funds.
77. For the purposes of calculating eligible own funds in accordance with Article 82 of Commission Delegated Regulation 2015/35 for the MCR, undertakings should:
- a) consider all Tier 1 items set out in Article 69(a)(i),(ii),(iv) and (vi) of Commission Delegated Regulation 2015/35 as eligible to cover the MCR;
  - b) consider those restricted Tier 1 items in excess of the 20% limit in Article 82(3) as available as Tier 2 basic own funds;
  - c) consider that the effect of Article 82(2) of Commission Delegated Regulation 2015/35 is that Tier 2 basic own-funds items are eligible as long as they are less than 20% of the MCR.

## **Section 5: Approval of the assessment and classification of Items not on the lists**

### **Guideline 22 – Cover letter**

78. The undertaking should submit a cover letter confirming that:
- a) the undertaking believes any legal or contractual terms governing the own-fund item or any connected arrangement are unambiguous and clearly defined;
  - b) taking into account likely future developments as well as circumstances applying as at the date of the application, the undertaking considers that the basic own-fund item will comply, in terms of both legal form and economic substance, with the criteria in Articles 93 and 94 of Solvency

II and the features determining classification set out in Articles 71, 73 and 77 of Commission Delegated Regulation 2015/35;

- c) no facts have been omitted which if known by the supervisory authority could influence its decision regarding whether to approve the assessment and classification of the own-fund item.

79. The undertaking should also list in the cover letter other applications submitted by the undertaking or currently foreseen within the next six months for approval of any items listed in Article 308a(1) of Solvency II together with corresponding application dates.

80. The undertaking should ensure that the cover letter is signed by persons authorised to sign on behalf of the AMSB.

### **Guideline 22 – Supporting evidence**

81. The undertaking should provide a description of how the criteria in Articles 93 and 94 of Solvency II and the features determining classification set out in Articles 71, 73 and 77 of Commission Delegated Regulation 2015/35 have been satisfied including how the item will contribute to the undertaking's existing capital structure, and how the item may enable the undertaking to meet its existing or future capital requirements.

82. The undertaking should provide a description of the basic own-fund item, sufficient to allow the supervisory authority to conclude on the loss absorbing capacity of the item including the contractual terms of the arrangement governing the own-fund item and the terms of any connected arrangement together with evidence that any counterparty, where relevant, has entered into the contract and any connected arrangement and evidence that the contract and any connected arrangement are legally binding and enforceable in all relevant jurisdictions.

### **Guideline 25 – Assessment of the application**

83. Supervisory authorities should confirm receipt of the application.

84. Supervisory authorities should consider an application complete if the application covers all the matters set out in Guidelines 22 to 23.

85. Supervisory authorities should confirm if the application is considered complete or not on a timely basis, and at least within 30 days of the date of receipt of the application.

86. Supervisory authorities should ensure that the period of time within which it decides on an application:

- a) is reasonable;
- b) does not exceed three months from the receipt of a complete application, unless there are exceptional circumstances which are communicated in writing to the undertakings on a timely basis.

87. Where there are exceptional circumstances, supervisory authorities should not take longer than six months from the receipt of a complete application to decide on an application.

88. If necessary to its assessment of the own-fund item, supervisory authorities should request further information from the undertakings, after they have considered an application to be complete. The supervisory authority should specify the additional information needed and the rationale for the request. The days between the date the supervisory authority requests such information and the

date the supervisory authority receives such information should not be included within the periods of time stated in paragraphs 1.87 and 1.88.

89. The undertaking should inform the supervisory authority of any change to the details of its application.
90. Where an undertaking informs the supervisory authority of a change to its application, the supervisory authority should treat it as a new application unless:
  - a) the change is due to a request from the supervisory authority for further information; or
  - b) the supervisory authority is satisfied that the change does not significantly affect its assessment of the application.
91. Undertakings should be able to withdraw an application by notification in writing at any stage prior to the decision of the supervisory authority. If the undertaking subsequently resubmits the application or submits an updated application, the supervisory authority should treat this as a new application.

## Section 5: Ancillary own funds

### Guideline 26 – Callable on demand

92. For the items described in points (a), (b), (c), (d), (f) and (i) of Article 74 of Commission Delegated Regulation 2015/35 to be callable on demand, undertakings should ensure that the call is not:
  - a) contingent on the occurrence of an event or criteria being met;
  - b) subject to the agreement of the counterparty or any third party;
  - c) subject to any agreement, arrangement or incentive that means that the undertaking is not permitted or is not likely to call up the item; or
  - d) subject to any other arrangement or combination of arrangements which has the same effect as points (a) to (c).
93. With regard to the assessment of future claims by a mutual or mutual-type association with variable contributions for the purposes of Article 90 of Solvency II, supervisory authorities should consider whether there are any impediments to the claims being used to cover losses when they arise, and to the amounts being recovered in a timely manner.

### Guideline 27 - Classification of ancillary own-fund items

94. The supervisory authority should not determine the classification of an ancillary own-fund item based only on the form in which the item is presented or described. The supervisory authority's assessment and the classification of the ancillary own-fund item should depend upon the item's economic substance and the extent to which it would satisfy the characteristics and features set out in Articles 93 to 96 of Solvency II and Articles 74, 75, and 78 of Commission Delegated Regulation 2015/35.
95. Where ancillary own-fund items become Capital instruments on call, undertakings should classify the ancillary own-fund item by assessing the features of that Capital instrument and determine to which tier the Capital instrument would belong if called up.
96. Undertakings should ensure that where an ancillary own-fund item on being called results in the receipt of cash or other assets, that basic own-fund item is only treated as a contribution where it

does not give rise to a corresponding Capital instrument or liability, whether contingent or not, of the undertaking.

97. Undertakings should treat items as contributions:

- a) when they are in the form of an unconditional gift, or donation of own funds;
- b) whether they are from a parent undertaking, or any other party, or in the form of supplementary contributions from members of mutual or mutual-type undertakings;
- c) regardless of the treatment of the item for accounting purposes, as contributing to profit or loss or contributing directly to reserves.

98. Since the balance sheet treatment of contributions which satisfy the necessary features and characteristics used to classify own funds into tiers, is an increase in the undertaking's assets with a corresponding increase in the reconciliation reserve, and since the contribution does not give rise to any Capital instrument or liability or any other basic own-fund item, undertakings should classify the item as Tier 2 ancillary own funds.

99. Undertakings should classify contractual arrangements which when called up meet the undertaking's liabilities by indemnifying third-parties, in the same manner as contributions if they:

- a) generate an asset for a third-party creditor of the undertaking;
- b) do not create corresponding liabilities for the undertaking.

100. Undertakings should treat contracts of indemnity, which oblige a third-party indemnifier to pay sums to the undertaking's creditor without obliging the undertaking to repay such sums to the indemnifier, as ancillary own-fund items, subject to approval by the supervisory authority.

101. Supervisory authorities should classify ancillary own-fund items which on call do not become Capital instruments, contributions or arrangements, but which meet an undertaking's liabilities, by considering the features of whatever the ancillary own-fund item delivers on call.

## COMPLIANCE AND REPORTING RULES

102. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.

103. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.

104. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.

105. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

## FINAL PROVISION ON REVIEWS

106. These Guidelines will be subject to a review by EIOPA.

## EXPLANATORY TEXT

**Amended: Introduction**

1. The present Guidelines shall be subject to a review by EIOPA.
2. These Guidelines are drafted according to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (hereinafter “EIOPA Regulation”).
3. These Guidelines relate to Articles **89, 90, 93 to 95, 226 and 235** of 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 (hereinafter “Solvency II”) as well as to Articles **62 to 67**, 69 to ~~73, 76, 77~~, 79 and 82 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC (hereinafter “Commission Delegated Regulation 2015/35”) .
4. These Guidelines are addressed to supervisory authorities under Solvency II.
5. The purpose of these Guidelines is to provide guidance on how the lists of own fund items and the features determining classification for each tier should be applied. The Guidelines also set out procedures relating to the classification of own funds including the prior supervisory approval of Items not on the lists of own-fund items.
6. Undertakings have different capital items in their financial statements. Most of these will correspond to the defined lists of basic own-fund items in Commission Delegated Regulation 2015/35, which do not require supervisory approval. Some, including retained earnings, will be taken into account within the reconciliation reserve, which is a single own-fund item. Other Items not on the lists will need to be approved as basic or ancillary own-funds items. All items should be assessed against the features for determining classification to judge whether they qualify as available own funds and their appropriate tier.
7. The terms of the contractual arrangement governing the own-fund item should comply with the substance not just the form specified in Solvency II and be clear and unambiguous.
8. Paid-in ordinary share capital including its related share premium account, and paid-in initial funds, members’ contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings, should form the highest quality own funds which can be relied on to absorb losses on a going-concern basis. The quality of such own funds should not be undermined.
9. The interpretation of share premium account should be based on the economic substance as different terminology may be employed in national law. Share premium account should therefore be understood as a separate account or reserve to which share premiums, the amount between the value received and the nominal value of the share at issuance or the value received at issuance and the value recognised in share capital, are transferred in accordance with national law.
10. The Guidelines clarify that in order for undertakings to always retain full flexibility in raising new own-fund items, paid-in subordinated mutual member accounts, paid-in preference

shares including the related share premium account, and paid-in subordinated liabilities should not, by their contractual arrangements, prevent or hinder new own funds being raised.

11. Own-fund items should have sufficient maturity, depending on the tier in which they are classified. The Guidelines set out that this requirement should not be undermined by any call options prior to five years for items of all tiers as defined in Article 94 of Solvency II, irrespective of whether they relate to changes that lie within or outside the control of the undertaking. While the repurchase or buyback of any own-fund item is permitted at the option of the undertaking on or after the first possible call date, the undertaking should not create any expectation at issuance that the item will be bought back, redeemed or cancelled before the contractual maturity of the item. Since a repayment or redemption may have a substantial impact on the solvency position of the undertaking in the short and medium term, a repayment or redemption is always subject to supervisory approval. This is without prejudice to the treatment of transactions that are not deemed to be repayment or redemption as described in Articles 71(2), 73(2) and 77(2) of Commission Delegated Regulation 2015/35.
12. In order to avoid deterioration in an undertaking's solvency position, own-fund items need to provide that undertakings will be able to maintain own funds when there is non-compliance with the Solvency Capital Requirement (hereinafter "SCR") or if repayment or redemption would result in such non-compliance. The Guidelines set out that this should be independent of any contractual obligations or any notice of repayment and redemption given.
13. Since distributions cannot be made where they further weaken the solvency position of the undertaking, the Guidelines set out that alternative coupon satisfaction mechanisms should only be permissible in a restricted manner, whereby the cancellation of distributions is not undermined and there is no decrease in own funds of the undertaking.
14. Arrangements intended to stop or require payments on other items undermine full flexibility. The Guidelines make it clear that the use of dividend stoppers, capping or restricting the level or amount of distributions to be made on the item referred to in Article 69(a)(i) of Commission Delegated Regulation 2015/35, in any own-fund item, regardless of the tier, that would prevent payment on Tier 1 items is prohibited as they could discourage new providers of own funds and thus represent a hindrance to recapitalisation.
15. In order that any principal loss absorbency mechanism can achieve its purpose at the point of the trigger, the terms of the contractual arrangement should be clearly defined and legally certain, and capable of being applied without delay. The Guidelines explain that while a future write-up is generally permitted, this mechanism should not undermine the loss absorbency and should only be allowed on the basis of profits generated after restoring compliance with the SCR.
16. While called-up but not paid-in ordinary share capital may be classified as Tier 2 basic own funds, provided that the Tier 2 features are met, the Guidelines provide that this capital should only count as own funds for a limited time. This is to avoid the calling-up of capital solely for the purpose of satisfying the requirements of own funds classification without any intent that the item should become paid-in in due course.
17. These Guidelines also provide guidance in the event of non-compliance with the SCR. Non-compliance with the SCR arises when the value of own funds eligible to cover the SCR is less than the amount of the SCR. This should not be confused with a significant non-compliance

with the SCR as defined in Article 71(8) of Commission Delegated Regulation 2015/35 specifically for the purposes of principal loss absorbency mechanisms. Non-compliance with the Minimum Capital Requirement (hereinafter “MCR”) arises when the value of own funds eligible to cover the MCR is less than the amount of the MCR.

18. **Ancillary own funds are contingent in that they have not been paid in, and are not recognised on the balance sheet. The need for supervisory approval of such items recognises this contingent nature. If, at some undetermined point in the future, the ancillary own funds are called up, then they cease to be contingent and become basic own-fund items represented by assets on the balance sheet.**
19. **Article 89 of Solvency II states that ancillary own funds may comprise any legally binding commitment received by undertakings. This might encompass many arrangements that do not fall within the categories of specific ancillary own-fund items referred to in Solvency II as long as they can be called upon to absorb losses.**
20. **These Guidelines describe considerations relating to the supervisory authority approval process for ancillary own-fund items, classification of ancillary own fund items and ongoing satisfaction of criteria for approval.**
21. **The ancillary own funds approval process envisages ongoing communication between supervisory authorities and undertakings, including before an undertaking submits a formal application for approval of an ancillary own-fund item. Where the ancillary own-fund item on call would become an Item not on the lists, and therefore two supervisory approvals are needed, such communication should include the procedural approach to be followed regarding this need for two approvals.**
22. **Article 226 of Solvency II permits a group to apply for approval of an ancillary own-fund item in respect of an intermediate insurance holding company or an intermediate mixed financial holding company. In such cases these Guidelines apply as though the intermediate insurance holding company or the intermediate mixed financial holding company were an insurance or reinsurance undertaking. This also applies where a group is headed by an insurance holding company or a mixed financial holding company in accordance with Article 235 of Solvency II.**
23. For the purpose of these Guidelines, the following definition has been developed:
  - a) **‘Capital instrument’ means an instrument which if called up will generate an asset, often in the form of cash, while simultaneously creating corresponding interests in the insurance or reinsurance undertaking in the case of shares, or corresponding subordinated liabilities of the undertaking;**
  - b) **‘Item not on the lists’ means an own-fund item not included in the lists set out in Articles 69, 72 and 76 of Commission Delegated Regulation 2015/35.**
24. **If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.**
25. **The Guidelines shall apply from 30 January 2027.**

#### **Explanatory text:**

The introduction is amended as the Guideline on ancillary own funds has been merged into this Guideline. The changes integrate the introduction of Guideline on ancillary own funds into the Guideline on classification of own funds.

#### **DELETED: Guideline 2 – Reconciliation Reserve**

~~1.22. For the purposes of Article 70(1)(a) of Commission Delegated Regulation 2015/35, undertakings should include own shares held both directly and indirectly.~~

~~1.23. For the purposes of Article 70(1)(b) of Commission Delegated Regulation 2015/35:~~

~~(a) undertakings should consider a dividend or distribution to be foreseeable at the latest when it is declared or approved by the AMSB, or the other persons who effectively run the undertaking, regardless of any requirement for approval at the annual general meeting;~~

~~(b) where a participating undertaking holds a participation in another undertaking, which has a foreseeable dividend, the participating undertaking should make no reduction to its reconciliation reserve for that foreseeable dividend;~~

~~(c) undertakings should consider the amount of foreseeable charges to be taken into account as:~~

~~(i) the amount of taxes which are foreseeable and are not already recognised as a liability on the Solvency II balance sheet;~~

~~(ii) the amount of any obligations or circumstances arising during the related reporting period which are likely to reduce the profits of the undertaking and for which the supervisory authority is not satisfied that they have been appropriately captured by the valuation of assets and liabilities in accordance with Commission Delegated Regulation 2015/35.~~

#### **Explanatory text:**

Guideline 2 is deleted because it is deemed not necessary (type 2 deletion) due to the amendments to the Delegated Regulation 2015/35. In particular, the deletion reflects the new definition of foreseeable changes under point 67 of Article 1 and the new Article 70a of Delegated Regulation 2015/3, which establishes that the amount of foreseeable dividends and distributions shall be determined in accordance with the accrual approach.

#### **DELETED: Guideline 12 – Repayment or redemption**

~~1.58. For the purposes of displaying the features in Article 71, Article 73 and Article 77 of Commission Delegated Regulation 2015/35, undertakings should consider repayment or redemption to include the repayment, redemption, repurchase or buyback of any own fund item or any other arrangement that has the same economic effect. This includes share buybacks, tender operations, repurchase plans and repayment of the principal at maturity for dated items~~

~~as well as repayment or redemption following the exercise of an issuer call option. This is without prejudice to the treatment of transactions that are not deemed to be repayment or redemption as described in Articles 71(2), 73(2) and 77(2) of Commission Delegated Regulation 2015/35.~~

**Explanatory text:**

Guideline 12 is deleted because it is deemed not necessary (type 2 deletion) due to the amendments to the Delegated Regulation 2015/35. In particular, the new Article 70b of Delegated Regulation 2015/35 refers to repayment and redemption requirements for the classification as own funds, and regulates substantial parts of this guideline.

**DELETED: Guideline 17 – Principal loss absorbency: conversion**

~~1.67. In the application of a principal loss absorbency mechanism in the form of a conversion feature according to Article 71(1)(e)(ii) of Commission Delegated Regulation 2015/35, the AMSB of the undertaking and other persons who effectively run the undertaking should be aware of the impact that a potential conversion of an instrument could have on the capital structure and ownership of the undertaking and should monitor this impact as part of the undertaking's system of governance.~~

**Explanatory text:**

Guideline 17 is deleted because it is deemed redundant (type 1 deletion) as it requires that the AMSB of the undertaking and other persons who effectively run the undertaking are aware of the impact of potential conversion of an instrument. This aspect is embedded in the Fit and Proper requirements and principle that the AMSB is ultimate responsible for running the undertaking.

**DELETED: Guideline 21 – General features of the application**

~~1.77. When submitting a request for approval in accordance with Article 79 of Commission Delegated Regulation 2015/35 the undertaking should:~~

- ~~(a) submit a written application for approval of each own-fund item;~~
- ~~(b) submit the application in one of the official languages of the Member State in which the undertaking has its head office, or in a language that has been agreed with the supervisory authority;~~
- ~~(c) approve the application at the AMSB, and submit documentary evidence of that approval;~~
- ~~(d) provide an application in the form of a cover letter and supporting evidence.~~

**Explanatory text:**

Guideline 21 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and do not have added-value content compared to the Solvency II Directive and the Delegated Regulation 2015/35.

**DELETED: Guideline 24 – Procedures for supervisory authorities**

~~Supervisory authorities should establish procedures for the receipt and consideration of the applications and information provided by undertakings in accordance with Guidelines 21 to 23.~~

**Explanatory text:**

Guideline 24 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and do not have added-value content compared to the Solvency II Directive and the Delegated Regulation 2015/35.

**DELETED: Guideline 26 – Communication of the supervisory authorities' decision**

~~1.93. When supervisory authorities have reached a decision on an application, they should communicate this in writing to the undertakings, on a timely basis.~~

~~1.94. Where the supervisory authority rejects the application, it should state the reasons on which the decision is based.~~

**Explanatory text:**

Guideline 26 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the Solvency II Directive and the Delegated Regulation 2015/35.

**DELETED: Guideline 27 – Transitional arrangements**

~~1.95. Undertakings should assess all basic own-fund items issued prior to 1 January 2016 or the date of entry into force of Commission Delegated Regulation 2015/35 referred to in Article 97 of Solvency II, whichever is earliest to determine whether they display the features determining classification under Articles 71 and 73 of Commission Delegated Regulation 2015/35. Where such items display the features determining classification as Tier 1 or Tier 2, undertakings should classify the item in that tier, even if the item cannot be used to meet the available solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/13/EC, Directive 2002/83/EC and Directive 2005/68/EC.~~

~~1.96. Where items that are available as basic own funds in accordance with Article 308b(9) or (10) of Solvency II are exchanged or converted into another basic own-fund item after 1 January 2016 or the date of entry into force of Commission Delegated Regulation 2015/35 referred to in Article 97, whichever is earliest, undertakings should consider the item into which it is converted, or for which it is exchanged, as a new item which does not satisfy Article 308b(9)(a) or (10)(a) of Solvency II.~~

~~1.97. Supervisory authorities should consider items which are only ineligible due to the application of limits according to the laws, regulations and administrative provisions which are~~

~~adopted pursuant to Directive 73/239/EEC, Directive 2002/13/EC, Directive 2002/83/EC and Directive 2005/68/EC, as satisfying the requirements in Article 308b(9)(b) and (10)(b) of Solvency II.~~

**Explanatory text:**

Guideline 27 is deleted because it is deemed not necessary (type 2 deletion). The transitional OF items are no longer eligible as the transitional period was 10 years, expiring on 1 January 2026.

**Merged: Guideline 27 – Transitional arrangements**

**Section 5: Ancillary own funds**

**Guideline 26 – Callable on demand**

92. For the items described in points (a), (b), (c), (d), (f) and (i) of Article 74 of Commission Delegated Regulation 2015/35 to be callable on demand, undertakings should ensure that the call is not:

- a) contingent on the occurrence of an event or criteria being met;
- b) subject to the agreement of the counterparty or any third party;
- c) subject to any agreement, arrangement or incentive that means that the undertaking is not permitted or is not likely to call up the item; or
- d) subject to any other arrangement or combination of arrangements which has the same effect as points (a) to (c).

93. With regard to the assessment of future claims by a mutual or mutual-type association with variable contributions for the purposes of Article 90 of Solvency II, supervisory authorities should consider whether there are any impediments to the claims being used to cover losses when they arise, and to the amounts being recovered in a timely manner

**Guideline 27 - Classification of ancillary own-fund items**

94. The supervisory authority should not determine the classification of an ancillary own-fund item based only on the form in which the item is presented or described. The supervisory authority's assessment and the classification of the ancillary own-fund item should depend upon the item's economic substance and the extent to which it would satisfy the characteristics and features set out in Articles 93 to 96 of Solvency II and Articles 74, 75, and 78 of Commission Delegated Regulation 2015/35.

95. Where ancillary own-fund items become Capital instruments on call, undertakings should classify the ancillary own-fund item by assessing the features of that Capital instrument and determine to which tier the Capital instrument would belong if called up.

96. Undertakings should ensure that where an ancillary own-fund item on being called results in the receipt of cash or other assets, that basic own-fund item is only treated as a contribution where it does not give rise to a corresponding Capital instrument or liability, whether contingent or not, of the undertaking.

97. Undertakings should treat items as contributions:

- a) when they are in the form of an unconditional gift, or donation of own funds;
- b) whether they are from a parent undertaking, or any other party, or in the form of supplementary contributions from members of mutual or mutual-type undertakings;
- c) regardless of the treatment of the item for accounting purposes, as contributing to profit or loss or contributing directly to reserves.

97. Since the balance sheet treatment of contributions which satisfy the necessary features and characteristics used to classify own funds into tiers, is an increase in the undertaking's assets with a corresponding increase in the reconciliation reserve, and since the contribution does not give rise to any Capital instrument or liability or any other basic own-fund item, undertakings should classify the item as Tier 2 ancillary own funds.

98. Undertakings should classify contractual arrangements which when called up meet the undertaking's liabilities by indemnifying third-parties, in the same manner as contributions if they:

- a) generate an asset for a third-party creditor of the undertaking;
- b) do not create corresponding liabilities for the undertaking.

99. Undertakings should treat contracts of indemnity, which oblige a third-party indemnifier to pay sums to the undertaking's creditor without obliging the undertaking to repay such sums to the indemnifier, as ancillary own-fund items, subject to approval by the supervisory authority.

100. Supervisory authorities should classify ancillary own-fund items which on call do not become Capital instruments, contributions or arrangements, but which meet an undertaking's liabilities, by considering the features of whatever the ancillary own-fund item delivers on call.

**Explanatory text:**

The new Guidelines 26 and 27 are merged from the Guideline on ancillary own funds.

## GUIDELINES ON ANCILLARY OWN FUNDS

*Please note that this Guideline has been repealed. Guidelines 1, 2, 5 and 6 have been deleted, while Guidelines 3 and 4 have been merged into Section 5 of Guideline on classification of own funds (new Guidelines 26 and 27).*

### EXPLANATORY TEXT

#### **DELETED: Guideline 1 – Approval of ancillary own-fund items which, once called, take the form of an Item not on the lists**

~~1.12. If an ancillary own-fund item once called up would take the form of an Item not on the lists, undertakings should seek approval of the classification of that item, as provided for in Article 79 of Commission Delegated Regulation 2015/35 prior to submitting an application for approval of the ancillary own-fund item.~~

#### **Explanatory text:**

Guideline 12 is deleted because it is deemed not necessary (type 2 deletion). The guideline clarifies that the approval process (covered by the ITS) addresses the amount of the AOF item to be recognised and not directly its classification into a tier if it is not on the “list”. This does not add substantially to the Delegated Regulation 2015/35.

#### **DELETED: Guideline 2 – Entering into the contract for an ancillary own-fund item**

~~1.13. Where supervisory approval has been granted on the condition that the contract is entered into, in accordance with Article 7(3) of the EIOPA Draft Implementing Technical Standard with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items, the undertaking should formally conclude the contract no later than 15 working days after the approval has been granted, unless the undertaking has agreed a longer time period in advance in writing with the supervisory authority.~~

#### **Explanatory text:**

Guideline 12 is deleted because it is deemed not necessary (type 2 deletion) as it does not have added value to the third and fourth subparagraph of Article 6 of the ITS on supervisory approval of ancillary own funds.

#### **DELETED: Guideline 5 – Ongoing satisfaction of the criteria**

~~1.24. Undertakings should discuss with the supervisory authority as early as possible, if they have reason to believe that a material change in the loss absorbency of an ancillary own-fund item is imminent or likely.~~

**Explanatory text:**

Guideline 17 is deleted because it is deemed redundant (type 1 deletion) as it does not add value to the content embedded in Article 62(1)(d) of the Delegated Regulation 2015/35.

**DELETED: Guideline 6 – Assessment of the ongoing satisfaction of the criteria**

~~When considering whether the amount ascribed to an ancillary own-fund item continues to reflect its loss-absorbency, supervisory authorities should consider using information obtained from other sources in addition to the information received from undertakings in accordance with Article 62(1)(d) of Commission Delegated Regulation 2015/35, including but not limited to:~~

- ~~(a) information obtained through on-site inspections;~~
- ~~(b) ad hoc information received or obtained as part of the supervisory review process;~~
- ~~(c) information provided by other supervisory authorities within the college of supervisors, where applicable.~~

**Explanatory text:**

Guideline 26 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the Solvency II Directive and the Delegated Regulation 2015/35.

## GUIDELINES ON PILLAR 2

### GUIDELINES ON OWN RISK AND SOLVENCY ASSESSMENT

#### INTRODUCTION

1. According to Article 16 of Regulation (EU) No. 1094/2010 (EIOPA Regulation)<sup>42</sup>, EIOPA issues these Guidelines on own risk and solvency assessment.
2. These Guidelines are based on Articles 41, 44, 45 and Article 246 of Directive 2009/138/EC (Solvency II)<sup>43</sup> and on Articles 262 and 306 of Commission Delegated Regulation (EU) 2015/35 of (Commission Delegated Regulation 2015/35)<sup>3</sup>.
3. Supervisory authorities are expected to ensure that undertakings take a forward looking view on the risks to which they are exposed.
4. The Guidelines focus on what is to be achieved by the own risk and solvency assessment (hereinafter “ORSA”), rather than on how it is to be performed. For example, since the assessment of overall solvency needs represents the undertaking’s own view of its risk profile, and the capital and other means needed to address these risks, the undertaking should decide for itself how to perform this assessment given the nature, scale and complexity of the risks inherent in its business.
5. EIOPA acknowledges and supports the developments and achievements on a global scale and national level outside the European Union with regard to setting standards for ORSA with a forward looking perspective. However, EIOPA does not expect that supervisory authorities in third countries apply these Guidelines. Nevertheless, the Guidelines are subject to equivalence analysis. When referring to group structures or group level, the Guidelines apply to European Economic Area (hereinafter “EEA”) groups only. The Guidelines apply to branches established within the European Union and belonging to insurance or reinsurance undertakings with their head office situated in their countries and performing business referred to in the first subparagraph of Article 2(1) of Solvency II.
6. It is crucial that the administrative, management or supervisory body (hereinafter “AMSB”) of the undertaking is aware of all material risks the undertaking faces, regardless of whether the risks are captured by the Solvency Capital Requirement (hereinafter “SCR”) calculation and whether they are quantifiable or not. It is also vital that the AMSB takes an active role in the ORSA by directing the process and challenging the outcome.
7. In case a group wishes to apply for the undertaking of the ORSA pursuant to the third subparagraph of Article 245(4) of Solvency II, this requires a high level of consistency in processes across the group.

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<sup>42</sup> OJ L 331, 15.12.2010, p. 48–83.

<sup>43</sup> OJ L 335, 17.12.2009, p.1-155. <sup>3</sup>  
OJ L 12, 17.01.2015, p. 1.

8. These Guidelines apply to both individual undertakings and at the level of the group. Additionally, these Guidelines address issues relevant to the group specificities of the ORSA, in particular on account of specific risks to the group or risks that could be less relevant at individual level than at group level.
9. The relevant Guidelines for individual undertakings apply mutatis mutandis to the group ORSA. Additionally, groups need to take into consideration the group specific Guidelines.
10. These Guidelines are addressed to supervisory authorities under Solvency II.
11. The Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on own risk and solvency assessment (EIOPA-BoS-14-259).
12. For the purpose of these Guidelines, the following definitions have been developed:
  - a) 'group level' means a coherent economic entity (holistic view) comprising all entities that are part of the group as referred to in the EIOPA's Guidelines on the system of governance;
  - b) 'group ORSA' means the ORSA undertaken at group level;
  - c) 'single ORSA document' means a single document (supervisory report of the ORSA) which covers ORSA undertaken at the level of the group and at the level of some subsidiaries in the group on the same reference date and period, subject to supervisory approval, as referred to in the third subparagraph of Article 246(4) of Solvency II.
13. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

## GUIDELINES

### Guideline 1 – Governance and general approach

14. The undertaking should develop for the ORSA its own processes with appropriate and adequate techniques, tailored to fit into its organisational structure and risk-management system and taking into consideration the nature, scale and complexity of the risks inherent to the business.
15. The AMSB should take an active part in the ORSA, including steering, how the assessment is to be performed and challenging the results.

### Guideline 3 – Documentation

16. The undertaking should have at least the following documentation on the ORSA:
  - a) the policy for the ORSA;
  - b) record of each ORSA;
  - c) an internal report on each ORSA;
  - d) a supervisory report of the ORSA.

### Guideline 4 – Policy for the ORSA

17. The AMSB of the undertaking should approve the policy for the ORSA. This policy should include at least a description of:
  - a) the processes and procedures in place to conduct the ORSA;

- b) the link between the risk profile, the approved risk tolerance limits and the overall solvency needs;
- c) the methods and methodologies including information on:
  - i. how and how often stress tests, sensitivity analyses, reverse stress tests or other relevant analyses are to be performed;
  - ii. data quality standards;
  - iii. the frequency of the assessment itself and the justification of its adequacy particularly taking into account the undertaking's risk profile and the volatility of its overall solvency needs relative to its capital position;
  - iv. the timing for the performance of the ORSA and the circumstances which would trigger the need for an ORSA outside of the regular time-scales.

#### **Guideline 5 – Record and internal reporting of each ORSA**

18. The undertaking should evidence and document each ORSA and its outcome. Once approved by the AMSB, the main results and conclusions of the ORSA should be communicated to all relevant staff whose responsibilities are affected by the assessment.

#### **Guideline 7 – Assessment of the overall solvency needs**

19. The undertaking should provide a quantification of the capital needs and a description of other means needed to address all material risks irrespective of whether the risks are quantifiable or not.
20. Where appropriate, the undertaking should subject the identified material risks to a sufficiently wide range of stress tests or scenario analyses in order to provide an adequate basis for the assessment of the overall solvency needs.

#### **Guideline 9 – Valuation and recognition bases of the overall solvency needs**

22. The undertaking should, if it uses recognition and valuation bases that are different from the Solvency II bases in the assessment of its overall solvency needs, explain how the use of such different recognition and valuation bases ensures better consideration of the specific risk profile, approved risk tolerance limits and business strategy of the undertaking, while complying with the requirement for a sound and prudent management of the business.
23. The undertaking should quantitatively estimate the impact on the overall solvency needs assessment of the different recognition and valuation bases in those cases where recognition and valuation bases that are different from the Solvency II bases have been used in the assessment of its overall solvency needs.

#### **Guideline 10 – Continuous compliance with regulatory capital requirements**

24. The undertaking should analyse whether it complies on a continuous basis with the Solvency II regulatory capital requirements and as part of this assessment it should include at least:
- a) the potential future material changes in its risk profile;
  - b) the quantity and quality of its own funds over the whole of its business planning period;

- c) the composition of own funds across tiers and how this composition may change as a result of redemption, repayment and maturity dates during its business planning period.
25. Regarding the assessment to determine whether its risk profile deviates significantly from the SCR assumptions, the undertaking should first use a qualitative analysis and perform a quantitative assessment only if the deviation appears significant.

#### **Guideline 11 – Continuous compliance with technical provisions**

26. The undertaking should require the actuarial function of the undertaking to:
- a) provide input as to whether the undertaking would comply continuously with the requirements regarding the calculation of technical provisions;
  - b) identify potential risks arising from the uncertainties connected to this calculation.

#### **Guideline 13 – Link to the strategic management process and decision-making framework**

27. The undertaking should take into account the results of the ORSA and the insights gained during the process of this assessment in at least:
- a) its capital management;
  - b) its business planning;
  - c) its product development and design.

#### **Guideline 15 – Scope of group ORSA**

29. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should design the group ORSA to reflect the nature of the group structure and its risk profile. They should cover in the group ORSA the material risks arising from all the entities that are part of the group.

#### **Guideline 16 – Reporting to the supervisory authorities**

30. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should send to the group supervisor the group supervisory ORSA report. The document sent to the group supervisor with the outcome of the group ORSA should be in the same language as the group Regular Supervisory Reporting.
31. If a single ORSA document has been performed, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that, if requested by a member or a new member of the college, a translation into the official language of that Member State of the part of the ORSA information concerning the related undertaking is provided to the requiring member, in timely manner.

#### **Guideline 17 – Group specificities on overall solvency needs**

32. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should adequately assess the impact of all group specific risks and interdependencies within the group and the impact of these risks and interdependencies on

the overall solvency needs. They should take into consideration the specificities of the group and the fact that some risks may be scaled up at the level of the group.

33. In accordance with Guideline 5 on the record of each ORSA, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should include in the record of the group ORSA at least a description on how the following factors were taken into consideration for the assessment of overall solvency needs:
- a) the identification of the possible sources of capital within the group and identification of potential needs for additional capital;
  - b) the assessment of availability, transferability or fungibility of capital;
  - c) references to any envisaged transfer of capital within the group, which would have a material impact on any entity of the group, and its consequences;
  - d) alignment of individual strategies with the ones established at the level of the group;
  - e) specific risks the group could be exposed to.

#### **Guideline 18 – Group specificities on the continuous compliance with regulatory capital requirements**

34. In accordance with Guideline 5 on the record of each ORSA, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should include in the record of the group ORSA at least a description on how the following factors were taken into consideration for the assessment of continuous compliance with regulatory requirements:
- a) the identification of the sources of own funds within the group and if there is a need for additional own funds;
  - b) the assessment of availability, transferability or fungibility of own funds;
  - c) references to any planned transfer of own funds within the group, which would have a material impact on any entity of the group, and its consequences;
  - d) alignment of individual strategies with the ones established at the level of the group;
  - e) specific risks the group could be exposed to.

#### **Guideline 19 – Specific requirements for a single ORSA document**

35. In case of application to undertake the ORSA according to third subparagraph of Article 246(4) of Solvency II, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should provide to the group supervisor:
- a) a list of the undertakings for which the individual assessments required by Article 45 of Solvency II are covered in the single ORSA document including the reason of the choice made;
  - b) a description of how the governance requirements are met at the level of these undertakings and in particular how the AMSBs of the subsidiaries are involved in the assessment process and approval of the outcome;
  - c) a description of how the single ORSA document is organised in order to allow the group supervisor to separate individual assessments for the other supervisors in the college;

- d) where necessary, a specific indication on required translations, with specific attention to timing and content.

### **Guideline 20 – Integration of related third-country insurance and reinsurance undertakings**

36. In the assessment of the group overall solvency needs, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should include the risks of the business in third countries in a consistent manner as it does for European Economic Area business with special attention to the assessment of transferability and fungibility of capital.

### **COMPLIANCE AND REPORTING RULES**

37. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
38. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
39. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
40. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

### **FINAL PROVISION ON REVIEWS**

41. These Guidelines will be subject to a review by EIOPA.

### **EXPLANATORY TEXT**

#### **AMENDED: Introduction**

According to Article 16 of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (hereinafter “EIOPA Regulation”), EIOPA issues these Guidelines addressed to the supervisory authorities on how to proceed with the application of 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 (hereinafter “Solvency II”).

1.2. These Guidelines are based on Articles 41, 44, 45 and Article 246 of Solvency II and on Articles 262 and 306 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014

supplementing Directive 2009/138/EC (hereinafter “Commission Delegated Regulation 2015/35”)<sup>3</sup>.

1.3. Supervisory authorities are expected to ensure that undertakings take a forward looking view on the risks to which they are exposed.

1.4. The Guidelines focus on what is to be achieved by the own risk and solvency assessment (hereinafter “ORSA”), rather than on how it is to be performed. For example, since the assessment of overall solvency needs represents the undertaking’s own view of its risk profile, and the capital and other means needed to address these risks, the undertaking should decide for itself how to perform this assessment given the nature, scale and complexity of the risks inherent in its business.

1.5. EIOPA acknowledges and supports the developments and achievements on a global scale and national level outside the European Union with regard to setting standards for ORSA with a forward looking perspective. However, EIOPA does not expect that supervisory authorities in third countries apply these Guidelines. Nevertheless, the Guidelines are subject to equivalence analysis. When referring to group structures or group level, the Guidelines apply to European Economic Area (hereinafter “EEA”) groups only. The Guidelines apply to branches established within the European Union and belonging to insurance or reinsurance undertakings with their head office situated in their countries and performing business referred to in the first subparagraph of Article 2(1) of Solvency II.

1.6. It is crucial that the administrative, management or supervisory body (hereinafter “AMSB”) of the undertaking is aware of all material risks the undertaking faces, regardless of whether the risks are captured by the Solvency Capital Requirement (hereinafter “SCR”) calculation and whether they are quantifiable or not. It is also vital that the AMSB takes an active role in the ORSA by directing the process and challenging the outcome.

1.7. In case a group wishes to apply for the undertaking of the ORSA pursuant to the third subparagraph of Article 245(4) of Solvency II, this requires a high level of consistency in processes across the group.

1.8. These Guidelines apply to both individual undertakings and at the level of the group. Additionally, these Guidelines address issues relevant to the group specificities of the ORSA, in particular on account of specific risks to the group or risks that could be less relevant at individual level than at group level.

1.9. The relevant Guidelines for individual undertakings apply mutatis mutandis to the group ORSA. Additionally, groups need to take into consideration the group specific Guidelines.

1.10. For the purpose of these Guidelines, the following definitions have been developed:

- ‘group level’ means a coherent economic entity (holistic view) comprising all entities that are part of the group as referred to in the EIOPA’s Guidelines on the system of governance;
- ‘group ORSA’ means the ORSA undertaken at group level;
- ‘single ORSA document’ means a single document (supervisory report of the ORSA) which covers ORSA undertaken at the level of the group and at the level of some subsidiaries in the

group on the same reference date and period, subject to supervisory approval, as referred to in the third subparagraph of Article 246(4) of Solvency II.

1.11. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.

~~1.12. The Guidelines shall apply from 1 January 2016.~~

**1.12. The Guidelines shall apply from 30 January 2027 and repeal and replace the Guidelines on own risk and solvency assessment (EIOPA-BoS-14-259).**

**Explanatory text:**

The amendments are intended to update the text.

AMENDED: Guideline 1 - **Governance and g**General approach

1.13. The undertaking should develop for the ORSA its own processes with appropriate and adequate techniques, tailored to fit into its organisational structure and risk-management system and taking into consideration the nature, scale and complexity of the risks inherent to the business.

**1.14. The AMSB should take an active part in the ORSA, including steering, how the assessment is to be performed and challenging the results.**

**Explanatory text:**

Guideline 1 and Guideline 2 cover the same core expectation, so combining them avoids duplication without changing the substance.

~~DELETED: Guideline 2 – Role of the AMSB: top down approach~~

~~1.14 The AMSB should take an active part in the ORSA, including steering, how the assessment is to be performed and challenging the results.~~

**Explanatory text:**

Guideline 2 is deleted. The content of the guideline is merged with Guideline 1.

AMENDED: Guideline 5 – Record **and internal reporting** of each ORSA

1.17. The undertaking should evidence and document each ORSA and its outcome.

**1.18. Once approved by the AMSB, the main results and conclusions of the ORSA should be communicated to all relevant staff whose responsibilities are affected by the assessment.**

**Explanatory text:**

Guideline 5 and Guideline 6 cover the same core expectation, so combining them avoids duplication without changing the substance.

**DELETED: Guideline 6 – Internal reporting on the ORSA**

~~1.18 The undertaking should communicate to all relevant staff at least the results and conclusions of the ORSA, once the process and the results have been approved by the AMSB.~~

**Explanatory text:**

Guideline 6 is deleted. The content of the guideline is merged with Guideline 5.

**DELETED: Guideline 8 – Forward-looking perspective of the overall solvency needs assessment**

~~1.21 The undertaking should ensure that its assessment of the overall solvency needs is forward-looking, including a medium term or long term perspective as appropriate.~~

**Explanatory text:**

This guideline is redundant in relation to the article 262 Delegated regulation and to the article 45(1)(a) of Directive 2009/138/EC.

**AMENDED: Guideline 10 – Continuous compliance with regulatory capital requirements**

1.24. The undertaking should analyse whether it complies on a continuous basis with the Solvency II regulatory capital requirements and as part of this assessment it should include at least:

- a) the potential future material changes in its risk profile;
- b) the quantity and quality of its own funds over the whole of its business planning period;
- c) the composition of own funds across tiers and how this composition may change as a result of redemption, repayment and maturity dates during its business planning period.

**d) 1.25. Regarding the assessment to determine whether its risk profile deviates significantly from the SCR assumptions, the undertaking should first use a qualitative analysis and perform a quantitative assessment only if the deviation appears significant**

**Explanatory text:**

The second sentence of Guideline 12 is incorporated into Guideline 10, as it provides a methodological clarification on how the forward-looking assessment may be carried out (qualitative first, followed by quantitative analysis where warranted).

**DELETED: Guideline 12 – Deviations from assumptions underlying the SCR calculation**

~~1.26 The undertaking should assess whether its risk profile deviates from the assumptions underlying the SCR calculation and whether these deviations are significant. The undertaking may as a first step perform a qualitative analysis and if that indicates that the deviation is not significant, a quantitative assessment is not required.~~

**Explanatory text:**

Guideline 12 is deleted. The second sentence of Guideline 12, providing a methodological clarification is merged into GL10, where it directly supports the forward-looking assessment.

**DELETED: Guideline 14 – Frequency**

~~1.28 The undertaking should perform the ORSA at least annually.~~

**Explanatory text:**

This guideline is deleted as it is outdated, since Directive (EU) 2025/2 amends Article 45 to require that the ORSA be performed at least annually.

## GUIDELINES ON SYSTEM OF GOVERNANCE

### INTRODUCTION

1. According to Article 16 of Regulation (EU) 1094/2010 (EIOPA Regulation)<sup>44</sup>, EIOPA issues these Guidelines on system and governance..
2. These Guidelines are based on Articles 40 to 49, Article 93, Article 132 and Article 246 of Directive 2009/138/EC (Solvency II)<sup>45</sup> and on Articles 258 to Article 275 of Commission Delegated Regulation (EU) 2015/35(Commission Delegated Regulation 2015/35)<sup>46</sup>.
3. The requirements on the system of governance are aimed at providing for sound and prudent management of the business of undertakings without unduly restricting them in choosing their own organisational structure, as long as they establish an appropriate segregation of duties.
4. At least the four functions included in the system of governance, namely the risk management, the compliance, the actuarial and the internal audit function, are considered to be key functions and consequently also important or critical functions. Furthermore, persons are considered to be persons having key functions if they perform functions of specific importance for the undertaking in view of its business and organisation. These additional key functions, if any, are identified by the undertaking, but the determination of whether such functions should be considered key or not may be challenged by the supervisory authority.
5. These Guidelines provide further details on a number of issues regarding remuneration policy, including the composition of the remuneration committee.
6. The fit and proper requirements apply to all persons who effectively run the undertaking or have other key functions in order to ensure that all the persons having relevant functions in the undertaking are appropriately qualified. The scope of the requirements aims to avoid gaps where important persons for the undertaking are not covered, accepting at the same time that there may well be considerable overlap between persons from senior management who are considered to effectively run the undertaking and other key function holders.
7. The notification requirements only apply to persons who effectively run the undertaking or are key function holders as opposed to persons who have or perform a key function. In case of outsourcing of a key function or of outsourcing of a part of a function where this part is regarded as key, the person responsible is considered to be the one who has the oversight over the outsourcing at the undertaking.
8. The Guidelines on risk management take as a starting point that an adequate risk management system requires an effective and efficient set of integrated measures which must fit into the organisation and operational activity of the undertaking. There is no single risk management system that is appropriate to all undertakings; the system must be tailored to the individual undertaking.
9. Although the own risk and solvency assessment (hereinafter “ORSA”) is part of the risk management system, the corresponding Guidelines are set out separately.

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10. While internal models are mentioned in connection with the responsibilities of the risk management function, on the whole, the Guidelines on the system of governance do not address specific internal model related issues.
11. Article 132 of Solvency II introduces the 'prudent person principle' which includes provisions on how undertakings should invest their assets. The absence of regulatory limits on investments does not mean that undertakings can take investment decisions without any regard to prudence and to the interests of policyholders. The requirements of Solvency II and of the Commission Delegated Regulation 2015/35 cover extensively some of the main aspects of the prudent person principle, such as asset-liability management, investment in derivatives, liquidity risk management and concentration risk management. Therefore, the intention of these Guidelines is not to further develop these aspects, but to focus on the remaining aspects of the prudent person principle.
12. With respect to the actuarial function, these Guidelines focus on what should be done by the actuarial function, rather than how it should be performed. As the purpose of having the actuarial function is to provide a measure of quality assurance through expert technical actuarial advice, it is especially important to establish specific technical guidance on the tasks, responsibilities and other aspects of the actuarial function.
13. Currently, the institution of the "responsible/appointed actuary" exists in some Member States. As the "responsible/appointed actuary" is not foreseen by Solvency II, it is up to the supervisory authorities concerned to decide on whether to keep the "responsible/appointed actuary" or not, and how it relates to the actuarial function. However, this issue is not addressed under these Guidelines.
14. The Guidelines on outsourcing are based on the principle that an undertaking has to ensure that it remains fully responsible for discharging all its obligations when outsourcing any function or activities. In particular, there are strict and rigorous measures an undertaking must meet if it outsources a critical or important function or activity. In particular, an undertaking has to give proper consideration to the content of the written agreement with the service provider.
15. Intra-group outsourcing is not necessarily different from external outsourcing. It may allow for a more flexible selection process, but it should not to be seen as automatically requiring less care and oversight than external outsourcing.
16. The Guidelines apply to both individual undertakings and mutatis mutandis at group level. Additionally, for groups the group specific Guidelines apply.
17. The implementation of governance requirements at group level should be understood as having in place a robust governance system applied to one coherent economic entity (holistic view) comprising all entities that are part of the group.
18. Solvency II requires that all the insurance and reinsurance undertakings in a group have in place a risk management system and an internal control system and that this requirement is applied in a consistent manner in the group. However, from a group risk management and governance perspective, the group and the group supervisor have also to take into account the risks arising from other entities that are part of the group.
19. When the Guidelines refer to entities that are part of the group, in general, they refer to insurance and reinsurance undertakings, but also to all the other entities that are part of the group.

20. The governance requirements at group level take into account the corporate governance responsibilities of both, the administrative, management or supervisory body at group level, that is, the administrative, management or supervisory body of the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company, and the administrative, management or supervisory body of legal entities that are part of the group.
21. These Guidelines are addressed to supervisory authorities under Solvency II.
22. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on system of governance.
23. For the purpose of these Guidelines, the following definitions have been developed:
  - ‘persons who effectively run the undertaking’ cover members of the administrative, management or supervisory body taking into account national law, as well as members of the senior management. The latter includes persons employed by the undertaking who are responsible for high level decision making and for implementing the strategies devised and the policies approved by the administrative, management or supervisory body;
  - ‘persons having other key functions’ include all persons performing tasks related to a key function;
  - ‘key function holders’ are the persons responsible for a key function as opposed to persons having, carrying out or performing a key function.
24. If not defined in these Guidelines the terms have the meaning defined in the legal acts referred to in the introduction.

## GUIDELINES

### **Guideline 1 – The administrative, management or supervisory body**

25. The administrative, management or supervisory body (hereinafter “AMSB”) should have appropriate interaction with any committee it establishes as well as with senior management and with persons having other key functions in the undertaking, proactively requesting relevant information from them and challenging that information when necessary.
26. At group level the AMSB of the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should have an appropriate interaction with the AMSB of all entities within the group that have a material impact on the risk profile of the group, requesting information proactively and challenging the decisions in the matters that may affect the group.

### **Guideline 4 – Documentation of decisions taken at the level of the AMSB**

27. The undertaking should appropriately document the decisions taken at the level of the AMSB of the undertaking and how information from the risk management system has been taken into account

### **Guideline 6 – Internal review of the system of governance**

28. The AMSB of the undertaking should determine the scope and frequency of the internal reviews of the system of governance, taking into account the nature, scale and complexity of the business both at individual and at group level, as well as the structure of the group.
29. The undertaking should ensure that the scope, findings and conclusions of the review are properly documented and reported to its AMSB. Suitable feedback loops are necessary to ensure follow-up actions are undertaken and recorded.

### **Guideline 7 – Policies**

30. The undertaking should align all policies required as part of the system of governance with each other and with its business strategy. Each policy should clearly set out at least:
  - a) the goals pursued by the policy;
  - b) the tasks to be performed and the person or role responsible for them;
  - c) the processes and reporting procedures to be applied;
  - d) the obligation of the relevant organisational units to inform the risk management, internal audit, compliance and actuarial functions of any facts relevant for the performance of their duties.
31. In the policies that cover the key functions, the undertaking should also address the position of these functions within the undertaking, their rights and powers.
32. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that the policies are implemented consistently across the group. In addition, it ensures that the policies of the entities of the group are consistent with the group policies.

## **Section 2: Remuneration**

### **Guideline 9 – Scope of the remuneration policy**

33. In its remuneration policy the undertaking should at least ensure that:
  - a) remuneration awards do not threaten the undertaking's ability to maintain an adequate capital base;
  - b) remuneration arrangements with service providers do not encourage risk-taking that is excessive in view of the undertaking's risk management strategy.
34. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should adopt and implement a remuneration policy for the whole group. This should take into account the complexity and structures of the group in order to establish, develop and implement a consistent policy for the whole group that is in line with the group's risk management strategies. The policy should be applied to all relevant persons at group and individual entity level.
35. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure:

- a) an overall consistency of the group's remuneration policies by ensuring that they comply with the legal requirements of undertakings which are part of the group and by verifying their correct application;
- b) that all undertakings that belong to the group comply with the remuneration requirements;
- c) that material risks at group level linked to remuneration issues in the group entities are managed.

### **Section 3: Fit and proper**

#### **Guideline 11 – Fit requirements**

- 36. The undertaking should ensure that persons who effectively run the undertaking or have other key functions are 'fit' and take account of the respective duties allocated to individual persons to ensure appropriate diversity of qualifications, knowledge and relevant experience so that the undertaking is managed and overseen in a professional manner.
- 37. The AMSB should collectively possess appropriate qualification, experience and knowledge about at least:
  - a) insurance and financial markets;
  - b) business strategy and business model;
  - c) system of governance;
  - d) financial and actuarial analysis;
  - e) regulatory framework and requirements.

#### **Guideline 12 – Proper requirements**

- 38. When assessing whether a person is 'proper', the undertaking should consider that the period of limitation of the relevant criminal or any other offence is lapsed based on national law.

#### **Guideline 13 – Fit and proper policies and procedures**

- 39. The undertaking should have a policy on the fit and proper requirements, which includes at least:
  - a) a description of the procedure for identifying the positions for which notifying is required and for the notification to the supervisory authority;
  - b) a description of the procedure for assessing the fitness and propriety of the persons who effectively run the undertaking or have other key functions, both when being considered for the specific position and on an on-going basis;
  - c) a description of the situations that give rise to a re-assessment of the fit and proper requirements;
  - d) a description of the procedure for assessing the skills, knowledge, expertise and personal integrity of other relevant personnel not subject to the requirements of Article 42 of Solvency II according to internal standards, both when being considered for the specific position and on an on-going basis.
- 40. The supervisory authority should require as a minimum from the undertaking the information included in the Technical Annex to be submitted by means of a notification.

### **Guideline 14 – Outsourcing of key functions**

41. The undertaking should apply the fit and proper procedures in assessing persons employed by the service provider or sub service provider to perform an outsourced key function.
42. The undertaking should designate a person within the undertaking with overall responsibility for the outsourced key function who is fit and proper and possesses sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider. This designated person should be considered as the person responsible for the key function according to Article 42 (2) of Solvency II that needs to be notified to the supervisory authority.

## **Section 4: Risk management**

### **Guideline 17 – Role of the AMSB in the risk management system**

43. The AMSB should be ultimately responsible for ensuring the effectiveness of the risk management system, setting the undertaking's risk appetite and overall risk tolerance limits, as well as approving the main risk management strategies and policies.
44. The AMSB of the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that the risk management system of the whole group is effective. This risk management system of the group should include at least:
  - a) the strategic decisions and policies on risk management at group level;
  - b) the definition of group's risk appetite and overall risk tolerance limits;
  - c) the identification, measurement, management, monitoring and reporting of risks at group level.
45. The AMSB of the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that such strategic decisions and policies are consistent with the group's structure, size and the specificities of the entities that are part of the group.

### **Guideline 18 – Risk management policy**

46. The undertaking should establish a risk management policy which at least:
  - a) defines the risk categories and the methods to measure the risks;
  - b) outlines how the undertaking manages each relevant category, area of risks and any potential aggregation of risks;
  - c) describes the connection with the overall solvency needs assessment as identified in the ORSA, the regulatory capital requirements and the undertaking's risk tolerance limits;
  - d) specifies risk tolerance limits within all relevant risk categories in line with the undertaking's risk appetite;
  - e) describes the frequency and content of regular stress tests and the situations that would warrant ad-hoc stress tests.

**Guideline 20 – Underwriting and reserving risk management policy**

47. In its risk management policy, the undertaking should cover at least the following with regard to underwriting and reserve risk:
- a) the types and characteristics of the insurance business, such as the type of insurance risk the undertaking is willing to accept;
  - b) how the sufficiency of premium income to cover expected claims and expenses is to be ensured;
  - c) the identification of the risks arising from the undertaking's insurance obligations, including embedded options and guaranteed surrender values in its products;
  - d) how, in the process of designing a new insurance product and the premium calculation, the undertaking takes account of the constraints related to investments;
  - e) how, in the process of designing a new insurance product and the premium calculation, the undertaking takes account of reinsurance or other risk mitigation techniques.

**Guideline 21 – Operational risk management policy**

48. In the risk management policy, the undertaking should cover at least the following with regard to operational risk:
- a) identification of the operational risks it is or might be exposed to and assessment of the way to mitigate them;
  - b) activities and internal processes for managing operational risks, including the IT system supporting them;
  - c) risk tolerance limits with respect to the undertaking's main operational risk areas.
49. The undertaking should have processes to identify, analyse and report on operational risk events. For this purpose, it should establish a process for collecting and monitoring operational risk events.
50. For the purposes of operational risk management, the undertaking should develop and analyse an appropriate set of operational risk scenarios based on at least the following approaches:
- a) the failure of a key process, personnel or system;
  - b) the occurrence of external events.

**Guideline 22 – Reinsurance and other risk-mitigation techniques – risk management policy**

51. In the risk management policy the undertaking should cover at least the following with regard to reinsurance and other risk mitigation techniques:
- a) identification of the level of risk transfer appropriate to the undertaking's defined risk tolerance limits and which kind of reinsurance arrangements are most appropriate considering the undertaking's risk profile;
  - b) principles for the selection of such risk mitigation counterparties and procedures for assessing and monitoring the creditworthiness and diversification of reinsurance counterparties;
  - c) procedures for assessing the effective risk transfer and consideration of basis risk;
  - d) liquidity management procedures to deal with any timing mismatch between claims' payments and reinsurance recoverable.

**Guideline 23 – Strategic and reputational risk**

52. The undertaking should manage, monitor and report the following situations:

- a) actual or potential exposure to reputational and strategic risks and the interrelationship between these risks and other material risks;
- b) key issues affecting its reputation, considering the expectations of stakeholders and the sensitivity of the market.

**Guideline 24 – Asset-liability management policy**

53. In its risk management policy the undertaking should cover at least the following information with regard to asset-liability management:

- a) a description of the procedure for identification and assessment of different natures of mismatches between assets and liabilities, at least with regard to terms and currency;
- b) a description of mitigation techniques to be used and the expected effect of relevant risk-mitigating techniques on asset-liability management;
- c) a description of deliberate mismatches permitted;
- d) a description of the underlying methodology and frequency of stress tests and scenario tests to be carried out.

**Guideline 25 – Investment risk management policy**

54. In its risk management policy the undertaking should cover at least the following information with regard to investments:

- a) the level of security, quality, liquidity and profitability the undertaking is aiming for with regard to the whole portfolio of assets and how it plans to achieve this;
- b) its quantitative limits on assets and exposures, including off-balance sheet exposures, that are to be established to help to ensure the undertaking achieves its desired level of security, quality, liquidity, profitability and availability for the portfolio;
- c) the level of availability the undertaking is aiming for with regard to the whole portfolio of assets and how it plans to achieve this
- d) consideration of the financial market environment;
- e) the conditions under which the undertaking can pledge or lend assets;
- f) the link between market risk and other risks in adverse scenarios;
- g) the procedure for appropriately valuing and verifying the investment assets;
- h) the procedures to monitor the performance of the investments and review the policy when necessary;
- i) how the assets are to be selected in the best interest of policyholders and beneficiaries.

**Section 5: The prudent person principle and the system of governance****Guideline 27 – Investment risk management**

55. The undertaking should not solely depend on the information provided by third parties, such as financial institutions, asset managers and rating agencies. In particular, the undertaking should

develop its own set of key risk indicators in line with its investment risk management policy and business strategy.

56. When making its investment decisions, the undertaking should take into account the risks associated with the investments without relying only on the risk being adequately captured by the capital requirements.

### **Guideline 28 – Assessment of non-routine investment activities**

57. Before performing any investment or investment activity of a non-routine nature the undertaking should carry out an assessment of at least:
- a) its ability to perform and manage the investment or the investment activity;
  - b) the risks specifically related to the investment or the investment activity and the impact of the investment or the investment activity on the undertaking's risk profile;
  - c) the consistency of the investment or investment activity with the beneficiaries' and policyholders' interest, liability constraints set by the undertaking and efficient portfolio management;
  - d) the impact of this investment or investment activity on the quality, security, liquidity, profitability and availability of the whole portfolio.
58. The undertaking should have procedures that require that where such investment or investment activity entails a significant risk or change in the risk profile, the undertaking's risk management function communicates such a risk or change in the risk profile to the AMSB of the undertaking.

### **Guideline 29 – Security, quality, liquidity and profitability of the investment portfolios**

59. The undertaking should regularly review and monitor the security, quality, liquidity and profitability of the portfolio as a whole by considering at least:
- a) any liability constraint, including policyholders' guarantees, and any disclosed policy on future discretionary benefits and, where relevant, reasonable policyholders' expectations;
  - b) the level and nature of risks that an undertaking is willing to accept;
  - c) the level of diversification of the portfolio as a whole;
  - d) the characteristics of the assets including:
    - i. credit quality of counterparties;
    - ii. liquidity;
    - iii. tangibility;
    - iv. sustainability;
    - v. existence and quality of collateral or other assets backing the assets;
    - vi. gearing or encumbrances;
    - vii. tranches;
  - e) events that could potentially change the characteristics of the investments, including any guarantees, or affect the value of the assets;
  - f) issues relating to the localisation and availability of the assets including:
    - i. non-transferability;
    - ii. legal issues in other countries;
    - iii. currency measures;

- iv. custodian risk;
- v. over-collateralisation and lending.

### **Guideline 31 – Conflicts of interests**

60. The undertaking should describe in its investment policy how it identifies and manages any conflict of interest that arises regarding investments, irrespective of whether they arise in the undertaking or in the entity which manages the asset portfolio. It should also document the actions taken to manage such conflicts.

### **Guideline 32 – Unit-linked and index-linked contracts**

- 61. The undertaking should ensure that its investments of unit-linked and index-linked contracts are selected in the best interest of policyholders and beneficiaries taking into account any disclosed policy objectives.
- 62. In the case of unit-linked business the undertaking should take into account and manage the constraints related to unit-linked contracts, in particular liquidity or any contractual or legal transferability constraints.

### **Guideline 33 - Assets not admitted for trading on a regulated financial market**

- 63. The undertaking should implement, manage, monitor and control procedures in relation to investments that are not admitted to trading on a regulated financial market or to complex products, which are difficult to value.
- 64. The undertaking should treat assets admitted to trading, but not traded or traded on a non-regular basis, similarly to those assets not admitted to trading on a regulated financial market.

### **Guideline 34 - Derivatives**

- 65. When using derivatives, the undertaking should implement the procedures in line with its investment risk management policy to monitor the performance of these derivatives.
- 66. The undertaking should demonstrate how the quality, security, liquidity or profitability of the portfolio is improved without significant impairment of any of these features where derivatives are used to facilitate efficient portfolio management.
- 67. The undertaking should document the rationale and demonstrate the effective risk transfer obtained by the use of the derivatives where derivatives are used to contribute to a reduction of risks or as a risk mitigation technique.

## **Section 6: Own fund requirements and the system of governance**

### **Guideline 36 – Capital management policy**

- 68. The undertaking should develop a capital management policy which includes a description of the procedures to:
  - a) ensure that own-fund items, both at issue and subsequently, are classified according to the features in Articles 71, 73, 75 and 77 of Commission Delegated Regulation 2015/35;

- b) monitor tier by tier the issuance of own fund items according to the medium-term capital management plan, and ensure before issuance of any own fund items that it can satisfy the criteria for the appropriate tier on a continuous basis;
- c) monitor that own-funds items are not encumbered by the existence of any agreements or connected transactions, or as a consequence of a group structure, which would undermine their efficacy as capital;
- d) ensure that the actions required or permitted under the contractual, statutory or legal provisions governing an own-fund item are initiated and completed in a timely manner;
- e) ensure that ancillary own-fund items can be, and are, called in a timely manner when necessary;
- f) identify and document any arrangements, legislation or products that give rise to ring-fenced funds, and ensure that appropriate calculations and adjustments in the determination of the solvency capital requirement and own funds are made;
- g) ensure that the contractual terms governing own-fund item items are clear and unambiguous in relation to the criteria for classification into tiers;
- h) ensure that any policy or statement in respect of ordinary share dividends is fully taken into account in consideration of the capital position and the assessment of the foreseeable dividends;
- i) identify and document the instances in which distributions on tier 1 own-fund items might be cancelled on a discretionary basis;
- j) identify, document and enforce the instances in which distributions on an own-funds item need to be deferred or cancelled in accordance with Articles 71(1)(l) and 73(1)(g) of Commission Delegated Regulation 2015/35;
- k) identify the extent to which the undertaking relies on own-fund items subject to transitional measures;
- l) ensure that the manner in which items included in own funds under the transitional measures operate in times of stress, and in particular how the items absorb losses is assessed and, if necessary, taken into account in the ORSA.

### **Guideline 37 – Medium-term capital management plan**

69. The undertaking should develop a medium-term capital management plan which is monitored by the AMSB, and which includes at least considerations of:
- a) any planned capital issuance;
  - b) the maturity of own-fund items, incorporating both the contractual maturity and any earlier opportunity to repay or redeem, relating to the undertaking's own fund items;
  - c) the result of the projections made in the ORSA;
  - d) how any issuance, redemption or repayment, or other variation in the valuation of own-funds items affects the application of the limits on tiers;
  - e) how applying the distribution policy will affect own funds; and
  - f) the impact of the end of the transitional period.

## Section 7: Internal controls

### Guideline 38 – Internal control environment

70. The undertaking should promote the importance of performing appropriate internal controls by ensuring that all personnel are aware of their role in the internal control system. The control activities should be commensurate to the risks arising from the activities and processes to be controlled.
71. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure a consistent implementation of the internal control systems across the group.

## Section 8: Internal audit function

### Guideline 42 – Internal audit policy

72. The undertaking should have an internal audit policy which covers at least the following areas:
- a) the terms and conditions according to which the internal audit function can be called upon to give its opinion or assistance or to carry out other special tasks;
  - b) if relevant, internal rules setting out the procedures the person responsible for the internal audit function needs to follow before informing the supervisory authority;
  - c) where appropriate, the criteria for the rotation of staff assignments.
73. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that the internal audit policy at group level describes how the internal audit function:
- a) coordinates the internal audit activity across the group;
  - b) ensures compliance with the internal audit requirements at group level.

### Guideline 44 – Internal audit documentation

74. The undertaking should keep a record of its work in order to allow for an assessment of the effectiveness of the work of the internal audit function, and to document the audits in a way that allows for retracing the audits undertaken and the findings they produced.

### Guideline 45 – Internal audit function tasks

75. The undertaking should require that the internal audit function, in the report to the AMSB, includes the envisaged period of time to remedy the shortcomings, and information on the achievement of previous audit recommendations.

## Section 9: Actuarial function

### Guideline 47 – Coordination of the calculation of technical provisions

76. The undertaking should require the actuarial function to identify any inconsistency with the requirements set out in Articles 76 to Article 83 of Solvency II for the calculation of technical provisions and propose corrections as appropriate.

77. The undertaking should require the actuarial function to explain any material effect of changes in data, methodologies or assumptions between valuation dates on the amount of technical provisions.

#### **Guideline 49 – Testing against experience**

78. The undertaking should ensure that the actuarial function reports any material deviations from actual experience to the best estimate to the AMSB. The report should investigate the causes of the deviations and, where applicable, propose changes in the assumptions and modifications to the valuation model in order to improve the best estimate calculation.

#### **Guideline 50 – Underwriting policy and reinsurance arrangements**

79. The undertaking should require the actuarial function, when providing its opinion on the underwriting policy and the reinsurance arrangements, to take into consideration the interrelations between these and the technical provisions.

#### **Guideline 51 – The actuarial function of an undertaking using an internal model**

80. The undertaking should require the actuarial function to contribute to specify which risks within their domain of expertise are covered by the internal model. The actuarial function should also contribute to how dependencies between these risks and dependencies between these risks and other risks are derived. This contribution should be based on a technical analysis and should reflect the experience and expertise of the function.

### **Section 10: Valuation of assets and liabilities other than technical provisions**

#### **Guideline 52 – Valuation of assets and liabilities other than technical provisions**

81. In its policy and procedures for valuation of assets and liabilities the undertaking should cover at least the following:

- a) the methodology and criteria to be used for the assessment of active and non-active markets;
- b) the requirements to ensure adequate documentation of the valuation process and of the accompanying controls, including those for data quality;
- c) the requirements on the documentation of the valuation approaches used regarding:
  - a. their designs and the way they are implemented;
  - b. the adequacy of data, parameters and assumptions;
- d) the process for the independent review and verification of the valuation approaches;
- e) the requirements for the regular reporting to the AMSB for matters that are relevant for its governance on valuation.

#### **Guideline 53 – Data quality control procedures**

82. The undertaking should implement data quality control procedures to identify deficiencies and to measure, monitor, manage and document their data quality. These procedures should include:

- a) completeness of data;
- b) appropriateness of data, both from internal and external sources;

c) independent review and verification of data quality.

83. The policies and procedures implemented by the undertaking should address the need to periodically review market data and inputs against alternative sources and experience.

#### **Guideline 54 – Documentation when using alternative valuation methods**

84. Where alternative methods for valuation are used, the undertaking should document:

- a) a description of the method, purpose, key assumptions, limitations and output;
- b) the circumstances under which the method would not work effectively;
- c) description and analysis of the valuation process, and the controls linked with the method;
- d) an analysis of valuation uncertainty linked with the method;
- e) a description of back-testing procedures performed on the results and, where possible, a comparison against comparable models or other benchmarks, which should be carried out when the valuation method is first introduced and regularly thereafter;
- f) a description of the tools or programs used.

#### **Guideline 55 – Independent review and verification of valuation methods**

85. The undertaking should ensure that an independent review of the valuation method, following Article 267 (4)(b) of Commission Delegated Regulation 2015/35 takes place before the implementation of a new method or a major change, and on a regular basis thereafter.

86. The undertaking should determine the frequency of the review in line with the significance of the method for the decision-making and risk management processes.

87. The undertaking should apply the same principles for the independent review and verification of both internally developed valuation methods or models and for vendor provided valuation methods or models.

88. The undertaking should have processes in place to report the results of the independent review and verification, as well as the recommendations for remedial actions to the appropriate management level of the undertaking.

#### **Guideline 56 – Oversight by the AMSB and other persons who effectively run the undertaking**

89. The AMSB and other persons who effectively run the undertaking should be able to demonstrate an overall understanding of the valuation approaches and the uncertainties involved in the valuation process to allow a proper oversight of the risk management process concerning valuation.

#### **Guideline 57 – Request to the undertaking by the supervisory authority, for an external independent valuation or verification**

90. The supervisory authority should consider requesting an independent valuation or verification from the undertaking at least when there is a risk of misstatements in the valuation of material assets or liabilities, with possible material consequences for the undertaking's solvency situation.

### **Guideline 58 – Independence of the external expert**

91. The undertaking should be able to demonstrate to the supervisory authority that the external valuation or verification has been performed by independent experts with the relevant professional competence, due care and relevant experience.

### **Guideline 59 – Information to be provided to the supervisory authority on the external valuation or verification**

92. The undertaking should provide the supervisory authority with all relevant information requested on external valuation or verification. The undertaking should include in this information, at least, the experts' written opinion on the valuation of the relevant asset or liability.

## **Section 11: Outsourcing**

### **Guideline 60 – Critical or important operational functions and activities**

93. The undertaking should determine and document whether the outsourced function or activity is a critical or important function or activity on the basis of whether this function or activity is essential to the operation of the undertaking as it would be unable to deliver its services to policyholders without the function or activity.

### **Guideline 61 – Underwriting**

94. When an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an undertaking, the undertaking should ensure that the activity of this intermediary is subject to the outsourcing requirements.

### **Guideline 62 – Intra-group outsourcing**

95. If critical or important functions or activities are outsourced within the group, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should document which functions relate to which legal entity and ensure that the performance of the critical or important functions or activities concerned at the level of the undertaking is not impaired by such arrangements.

### **Guideline 63 – Outsourcing written policy**

96. The undertaking that outsources or considers outsourcing should cover in its policy the undertaking's approach and processes for outsourcing from the inception to the end of the contract. This in particular should include:

- a) the process for determining whether a function or activity is critical or important;
- b) how a service provider of suitable quality is selected and how and how often its performance and results are assessed;
- c) the details to be included in the written agreement with the service provider taking into consideration the requirements laid down in Commission Delegated Regulation 2015/35;

- d) business contingency plans, including exit strategies for outsourced critical or important functions or activities.

#### **Guideline 64 – Written notification to the supervisory authority**

97. In its written notification to the supervisory authority of any outsourcing of critical or important functions or activities the undertaking should include a description of the scope and the rationale for the outsourcing and the service provider's name. When outsourcing concerns a key function, the information should also include the name of the person in charge of the outsourced function or activities at the service provider.

### **Chapter II: Group governance specific requirements**

#### **Guideline 65 – Responsibilities for setting internal governance requirements**

98. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should set adequate internal governance requirements across the group appropriate to the structure, business model and risks of the group and of its related entities, and should consider the appropriate structure and organization for risk management at group level, setting a clear allocation of responsibilities at all entities that are part of the group.
99. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should not impair the responsibilities of the AMSB of each entity in the group when setting up its own system of governance.

#### **Guideline 66 – System of governance at group level**

100. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should:
- a) have in place appropriate and effective tools, procedures and lines of responsibility and accountability enabling it to oversee and steer the functioning of the risk management and internal control systems at individual level;
  - b) have in place reporting lines within the group and effective systems for ensuring information flows in the group bottom up and top-down;
  - c) document and inform all the entities that are part of the group about the tools used to identify, measure, monitor, manage and report all risks to which the group is exposed;
  - d) take into account the interests of all the entities belonging to the group and how these interests contribute to the common purpose of the group as a whole over the long term.

#### **Guideline 67 – Risks with significant impact at group level**

101. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should consider in its risk management system the risks both at individual and group level and their interdependencies, in particular:
- a) reputational risk and risks arising from intra-group transactions and risk concentrations, including contagion risk, at the group level;

- b) interdependencies between risks stemming from conducting business through different entities and in different jurisdictions;
- c) risks arising from third-country entities;
- d) risks arising from non-regulated entities;
- e) risks arising from other regulated entities.

#### **Guideline 68 – Risk concentrations at group level**

102. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that there are processes and procedures in place to identify, measure, manage, monitor and report risk concentrations.

#### **Guideline 69 – Intra-group transactions**

103. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that the risk management system of the group and the individual undertakings include processes and reporting procedures for identifying, measuring, monitoring, managing and reporting of intra-group transactions, including significant and very significant intra-group transactions as referred in Solvency II.

### **COMPLIANCE AND REPORTING RULES**

104. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.

105. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.

106. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.

107. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

### **FINAL PROVISION ON REVIEWS**

108. These Guidelines will be subject to a review by EIOPA.

## **TECHNICAL ANNEX: MINIMUM INFORMATION TO BE PROVIDED TO THE SUPERVISORY AUTHORITY CONCERNING THE FIT & PROPER ASSESSMENT**

### **Contact information**

- Name of the undertaking
- Undertaking's registration number
- Contact person:
  - a) First name

- b) Surname
- c) Title
- d) Telephone number
- e) E-mail address
- f) Fax number

### **Fact being notified**

- First appointment
- Change in previous information
- Change of position

### **Description of the position being notified**

- Name of the position
- Scope of the responsibilities
- Date of the appointment
- Length of appointment, if applicable
- Executive functions or not
- Any other information the undertaking deems relevant for the assessment

### **Information on the person subject to notification**

- First name
- Surname
- Any previous names
- Personal address
- Telephone number
- Date of birth
- Place of birth
- Nationality
- Information on any previous assessment/notification process by a supervisory authority of the financial sector within the EEA:
  - a) Name of the supervisory authority
  - b) Country
  - c) Date
- Information on previous employments, qualified assignments or appointments as a member of an administrative, management or supervisory body:
  - a) Company name and registration number
  - b) Nature and scope of the operations
  - c) The registered office of the undertaking
  - d) Position
- Any other positions held:
  - a) Company name and registration number
  - b) Nature and scope of the operations
  - c) The registered office of the undertaking

- d) Position
- Description of the level of knowledge, competence and experience of the person to perform the task, including:
  - a) Skills, knowledge (university degree, training or diploma)
  - b) Professional relevant experience
- Information on potential conflicts of interest with details, if applicable
  - a) Qualifying ownership or any other form of substantial influence in the undertaking
- Any other companies in which the notified person has a direct or indirect qualifying ownership:
  - a) Company name and registration number
  - b) Nature and scope of the operations
  - c) The registered office of the company
  - d) Possession in percentage
- Close relatives with ownership shares in the undertaking that notifies or in any other company which has ownership shares in that company
- Close relatives with any other financial relations to companies mentioned above
- Any other commitments that may give rise to conflict of interest with explanations as to the circumstances and a statement how the notified person intends to deal with potential conflicts of interest
- Conviction in a domestic or foreign court within the last X years [number of years according to national law] with explanation of circumstances, if applicable
- Pending criminal proceedings
- Membership in a board of directors in an operating undertaking that has not been granted a release from liability
- Dismissal from a position in a financial institution, company or from employment as a senior executive or termination of an engagement as a board member or auditor in another operating undertaking
- Participation in an arbitration board
- Bankruptcies or the equivalent abroad
- Rejection of an application, exclusion or limitation in any other way in terms of the right to conduct operations or a profession which requires authorisation, registration or such of the competent authority, organisation or equivalent body
- Supervisory sanctions against the person notified or a company where the person had a key function
- Any other information relevant to the assessment by the supervisory authority

### **Documents to be submitted**

- Extract from the judicial record or an equivalent document issued by a competent judicial or administrative authority related to the above referred information, if available

### **Declarations**

- Declaration signed by the appropriately authorized person [according to national law/practice the management or supervisory body or the person responsible for this in the undertaking with the position of the person(s) in the undertaking given] that the assessment was performed in

accordance with the laws, regulations and undertaking's fit and proper policy and the person subject to notification was considered as fit and proper for the job

- Declaration that the information submitted in the notification is correct and complete: date, name of signatories in block letters, signatures.

## EXPLANATORY TEXT

### **DELETED: Guideline 2 – Organisational and operational structure**

~~1.26. The undertaking should have organisational and operational structures aimed at supporting the strategic objectives and operations of the undertaking. Such structures should be adapted to changes in the strategic objectives, operations or in the business environment of the undertaking within an appropriate period of time.~~

~~1.27. At group level, the AMSB of the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should assess how changes to the group's structure impact the financial position of the affected undertakings of the group and make the necessary adjustments in a timely manner.~~

~~1.28. The AMSB of the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should, in order to take appropriate measures, have an appropriate knowledge of the corporate organisation of the group, the business model of its different entities and the links and relationships between them and the risks arising from the group's structure.~~

#### **Explanatory text:**

Guideline 2 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the combined reading of Article 41 of Solvency II Directive and Article 258 of the Delegated Regulation 2015/35.

### **DELETED: Guideline 3 – Significant decisions**

~~1.29. The undertaking should ensure that any significant decision of the undertaking involves at least two persons who effectively run the undertaking before the decision is being implemented.~~

#### **Explanatory text:**

Guideline 3 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to Article 258(4) of the Delegated Regulation 2015/35.

### **DELETED: Guideline 5 – Allocation and segregation of duties and responsibilities**

~~1.31. The undertaking should ensure that the duties and responsibilities are allocated, segregated and coordinated in line with the undertaking's policies and reflected in descriptions of tasks and responsibilities. The undertaking should ensure that all the important duties are covered and that unnecessary overlaps are avoided. Effective cooperation between personnel should be fostered.~~

**Explanatory text:**

Guideline 5 is deleted because it is deemed not necessary (type 2 deletion) due to the amendments to the Solvency II Directive. In particular, the review of the Solvency II Directive added explicit reference to the segregation of duties in Article 41. In addition, the same provision establishes that the system of governance shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information.

**DELETED: Guideline 8 – Contingency plans**

~~1.37. The undertaking should identify material risks to be addressed by contingency plans covering the areas where it considers itself to be vulnerable, and it should review, update and test these contingency plans on a regular basis.~~

**Explanatory text:**

Guideline 8 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the combined reading of Article 41 of Solvency II Directive and Article 258 of the Delegated Regulation 2015/35, requiring already the development of contingency plans.

**DELETED: Guideline 10 – Remuneration committee**

~~1.41. The undertaking should ensure that the composition of the remuneration committee enables it to exercise a competent and independent judgment on the remuneration policy and its oversight. If no remuneration committee is established, the AMSB should assume the tasks that would otherwise have been assigned to a remuneration committee in a way that avoids conflicts of interest.~~

**Explanatory text:**

Guideline 10 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to Article 275 of the Delegated Regulation 2015/35. The provision already established that an independent remuneration committee shall be created, if appropriate in relation to the significance of the insurance or reinsurance undertakings in terms of size and internal organization.

**AMENDED: Guideline 13 – Fit and proper policies and procedures**

1.45. The undertaking should have a policy on the fit and proper requirements, which includes at least:

- a) a description of the procedure for identifying the positions for which notifying is required and for the notification to the supervisory authority;
- b) a description of the procedure for assessing the fitness and propriety of the persons who effectively run the undertaking or have other key functions, both when being considered for the specific position and on an on-going basis;
- c) a description of the situations that give rise to a re-assessment of the fit and proper requirements;
- d) a description of the procedure for assessing the skills, knowledge, expertise and personal integrity of other relevant personnel not subject to the requirements of Article 42 of Solvency II according to internal standards, both when being considered for the specific position and on an on-going basis.

**1.46. The supervisory authority should require as a minimum from the undertaking the information included in the Technical Annex to be submitted by means of a notification.**

**Explanatory text:**

Guideline 13 is amended as Guideline 15 (Notification) is merged into this guideline.

**DELETED: Guideline 15 – Notification**

~~1.48. The supervisory authority should require as a minimum from the undertaking the information included in the Technical Annex to be submitted by means of a notification.~~

**Explanatory text:**

Guideline 15 is deleted because it is deemed not necessary (type 2 deletion) as it merely refers to the technical annex of the Guideline on System of Governance. The guideline is merged into Guideline 13.

**DELETED: Guideline 16 – Assessment of the fit and proper requirements by the supervisory authority**

~~1.49. The supervisory authority should assess the fit and proper requirements of the persons subject to notification requirements and give feedback on this to the undertaking concerned within an appropriate timeframe from the receipt of a complete notification.~~

**Explanatory text:**

Guideline 16 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the combined reading of Article 41 (5) and 42 of Solvency II Directive.

**DELETED: Guideline 19 – Risk management function: tasks**

~~1.54. The undertaking should require the risk management function to report to the AMSB on risks that have been identified as potentially material. The risk management function should also report on other specific areas of risks both on its own initiative and following requests from the AMSB.~~

**Explanatory text:**

Guideline 19 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to Article 269 of Delegated Regulation 2015/35, which lists the tasks of the risk management function.

**DELETED: Guideline 26 – Liquidity risk management policy**

~~1.63. In its risk management policy the undertaking should cover at least the following information with regard to liquidity risk:~~

- ~~a) — the procedure for determining the level of mismatch between the cash inflows and the cash outflows of both assets and liabilities, including expected cash flows of direct insurance and reinsurance such as claims, lapses or surrenders;~~
- ~~b) — consideration of total liquidity needs in the short and medium term, including an appropriate liquidity buffer to guard against a liquidity shortfall;~~
- ~~c) — consideration of the level and monitoring of liquid assets, including a quantification of potential costs or financial losses arising from an enforced realisation;~~
- ~~d) — identification and costs of alternative financing tools;~~
- ~~e) — consideration of the effect on the liquidity situation of expected new business.~~

**Explanatory text:**

Guideline 26 is deleted because it is deemed not necessary (type 2 deletion) due to the amendments to the Solvency II Directive. In particular, Article 144a of the Solvency II Directive regulated the liquidity risk management for insurance and reinsurance undertakings.

**DELETED: Guideline 30 – Profitability**

~~1.69. The undertaking should establish targets for the returns it seeks from its investments taking into account the need to obtain a sustainable yield on the asset portfolios to meet reasonable policyholders' expectations.~~

**Explanatory text:**

Guideline 30 is deleted because it is deemed not necessary (type 2 deletion) as it refers to the concept of profitability, already embedded in Guideline 29.

**DELETED: Guideline 35 – Securitised instruments**

~~1.78. Where the undertaking invests in securitised instruments, it should ensure that its interests and the interests of the originator or sponsor concerning the securitised assets are well understood and aligned.~~

**Explanatory text:**

Guideline 35 is deleted because it is deemed not necessary (type 2 deletion) as Commission Delegated Regulation (EU) 2018/1221 deleted Articles 254, 255 and 256 of Delegated Regulation 2015/35 on securitisation. To the extent that the revised legislative framework for securitisation overlaps with the scope of provisions laid down in Delegated Regulation 2015/35, it is necessary, in order to avoid double regulation and for reasons of clarity and consistency, to adapt the prudential framework applicable to insurance and reinsurance undertakings.

**DELETED: Guideline 39 – Monitoring and reporting**

~~1.83. The undertaking should establish monitoring and reporting mechanisms within the internal control system which provide the AMSB with the relevant information for the decision-making processes.~~

**Explanatory text:**

Guideline 39 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to Article 258(2) of Delegated Regulation 2015/35, which requires to establish policies on internal control.

**DELETED: Guideline 40 – Independence of the internal audit function**

~~1.84. The undertaking should ensure that the internal audit function does not perform any operational functions and is free from undue influence by any other functions including key functions.~~

~~1.85. When performing an audit and when evaluating and reporting the audit results, the undertaking should ensure that the internal audit function is not subject to influence from the AMSB that can impair its operational independence and impartiality.~~

**Explanatory text:**

Guideline 40 is deleted because it is deemed not necessary (type 2 deletion) due to the amendments to the Solvency II Directive. In particular, Article 41(2a) of the Solvency II Directive specifies that the internal audit function shall always be separated from other functions.

**DELETED: Guideline 41 – Conflicts of interest within the internal audit function**

~~1.86. The undertaking should take adequate measures in order to mitigate the risk of any conflict of interest.~~

~~1.87. The undertaking should therefore ensure that internally recruited auditors do not audit activities or functions they previously performed during the timeframe covered by the audit.~~

**Explanatory text:**

Guideline 41 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the combined reading of Articles 258 (5) and 271 (1)(b) of Delegated Regulation 2015/35, which requires that processes and procedures are in place to prevent conflicts of interest.

**DELETED: Guideline 43 – Internal audit plan**

~~1.90. The undertaking should ensure that the internal audit plan:~~

~~a) — is based on a methodical risk analysis, taking into account all the activities and the complete system of governance, as well as expected developments of activities and innovations;~~

~~b) — covers all significant activities that are to be reviewed within a reasonable period of time.~~

**Explanatory text:**

Guideline 43 is deleted because it is deemed not necessary (type 2 deletion) due to the amendments to the Delegated Regulation 2015/35. In particular, Article 271 (2) of the Delegated Regulation 2015/35 the main elements of the internal audit plan.

**DELETED: Guideline 46 – Tasks of the actuarial function**

~~1.93. The undertaking should take appropriate measures to address the potential conflicts of interests, if the undertaking decides to add additional tasks or activities to the tasks and activities of the actuarial function.~~

~~1.94. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should require that the actuarial function gives an opinion on the reinsurance policy and the reinsurance program for the group as a whole.~~

**Explanatory text:**

Guideline 46 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to Article 258 (5) of Delegated Regulation 2015/35, which requires that processes and procedures are in place to prevent conflicts of interest.

**DELETED: Guideline 48 – Data quality**

~~1.97. The undertaking should require the actuarial function to assess the consistency of the internal and external data used in the calculation of technical provisions against the data quality standards as set in Solvency II. Where relevant, the actuarial function should provide recommendations on internal procedures to improve data quality so as to ensure that the undertaking is in a position to comply with the Solvency II framework.~~

**Explanatory text:**

Guideline 48 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to Article 48(1)(c) of Solvency II Directive, which requires undertakings to assess the sufficiency and quality of the data used in the calculation of technical provisions.

**DELETED: Guideline 70 – Group risk management**

~~1.124. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should support in its risk management at group level by appropriate processes and procedures to identify, measure, manage, monitor and report the risks that the group and each individual entity are or might be exposed to.~~

~~1.125. The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company should ensure that the structure and organization of the group risk management do not impair the undertaking's legal ability to fulfil its legal, regulatory and contractual obligations.~~

**Explanatory text:**

Guideline 70 is deleted because it is deemed redundant (type 1 deletion) as it refers to practices that are well integrated in the supervision of NCAs, and does not have added-value content compared to the combined reading of Article 44 of Solvency II Directive and Article 351(2)(c) of Delegated Regulation 2015/35, which requires that the system of governance of the subsidiary is not impaired by the risk management and compliance functions of the parent undertaking covering the subsidiary.

## ANNEX I - PRIVACY STATEMENT RELATED TO PUBLIC ONLINE CONSULTATIONS AND SURVEYS

### Introduction

1. The European Insurance and Occupational Pension authority (EIOPA) is committed to protecting individuals' personal data in accordance with Regulation (EU) 2018/1725<sup>47</sup> (further referred as "the Regulation").
2. In line with Article 15 and 16 of the Regulation, this privacy statement provides information to the data subjects relating to the processing of their personal data carried out by EIOPA.

### Purpose of the processing of personal data

3. Personal data is collected and processed to manage online public consultations EIOPA launches, and to conduct online surveys, including via online platform EUSurvey<sup>48</sup>, and to facilitate further communication with participating stakeholders (e.g., when clarifications are needed on the information supplied or for the purposes of follow-up discussions that the participating stakeholders may agree to in the context of the consultations or surveys).
4. The 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 of personal data and/or contractual or other obligation imposing it

5. The legal basis for this processing operation are the following :
  - Regulation (EU) 1094/2010, and notably Articles 8, 10, 15, 16, 16a and 29 thereof
  - EIOPA's Public Statement on Public Consultations
  - EIOPA's Handbook on Public Consultations
6. In addition, in accordance with Article 5(1)(a) of the Regulation, processing is lawful as it is necessary for the performance of a task carried out in the public interest.

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<sup>47</sup> 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, OJ L 295, 21.11.2018, p. 39–98.

<sup>48</sup> For more information on the processing of personal data in EUSurvey, please see the [dedicated privacy statement](#)

### **Controller of the personal data processing**

7. The controller responsible for processing the data is EIOPA's Executive Director.

8. Address and email address of the controller:

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt am Main

Germany

[Damian.Jaworski@eiopa.europa.eu](mailto:Damian.Jaworski@eiopa.europa.eu)

### **Contact detail of EIOPA's Data Protection Officer (DPO)**

9. Westhafenplatz 1, 60327 Frankfurt am Main, Germany

[dpo@eiopa.europa.eu](mailto:dpo@eiopa.europa.eu)

### **Types of personal data collected**

10. The following personal data might be processed:

- Contact details (name, email address, phone number).
- Employment details (company and job title).

### **Recipients/processors of the personal data collected**

11. Data will be collected and disclosed to the relevant staff members part of the Department/Unit in charge of the consultation/surveys and also to other EIOPA's staff on a need-to-know basis (e.g. IT staff, security officer).

### **Retention period**

12. Personal data collected are kept by until the finalisation of the project the public consultation or the survey relate to.

13. The personal data collected in EUSurvey are deleted from EUSurvey as soon as the period to provide answers elapsed.

### **Transfer of personal data to a third country or international organisations**

14. No personal data will be transferred to a third country or international organisation. The service provider is located in the European Union.

#### **Automated decision-making**

15. No automated decision-making including profiling is performed in the context of this processing operation.

#### **What are the rights of the data subject?**

16. Data subjects have the right to access their 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. Data subjects also have the right to request the erasure of their personal data, as well as object to or obtain the restriction of their processing.
17. Where processing is based solely on the consent, data subjects have the right to withdraw their consent to the processing of their personal data at any time.
18. Restrictions of certain rights of the data subject may apply, in accordance with Article 25 of Regulation (EU) 2018/1725.
19. For the protection of the data subjects' privacy and security, every reasonable step shall be taken to ensure that their identity is verified before granting access, or rectification, or deletion.
20. Should the data subjects wish to exercise any of the rights provided in paragraphs 16 and 17 above, please contact EIOPA's DPO ([dpo@eiopa.europa.eu](mailto:dpo@eiopa.europa.eu)).

#### **Who to contact if the data subjects have any questions or complaints regarding data protection?**

21. Any questions or complaints concerning the processing of the personal data can be addressed to EIOPA's Data Controller ([Damian.Jaworski@eiopa.europa.eu](mailto:Damian.Jaworski@eiopa.europa.eu)) or EIOPA's DPO ([dpo@eiopa.europa.eu](mailto:dpo@eiopa.europa.eu)).
22. Alternatively, the data subjects can have recourse to the **European Data Protection Supervisor** ([www.edps.europa.eu](http://www.edps.europa.eu)) at any time, as provided in Article 63 of the Regulation.