

Feedback statement

on comments received during public consultation on the Supervisory Statement on supervision of reinsurance concluded with third country insurance and reinsurance undertakings

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European Insurance and
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INTRODUCTION

EIOPA collected views from stakeholders on the Supervisory Statement on supervision of reinsurance concluded with third country insurance and reinsurance undertakings (“Supervisory Statement”), through a public consultation which ran from 10 July 2023 until 10 October 2023.

During the public consultation 22 stakeholders and associations submitted around 300 comments, some of them classified as confidential and as such not published on EIOPA’s website.

EIOPA would like to thank all the stakeholders for their responses to the public consultation. The input received provided important elements for EIOPA to consider in the further improvement of the Supervisory Statement. All comments submitted were given careful consideration.

This feedback statement summarises the main comments received and how EIOPA has considered them in the finalisation of the Supervisory Statement while all publicly available comments with their resolutions are published separately on EIOPA’s website.

OBJECTIVE AND RATIONALE OF THE SUPERVISORY STATEMENT

The objective of this Supervisory Statement¹ is to raise awareness of the risks stemming from the use of reinsurance provided by reinsurers operating in regimes that have not been deemed equivalent to Solvency II by the European Commission and to propose a risk-based approach to identify and manage their effect by the relevant National Competent Authorities (NCAs) without limiting the use of reinsurance. This Supervisory Statement is inspired by concrete cases shared by some NCAs and it intends to ensure a high-quality and convergent supervision by NCAs.

The Supervisory Statement sets out supervisory expectations for the supervision of reinsurance concluded with third country insurance and reinsurance undertakings and as such it does not introduce any regulatory changes. The statement is addressed to the competent authorities, as defined in Article 4(2) of Regulation (EU) No 1094/2010², which should apply it considering the principle of proportionality and following a risk-based approach.

MAIN COMMENTS RECEIVED AND HOW EIOPA ADDRESSED THEM

The individual comments received and EIOPA’s response is published as a separate document. The major comments and EIOPA’s resolutions are summarised below.

¹EIOPA delivers this Supervisory Statement on the basis of Directive 2009/138/EC (Solvency II Directive), in particular Articles 134(1), 172(3) and 173 thereof and Commission Delegated Regulation (EU) 2015/35 (Solvency II Delegated Regulation), in particular Articles 211(2)(b) and (c), 213 and 214 thereof.

² Notwithstanding the fact that specific points of this Supervisory Statement describe supervisory expectations for insurance and reinsurance undertakings, they are required to comply with the regulatory and supervisory framework applied by their competent authority based on Union or national law.

CONTEXT AND OBJECTIVE

- Stakeholders expressed the view that the Supervisory Statement should have clear objectives and scope and it should be clearer when considering to whom it is addressed (e.g. presented as to NCAs but a number of elements present expectations for undertakings).

EIOPA agrees with the comment and as a result clarified the Supervisory Statement's addressees, scope and objectives (see par. 1.3, 2.6) and clarified that the Supervisory Statement is addressed to NCAs but also sets expectations for undertakings.

- Stakeholders commented that the Supervisory Statement should exclude retrocessions from the scope of the statement as they are pursued by highly specialised risk professionals.

EIOPA kept the sentence in paragraph 2.7 that the Supervisory Statement "might be also relevant, following a proportionate and risk-based approach and considering the specific business models, to reinsurance undertakings retroceding their risks.". EIOPA doesn't aim to restrict the use of retrocession but believes that the sentence presents a well-balanced, proportionate approach for cases when the Supervisory Statement might be applicable also to reinsurance undertakings. Furthermore, it has been clarified that the recommendation to follow the risks retroceded by the first reinsurer to another reinsurer is expected when it is material and this information is available to the ceding undertakings (see par. 3.17, last bullet point).

- Stakeholders requested EIOPA to clarify the Supervisory Statement's interaction with the European Commission equivalence decisions and the EU-US Covered Agreement, and not override them.

EIOPA clarified that the Supervisory Statement refers mainly to reinsurance concluded with reinsurers from non-equivalent third countries (see par. 2.7). However, some aspects of the Statement are considered relevant for equivalent third countries too and now are explicitly mentioned in the text (e.g. overall assessment of benefits/costs of reinsurance, early dialogue, ORSA, concentration risk, etc.). Regarding the applicability of the Supervisory Statement in case of US-reinsurers considering the EU-US Covered Agreement a new paragraph 2.4. has been added.

- Stakeholders commented that the Supervisory Statement should refrain from potentially encouraging "good practices" (using such wording) which have no ground or are even prohibited in Solvency II for equivalent jurisdictions, such as pre-approval of reinsurance programs, collaterals, localisation of assets.

EIOPA deleted the reference to "good practices".

ASSESSMENT OF THE BUSINESS RATIONALE FOR USING THIRD-COUNTRY REINSURANCE AND EARLY SUPERVISORY DIALOGUE

- Stakeholders commented that the suggestion to NCAs to engage in a supervisory dialogue with the undertaking "before the conclusion of the reinsurance agreement" is disproportionate,

impractical and could even be counter-productive to expect NCAs' ex-ante involvement in each reinsurance agreement.

EIOPA clarified that the engagement in a supervisory dialogue with the undertaking "before the conclusion of the reinsurance agreement" is to be done considering proportionality and materiality (see par. 3.3).

- Stakeholders expressed the view that the Supervisory Statement should not encourage the adoption of blanket restrictions (e.g. collateral) on third country jurisdictions.

EIOPA clarified that whenever the Supervisory statement suggests the use of collaterals, to mitigate the default risk of the reinsurer, is not with the aim to impose a new requirement as such (see par. 3.20, second bullet point).

GENERAL COMMENTS

The following general comments have been received:

- The Supervisory Statement might lead to a second-order effect of the introduction of barriers to European reinsurance operating elsewhere (whether directly reciprocal to, or simply inspired by, EU barriers) etc.

EIOPA would like to clarify that the Supervisory Statement is not introducing any new requirements that can be perceived as barriers and as such no material second-order effect of the introduction of barriers to reinsurance in the EU is expected. The Supervisory Statement on the opposite, aims to provide risk-based approach to supervisors in addressing risks stemming from use of reinsurance with reinsurers from non-equivalent third countries.

- The Supervisory Statement may have negative implications if it leads (in)directly to a decrease in the purchase of reinsurance. Reinsurance is made possible through global diversification of risks, and without capacity sourced in the EU from third country reinsurers, the NatCat protection gap would be even wider.

EIOPA acknowledges the fact that reinsurance is (and should remain) an international business, achieving a diversification of risks at global level, which plays an important role for the economy and society (e.g. supporting the reduction/closing of protection gaps). However, these benefits of reinsurance can't be achieved at the expense of introducing risks stemming from (a few) reinsurers operating in less modern, advance and risk based supervisory regime not adequately assessed and managed by the ceding insurance or reinsurance undertakings.

In addition to these main comments, stakeholders provided concrete proposals for different sections of the Supervisory Statement. As a result, the content of the Supervisory statement has been revised and drafting changes have been included.

EIOPA

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt – Germany

Tel. + 49 69-951119-20

info@eiopa.europa.eu

<https://www.eiopa.europa.eu>