

FINAL REPORT

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on draft Regulatory Technical Standards specifying the conditions and criteria to be used by supervisory authorities when determining which activities carried out by insurance or reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market

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European Insurance and  
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# 1. EXECUTIVE SUMMARY

## INTRODUCTION

In October 2024, EIOPA launched a public consultation on draft Regulatory Technical Standards (RTS) on relevant insurance and reinsurance undertakings with respect to the host Member State's market. This final report sets out the final text of the draft RTS including an impact assessment and a feedback statement on the public consultation.

## CONTENT

The review of the Solvency II Directive introduces changes to enhance the supervisory cooperation in relation to significant cross-border activities. Cross-border activities are in particular significant where the supervisory authority of the host Member State considers them to be of relevance with respect to the host Member State's market. The draft RTS further specify the conditions and criteria to be used when determining which insurance or reinsurance undertakings are of relevance with respect to the host Member State's market. The criteria and conditions set out in the draft RTS identify relevant cross-border activities based on both qualitative and quantitative information, without introducing thresholds. The draft RTS will support the effective and efficient supervision of cross-border activities, thereby contributing to the proper functioning of the internal market and the protection of policyholders.

## PUBLIC CONSULTATION

EIOPA conducted a public consultation on the draft RTS between 1 October 2024 and 2 January 2025. A stakeholder event was held on 27 November 2024 to discuss the consultation paper. Seven stakeholders feedback on the consultation paper. Based on the stakeholder feedback, the drafting of the draft RTS was refined, without changing the general approach set out in the consultation paper.

## NEXT STEPS

The draft RTS were submitted to the European Commission. In accordance with Article 10 of Regulation (EU) No 1094/2010 (EIOPA Regulation)<sup>1</sup>, the Commission will decide on the adoption of the draft RTS.

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<sup>1</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. 48–83

## 2. BACKGROUND AND RATIONALE

### AMENDMENTS TO THE SOLVENCY II DIRECTIVE

Directive 2009/138/EC<sup>2</sup> (Solvency II Directive) was reviewed.<sup>3</sup> As a result, Directive (EU) 2025/2<sup>4</sup> introduces a new Article 152ab on enhanced supervisory cooperation and information exchange between home and host supervisory authorities in relation to significant-cross-border activities. Accordingly, cooperation must be commensurate with the risks entailed by the significant cross-border activities and must cover at least the system of governance, outsourcing and distribution partnerships, business strategy and claims handling, and consumer protection. The home supervisory authority has, in addition a reporting obligation in case of deteriorating financial conditions or a risk of non-compliance with the capital requirements, the obligation to inform the host supervisory authority at least on annual basis about the Solvency Capital Requirement and the Minimum Capital Requirement, the amounts of eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement and on potential concerns related to technical provisions or capital requirements. In addition, there is a possibility for the host supervisory authority to address a duly justified information request to the home supervisory authority, provided that it relates to the solvency, the system of governance or the business model of the undertaking.

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

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

The supervisory authority of the host Member State shall notify the supervisory authority of the home Member State where it considers the activities carried out under the right of establishment or under

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<sup>2</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. 1–155

<sup>3</sup> [Reviewing EU insurance rules: encouraging insurers to invest in Europe's future](#)

<sup>4</sup> Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU, OJ L, 2025/2, 8.1.2025

the freedom to provide services to be of relevance with respect to the host Member State's market, stating the reasons therefor.

## MANDATE FOR DRAFT REGULATORY TECHNICAL STANDARDS

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

## APPROACH TO THE RTS

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

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

### 3. DRAFT TECHNICAL STANDARDS



EUROPEAN COMMISSION

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

**COMMISSION DELEGATED REGULATION (EU) .../..**

**of [ ]**

**COMMISSION DELEGATED REGULATION (EU) .../... supplementing Directive 2009/138/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions and criteria to be used by supervisory authorities when determining which activities carried out by insurance and reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market of [ ]**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)<sup>5</sup> and in particular Article 152aa (2), third subparagraph thereof,

Whereas:

- (1) When assessing whether activities carried out by insurance or reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market, supervisory authorities should perform a comprehensive assessment focusing on the protection of policyholders and beneficiaries and the financial stability of the host Member State's market.
- (2) High concentrations of cross-border activities can indicate a significant reliance on the host Member State's market by insurance or reinsurance undertakings, which could pose systemic risks. Therefore, supervisory authorities should look at the concentrations of insurance or reinsurance undertaking's cross-border activities carried out in the host Member State's market.
- (3) Cross-border activities can also have detrimental effects on policyholders and beneficiaries if those activities are not properly managed. Supervisory authorities should therefore look at the impact of those activities on the insurance market and on the policyholders and beneficiaries in the host Member State. That assessment should consider different granularity of cross-border activities of the insurance or reinsurance undertaking concerned compared to that undertaking's total activity or to the whole insurance market of the host Member State, including specific segments, lines of business, insurance risks or type of insurance products.
- (4) The availability of alternative products affects the level of protection of policyholders and beneficiaries in the host Member State's market. The level of substitutability indicates that policyholders may (or may not have) access to comparable insurance options and therefore mitigate the economic consequences of potential failures of insurance or reinsurance undertakings. Therefore, the supervisory authorities should look at the level of substitutability and the potential detriment to policyholders and beneficiaries in the host Member State's market.
- (5) The conditions and criteria that supervisory authorities are to use when determining which activities of insurance or reinsurance undertakings are of relevance with respect to the host

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<sup>5</sup> OJ L 335, 17.12.2009, p. 1, ELI: <http://data.europa.eu/eli/dir/2009/138/oj>.

Member State's market should provide the supervisory authority of the host Member State with a framework for identifying those insurance or reinsurance undertakings. At the same time, the insurance markets of the Member States have their own specificities as regards to specific segments, lines of business, insurance risks or type of insurance products. Therefore, considering the intrinsic differences among those national markets, it is necessary to ensure that the supervisory authority of the host Member State remains flexible to exercise its judgment within the parameters of those conditions and criteria.

- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.
- (7) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>6</sup>.

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<sup>6</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, ELI: <http://data.europa.eu/eli/reg/2010/1094/oj>).



HAS ADOPTED THIS REGULATION:

*Article 1*

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

- (a) whether the insurance or reinsurance undertaking's activities are concentrated having regard to:
  - (i) the share of the insurance or reinsurance undertaking's activities in the host Member State, measured as the annual gross written premium income corresponding to the activities carried out by that undertaking in that host Member State, compared to that undertaking's total annual gross written premium income;
  - (ii) the market share held by the insurance or reinsurance undertaking in the host Member State's market, measured in terms of whole insurance market, or life insurance and reinsurance market, or non-life insurance and reinsurance market;
- (b) whether the activities carried out by the insurance or reinsurance undertaking have a material impact on any of the following:
  - (i) specific lines of business, insurance risks or insurance products considered important by the supervisory authority of the host Member State due to specificities of the national insurance market, including compulsory insurance;
  - (ii) the protection of policyholders and beneficiaries in the host Member State.

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

3. For the purposes of paragraph 1, point (b), the supervisory authority of the host Member State shall assess the significance of the impact with regard to the following factors:

- (a) the market share of specific lines of business, insurance risks, or insurance products in the host Member State's market;
- (b) the level of substitutability in the host Member State's market as referred to in Article 5(2) of Directive (EU) 2025/1<sup>7</sup>;
- (c) the potential detriment to policyholders and beneficiaries in the host Member State's market.

4. For the purposes of paragraph 3, point (a), the supervisory authority of the host Member State shall use any quantitative criteria for determining market shares of specific lines of business, insurance risks or insurance products, including:

- (a) the level of premiums or technical provisions;
- (b) the number of policyholders or insured persons;
- (c) the number of policies;
- (d) the sum insured;
- (e) the number of insured vehicles.

5. For the purposes of paragraph 3, point (c), the supervisory authority of the host Member State shall use any quantitative or qualitative criteria for determining the potential detriment to policyholders and beneficiaries, including:

- (a) the level of affected policies;
- (b) whether the level of complaints is higher than average;
- (c) the commission rates;
- (d) the gross written premium growth in the previous financial year.

## *Article 2*

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*[For the Commission*

*The President]*

*[For the Commission*

*On behalf of the President]*

*[Position]*

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<sup>7</sup> Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU, OJ L, 2025/2, 8.1.2025

## ANNEX 1: IMPACT ASSESSMENT

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

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

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

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

In view of the specific purpose of these draft RTS, the following more specific objectives were identified:

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

## POLICY ISSUES

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

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

## POLICY OPTIONS

### Policy option 0: No change

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

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

Policy option 0		
<b>Costs</b>	Policyholders	Lacking the definition of common criteria and conditions to identify cross-border activities of relevance for the host Member State's market, cooperation and information-sharing would not be strengthened, ultimately affecting consumer rights and undermining the protection of policyholders across the Union.
	Industry	No material impact.
	Supervisors	Supervisors would not be able to make use of an instrument that may be relevant to identify activities of relevance for their market, by taking into account national specificities. Furthermore, Supervisors would dispose of excessive discretion, leading to detailed case-by-case assessments that could increase their administrative burden.
	Other	No material impact.
<b>Benefits</b>	Policyholders	No material impact.
	Industry	No material impact.
	Supervisors	No material impact.
	Other	No material impact.

### Policy option 1: Adopting criteria and conditions based on quantitative thresholds

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

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

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

Policy option 1		
<b>Costs</b>	Policyholders	Supervisors may excessively rely on quantitative thresholds, leading to overlook at the qualitative aspects of the cross-border activities that are equally important for ensuring consumer protection.
	Industry	No material impact.
	Supervisors	Rigid benchmarks may not capture all relevant nuances of different business models and market conditions, leading to potential misclassification and inappropriate regulatory responses. Moreover, Supervisors may excessively rely on quantitative thresholds, leading to overlook at the qualitative aspects of the cross-border activities that are equally important for ensuring consumer protection.
	Other	Not seen as fully aligned with the mandate.
<b>Benefits</b>	Policyholders	Benchmarks would provide criteria and conditions giving policyholders confidence that supervisory assessments are objective and consistent.
	Industry	No material impact.
	Supervisors	By introducing criteria and conditions that serve as a benchmark, supervisors will be facilitates in assessing compliance and establishing enhanced cooperation mechanisms. Moreover, having benchmark criteria and conditions streamlines the supervisory process and facilitates peer reviews among different undertakings and analysis through time.
	Other	No material impact.

### Policy option 2: Adopting criteria and conditions without thresholds

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

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

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

The use of criteria and conditions that are not strict benchmarks also allows a higher degree of proportionality, allowing for supervisory authority to adequately consider the cross-border activities of

undertakings under the right of establishment and freedom to provide services vis-à-vis the specificities of their markets.

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

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

Policy option 2		
<b>Costs</b>	Policyholders	No material impact.
	Industry	No material impact.
	Supervisors	Supervisors would need to employ more supervisory judgement to assess whether the criteria and conditions lead to relevant cross-border activities.
	Other	No material impact.
<b>Benefits</b>	Policyholders	Criteria and conditions – even if not in the form of benchmarks – would give policyholders confidence that supervisory assessments are objective and consistent, by taking into account specificities of each market
	Industry	No material impact.
	Supervisors	Broader and more qualitative criteria enable supervisors to take into account the complexities and specificities of their markets. This includes understanding consumer behaviour and emerging trends that quantitative thresholds might not capture.  Moreover, this approach allows supervisors to account for these specificities, ensuring that the assessment of the relevance of the cross-border activities reflects local conditions. Supervisors remain flexible and agile to encounter all range of scenarios that might arise in the cross-border domain, leveraging on EIOPA’s expertise to foster converge of practices.

	Other	No material impact.
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## COMPARISON OF POLICY OPTIONS

Policy option 0 is deemed inefficient from the point of view of ensuring and fostering supervisory convergence in determining the relevance of the activities carried out under the right of establishment or under the freedom to provide services with respect to the host Member State’s market. Likewise, it is considered as a non-viable option given the empowerment included in Article 152aa(2) of the Solvency II Directive. This consideration applies both in terms of effectiveness and efficiency.

Policy option 1 would contribute to achieve the objective of supervisory convergence among supervisory authorities by defining criteria and conditions based on strictly defined absolute and relative thresholds. However, this option is considered inefficient as it would not allow supervisors to capture all relevant nuances of different business models and market conditions, leading to potential misclassification and inappropriate regulatory responses. Moreover, this option is not deemed effective as it excessively relies on quantitative thresholds, overlooking at the qualitative aspects of the cross-border activities that are equally important for ensuring consumer protection and ensuring effective and efficient supervision of cross-border business.

Policy option 2 is deemed efficient as it provides supervisory authorities with criteria and conditions that allow flexibility and agility to encounter all range of scenarios that might arise in the cross-border domain. At the same time, this option is deemed effective as it introduces broader and more qualitative criteria that allows to take into account the complexities and specificities of the host Member States’ markets and enhanced cooperation and coordination between supervisory authorities. This leads to a better understanding of consumer behaviour and emerging trends that quantitative thresholds might not capture and finally to a more effective and efficient supervision of cross-border business.

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

	Effective and efficient supervision of cross-border business	Enhanced cooperation and coordination between supervisory authorities
<b>Policy option 0: No change</b>	0	0
<b>Policy option 1: Adopting criteria and conditions based on quantitative thresholds</b>	+	++
<b>Policy option 2: Adopting criteria and conditions without thresholds</b>	++	++

### **PREFERRED OPTION**

Based on the evidence provided in the above assessment, policy option 2 is the preferred option. Besides the superior efficiency and effectiveness and cost-benefit relation, this option also provides national supervisory authorities with the right tools to enhance and apply proportionality while creating a level playing field.

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

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



## ANNEX 2: FEEDBACK STATEMENT

This feedback statement sets out a high-level summary of the consultation comments received and EIOPA's assessment of them. The full list of all the non-confidential comments and their resolutions can be found on EIOPA's website.

EIOPA received comments from its Insurance and Reinsurance Stakeholder Group (IRSG) and from six other stakeholders, mainly insurance industry associations.

As part of the consultation, EIOPA held a workshop with stakeholders to discuss the draft RTS on 27 November 2024.

EIOPA would like to express its appreciation for the feedback of the stakeholders during the preparation of the draft RTS.

### MARKET SHARE CRITERIA

#### Stakeholder comments

Several stakeholders, including the IRSG, hold the view that the criterion of market share needs to be amended and propose that the draft RTS should base market share criteria on two markets: the life insurance and reinsurance market and the non-life insurance and reinsurance market, because as per the Solvency II Directive there is no standalone reinsurance market. The Solvency II Directive is reflective of an economic reality whereby reinsurance undertakings engage in the life and non-life markets through treaty business, facultative reinsurance business and direct specialty business. And the other way around, primary insurance undertakings, as well as financial market participants, also engage in the reinsurance market.

#### Assessment

Article 1 of the draft RTS has been amended as proposed by stakeholders. We note that the determination of a market share for the reinsurance market is not straightforward as for life reinsurance and non-life reinsurance typically different volume measures are used.

### INTRODUCTION OF QUANTITATIVE TRESHOLDS

#### Stakeholder comments

EIOPA's preferred policy option 2 (criteria and conditions without thresholds) is explicitly supported by the majority of stakeholders that commented on the consultation paper, while preference for policy option 1 and the introduction of quantitative thresholds are supported by one stakeholder. That stakeholder highlights that it is vital that the criteria and conditions proposed by EIOPA in its draft RTS are underpinned with thresholds equivalent or at least comparable to the benchmark established in Article 152aa(1)(a) of the Solvency II Directive. While that stakeholder agrees that supervisory cooperation and information exchange between home and host supervisory authorities based on mutual trust is key to ensure a common supervisory culture, the stakeholder considers also important that the definition of significant cross-border activities is not left to the sole discretion of host

supervisory authorities. The stakeholder believes that this would likely trigger disagreements between the supervisory authorities involved which would need to be resolved in an onerous formal process and distract attention and resources away from effectively supervising the undertaking. It may also result in a fragmented landscape where host supervisory authorities have a completely different view on what is relevant for their respective markets.

### Assessment

No change to the preferred option was made, in line with the majority view. The Solvency II Directive already prescribes a quantitative threshold that serves a benchmark in identifying cross-border activities as significant, while it attributes to the supervisory authority of the host Member State the possibility to consider cross-border activities as relevant to its market on different grounds. Such an approach enhances supervisory judgement and allows to conduct more targeted assessments, enabling supervisory authorities to consider the specific circumstances of each undertaking and reflecting the unique aspects of the activities conducted in their markets.

In addition, establishing rigid thresholds may not capture the specificities of individual markets or peculiar cases. In particular in the case of cross-border activities, where the size of the markets and the type of products offered therein can significantly vary from one Member State to the other, the rigid nature of these benchmarks could result in the misclassification of activities, potentially leading to unfair or inappropriate supervisory outcomes.