

REQUEST TO EIOPA FOR TECHNICAL ADVICE ON THE REVIEW OF SPECIFIC ITEMS IN THE SOLVENCY II DELEGATED REGULATION (DELEGATED REGULATION (EU) 2015/35)

With this mandate to EIOPA, the Commission seeks EIOPA's technical advice on the following:

- a) the methodology to be used when classifying undertakings as small and non-complex, and the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings not classified as small and non-complex undertakings;
- b) the standard formula capital requirements for exposures to central counterparties (CCP) when they become direct clearing members; and
- c) the standard formula capital requirements for investments in crypto-assets.

This technical advice shall be delivered to the Commission by 31 January 2025 in relation to items a) and b), and by 30 June 2025 in relation to item c).

1. Context

On 17 December 2020, EIOPA submitted to the Commission its Opinion on the 2020 review of the Solvency II framework, encompassing both Directive 2009/138/EC ('Solvency II Directive') and Delegated Regulation (EU) 2015/35 ('Solvency II Delegated Regulation').

A provisional interinstitutional agreement was reached on the amendments to the Solvency II Directive in December 2023. This provisional agreement includes, amongst others, new Commission mandates to adopt Delegated Acts for which EIOPA did not provide technical advice. Such new mandates relate to the new proportionality framework and to the treatment of crypto-assets¹.

In addition, in December 2022, the Commission stated, as part of its Communication on 'A path towards a stronger EU clearing system'², that it will aim '*to address the disadvantageous prudential treatment insurers face if they become a direct clearing member, in the context of the forthcoming revision of the relevant Delegated Regulation*'.

2. Content on which input is requested

EIOPA is asked to provide technical advice:

- by 31 January 2025, on the implementation of the new proportionality framework (sub-section A) and on the standard formula capital requirements for direct exposures to central counterparties (sub-section B); and
- by 30 June 2025, on the standard formula capital requirements for investments in crypto-assets (sub-section C).

¹ Under the provisional agreement, two recitals point to a possible review of the Solvency II Delegated Regulation in relation to the treatment of securitisation positions and the removal of data from the United Kingdom from the calibration of standard formula capital requirements. Those topics, which are not part of this call for Advice, may be dealt with separately at a later stage.

² See COM/2022/696 – <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0696>

A. Implementation of the new proportionality framework

The provisional agreement on the amendments to the Solvency II Directive (Articles 29(5) and 213a(6)) provides that the Commission should adopt Delegated Acts specifying:

- the methodology to be used when classifying undertakings (resp. groups) as small and non-complex undertakings (resp. small and non-complex groups), taking into account the expected automatic nature of the classification; and
- the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings (resp. groups) not classified as small and non-complex undertakings (resp. small and non-complex groups).

In relation to the first item, we request EIOPA to assess whether the methodology for the classification of undertakings and groups as small and non-complex, as specified in the provisional agreement on the amendments to the Solvency II Directive, is clear and comprehensive. Where this is not the case, EIOPA is asked to indicate what should be introduced in the Solvency II Delegated Regulation. Such potential additional specifications should be as limited as possible and avoid undue administrative burden for undertakings and groups, as well as supervisory authorities.

In relation to the second item, we request EIOPA to provide for the proportionality measures identified in Article 29d (including their *mutatis mutandis* application at group level in accordance with Article 213a(5)) of the Solvency II Directive, the conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex. It is expected that for each proportionality measure, when possible, EIOPA provides a closed list of conditions and aims at avoiding undue administrative burden – including new reporting requirements – for undertakings and groups. Such list should serve as basis for the supervisory assessment referred to in Article 29d (including at group level as implied by Article 213a(5)) of the Solvency II Directive.

Where appropriate, EIOPA's technical recommendations may take into account the legal form of certain undertakings and groups.

B. Standard formula capital requirements for direct exposures to qualifying central counterparties (CCPs)

Under the Solvency II framework, the CCP-related exposures of insurance and reinsurance companies wishing to become direct CCP members can be subject to higher capital requirements than those companies which act as indirect clearing participants. These higher capital requirements can be a disincentive to use these new access models and are not consistent with the idea that CCPs reduce counterparty risk.

We request EIOPA to provide technical advice on concrete and specific standard formula capital requirements for exposures to qualifying CCPs when insurance and reinsurance undertakings become direct clearing members, with the aim of ensuring greater consistency in the treatment applicable to such exposures and properly recognising the risk-reducing role of CCPs in terms of counterparty credit risk. When developing its advice, EIOPA should take the prudential treatment under Regulation (EU) No 575/2013 into account. We also encourage EIOPA to liaise with ESMA and EBA on the topic, as necessary and appropriate.

C. Standard formula capital requirements for investments in crypto-assets

The provisional agreement on the amendments to the Solvency II Directive provides that the Commission may adopt Delegated Acts to better reflect the risks posed by crypto-assets.

We request EIOPA to assess the appropriateness of the prudential treatment of investments in such assets under current rules and to provide, where appropriate, advice on possible revised calibrations considering also the differences in risk features of different categories of crypto-assets.³

3. Principles that EIOPA should take into account

In providing its technical advice, EIOPA is invited to take the following principles into account:

- It should respect the requirements of the EIOPA Regulation and is invited to widely consult market participants in an open and transparent manner. EIOPA should provide advice which takes into account the different opinions expressed by the market participants during the consultation and should provide a feedback statement on the consultation justifying its choice vis-à-vis the main arguments raised during the consultation.
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objectives of the Solvency II Directive and provide for the proportionate application of the Solvency II Directive, in particular in relation to small and non-complex insurance undertakings, and avoid creating administrative – including in terms of reporting – or procedural burdens for (re)insurers.
- EIOPA will determine its own working methods depending on the content of the issues being dealt with.
- While preparing its advice, EIOPA should seek coherence within the regulatory framework of the Union, and should ensure consistency with Directive 2009/138/EC.
- EIOPA should justify its advice by identifying, where relevant, a range of technical options and by undertaking evidence-based assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to the Commission. Where administrative burdens and compliance costs on the side of the industry could be significant, EIOPA should where possible quantify these costs.
- EIOPA should provide sufficient factual data backing the analyses gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by EIOPA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the options presented by EIOPA.
- EIOPA should provide comprehensive technical analysis on the subject matters described above covered by the delegated powers of the Commission included in the provisional agreement on the amendments to the Solvency II Directive.
- The technical advice given by EIOPA should not take the form of a legal text.

³ Regulation (EU) 2023/1114 on markets in crypto assets distinguishes between asset-referenced tokens, e-money tokens and ordinary crypto-assets.

- EIOPA should address to the Commission any question it might have concerning the clarification of the content of the provisional agreement, which it should consider of relevance to the preparation of its technical advice.

4. Procedure

The Commission requests the technical advice of EIOPA in preparation of the review of the Solvency II Delegated Regulation which is expected to be carried out under the next Commission mandate.

The Commission reserves the right to revise and/or supplement this mandate. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way.

In accordance with the established practice, the Commission may continue to consult experts appointed by the Member States to prepare amendments to the Solvency II Delegated Regulation.

This request will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to EIOPA.