GUIDELINES

on the treatment of related undertakings, including participations

EIOPA-BoS-25/522
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European Insurance and
Occupational Pensions Authority

GUIDELINES ON THE TREATMENT OF RELATED UNDERTAKINGS, INCLUDING PARTICIPATIONS

INTRODUCTION

1. In accordance with Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)[1], EIOPA issues these Guidelines on the treatment of related undertakings, including participations.
2. The Guidelines relate to Articles 92(1a) and (2) and 111(1)(m) of Directive 2009/138/EC (Solvency II)[2] as well as to Articles 68, 168 and 171 of Commission Delegated Regulation (EU) 2015/35 (Commission Delegated Regulation 2015/35)[3].
3. These Guidelines are addressed to supervisory authorities under Solvency II.
4. The purpose of these Guidelines is to provide guidance on the identification and the treatment of related undertakings, including participations, to ensure a consistent approach across Member States.
5. For the purposes of these Guidelines, the participating undertaking is the undertaking which is calculating its solvency position. The term related undertaking refers to any related undertaking of that participating undertaking, as specified in Article 212(1)(b) of Solvency II.
6. The Guidelines follow a holistic approach. They describe first the identification of different types of related undertakings, including participations. They then cover the treatment of the different types of related undertakings, specifically participations in financial and credit institutions and strategic participations.
7. Where these Guidelines refer to the valuation or value of a related undertaking, reference should be made to Article 13 of Commission Delegated Regulation 2015/35.
8. The Guidelines concern the treatment of related undertakings including participations on a solo basis. In most cases the identification of a related undertaking will be the same both from the perspective of the participating undertaking as an individual entity and for group purposes. However, in certain situations there will be differences: the business of the related undertaking may be such that the participating undertaking and related undertaking are not subject to group supervision according to Article 213 of Solvency II. In addition, there may be the case where a number of entities within a group hold voting rights or capital in an undertaking that when combined together, amount to 20% or more of the undertaking's voting rights or capital. Consequently, such an undertaking would be identified as a related undertaking at group level. However, if the holding of each individual entity within the group is lower than 20%, the undertaking would not be identified as a related undertaking by any of those entities within the group at individual entity level.

[1] 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] 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).

[3] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC (OJ L 12, 17.01.2015, p. 1-797).

9. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
10. These Guidelines apply from 30 January 2027 and repeal and replace the Guidelines on treatment of related undertakings, including participations (EIOPA-BoS-14-170).

GUIDELINE 1 - IDENTIFICATION

11. Participating undertakings should identify their related undertakings and participations based on an assessment from their perspective as an individual entity.
12. When identifying a related undertaking based on share ownership, directly or by way of control, participating undertakings should determine:

    (a) their holding of voting rights as a percentage of an undertaking's voting rights;
    (b) their holding of all classes of share capital issued by an undertaking as a percentage of that undertaking's issued share capital, regardless of voting rights.

    Where (a) or (b) are 20% or higher, participating undertakings should treat their investment in the undertaking as a participation.
    Where the participation is in an insurance or reinsurance undertaking subject to Solvency II, the assessments under (a) will generally relate to paid-in ordinary share capital referred to in Article 69(a)(i) of Commission Delegated Regulation 2015/35, and under (b) to paid-in ordinary share capital and paid-in preference shares referred to in Article 69(a)(v) of Commission Delegated Regulation 2015/35.
13. Participating undertakings should ensure that they are able to identify the effect of changes in the share capital of related undertakings on the assessment described in the preceding paragraph, each time the participating undertaking calculates its SCR in accordance with Article 102 of Solvency II.
14. When identifying a related undertaking pursuant to Article 212(2) of Solvency II on the basis that the participating undertaking can exert a dominant or significant influence over another undertaking, supervisory authorities should consider the factors set out in Article 212(4) of Solvency II and further specified in the regulatory technical standards referred to in Article 212(5) of Solvency II.

GUIDELINE 2 - IDENTIFICATION OF PARTICIPATIONS IN FINANCIAL AND CREDIT INSTITUTIONS

15. Participating undertakings should treat a related undertaking as a financial or credit institution, where it is an institution referred to in Article 92(2) of Solvency II. These descriptions cover any institution which performs the functions or carries out the business described pursuant to that Article, notwithstanding that the institution may not be subject to the legal acts referred to in that Article.
16. Participating undertakings should ensure that any participation in a financial or credit institution where voting rights or capital are held indirectly is treated in the same way as a participation in a financial or credit institution where voting rights or capital are held directly.

GUIDELINE 3 - IDENTIFICATION OF A STRATEGIC PARTICIPATION

17. Participating undertakings should identify strategic participations in accordance with Article 171 of Commission Delegated Regulation 2015/35 as follows:

    (c) participating undertakings using the standard formula to calculate their SCR should identify strategic participations regardless of whether their participation is in an insurance or reinsurance undertaking, in a financial or credit institution or in any other related undertaking;
    (d) participating undertakings using an internal model to calculate their SCR need to identify strategic participations in financial and credit institutions only for the purpose of assessing whether Article 68(3) of Commission Delegated Regulation 2015/35 applies.

18. For the purposes of demonstrating their compliance with the requirements of Article 171 of Commission Delegated Regulation 2015/35, participating undertakings should not divide a participation into different parts, treating some parts as strategic and others not. Where a particular participation has been identified as strategic:

    (a) in the case of a participation in a financial or credit institution, all investments in its own funds are strategic;
    (b) in the case of any other related undertakings, all equity investments in the participation are strategic.

19. In accordance with Article 171(a) of Commission Delegated Regulation 2015/35, participating undertakings should be able to demonstrate, both with a qualitative and quantitative assessment, that the value of the equity investment is likely to be materially less volatile. To the purpose of the assessment, participating undertakings should ensure that:

    (a) consistent and appropriate valuations are applied over time both to the participation and to the other equities selected as a basis of comparison;
    (b) they consider the impact of their influence on the participation's value.

20. In demonstrating that the nature of the investment is strategic, in accordance with Article 171(b)(i) to (iii) of Commission Delegated Regulation 2015/35, participating undertakings should:

    (a) indicate the period for which the strategy of holding the participation is intended to apply;
    (b) consider the impact of market conditions on the main policies;
    (c) identify any significant factors affecting, or constraints on, the participating undertaking's ability to maintain its strategy and how these could or would be mitigated.

21. In demonstrating the existence of a durable link, in accordance with Article 171(b)(iv) of Commission Delegated Regulation 2015/35, participating undertakings should consider the following criteria:

    (a) whether a stable relationship between the two undertakings exists over time;
    (b) whether that stable relationship results in a close economic bond, the sharing of risks and benefits between the undertakings or exposure to risks from one to the other;

(c) the form of the relationship between the two undertakings, which may include ownership, joint products or distribution lines, cross-selling, the creation of joint ventures or other long term operational or financial links.

22. In accordance with Article 171(b)(v) of Commission Delegated Regulation 2015/35, a participating undertaking that is part of a group should regard the main policies guiding or limiting the actions of the group as those defined by the ultimate parent undertaking or, if different, by the undertaking which sets the main policies for the group as a whole.
23. Participating undertakings should document their consideration of the matters set out in Article 171 of Commission Delegated Regulation 2015/35 and paragraphs 18 to 22, including any other relevant factors, together with relevant supporting material.

GUIDELINE 4 - SCOPE OF CALCULATIONS FOR ARTICLE 68 OF COMMISSION DELEGATED REGULATION 2015/35

24. When determining the value of participations in financial and credit institutions for the purposes of Article 68 of Commission Delegated Regulation 2015/35[4], participating undertakings should include holdings of equity and any other own fund items, whether held directly or indirectly.
25. Participating undertakings should apply the following approaches:
    (a) for direct holdings, the value of participations in financial and credit institutions, as determined by the participating undertaking in accordance with Solvency II valuation principles, should be used for the purposes of Article 68 of Commission Delegated Regulation 2015/35;
    (b) participations in financial and credit institutions, held indirectly via another participation in a financial or credit institution should not be considered under Article 68 of Commission Delegated Regulation 2015/35, as their value should already have been included in the value of the directly held participation in a financial or credit institution in accordance with point (a);
    (c) a deduction for a participation in a financial or credit institution held indirectly should only arise where related undertakings between the participating undertaking and the financial and credit participation are other than financial and credit participations;
    (d) for other indirect holdings in a financial or credit institution the value of the participation as determined by the related undertaking in accordance with Article 13 of Commission Delegated Regulation 2015/35 should be used for the purposes of Article 68 of Commission Delegated Regulation 2015/35;
    (e) the values used for Article 68 of Commission Delegated Regulation 2015/35 purposes should represent the participating undertaking's proportional ownership, held directly and indirectly, of the participation in the financial or credit institution.
26. When calculating 10% of the items included in Article 69(a)(i), (ii), (iv) and (vi) of Commission Delegated Regulation 2015/35 for the purposes of Article 68 of Commission Delegated Regulation 2015/35, participating undertakings should use the amount of basic own-fund items before any

[4] This includes all participations set out in Article 92(2) of Solvency II.

deduction pursuant to Article 68 of Commission Delegated Regulation 2015/35 in respect of participations in financial and credit institutions.

GUIDELINE 5 - DEDUCTIONS IN RESPECT OF PARTICIPATIONS IN FINANCIAL AND CREDIT INSTITUTIONS

27. Where deductions in accordance with Article 68(1) and (2) of Commission Delegated Regulation 2015/35 cannot be made from the corresponding tier as set out in Article 68(5) of Commission Delegated Regulation 2015/35, undertakings should adopt the following approaches:

    (a) where the items to be deducted are not classified into the tiers set out in Article 68(5) of Commission Delegated Regulation 2015/35, all deductions should be made from the amount of items included in Article 69(a)(i), (ii), (iv) and (vi) of Commission Delegated Regulation 2015/35;

    (b) where the amount of the deduction exceeds the amount from which it is required to be deducted in accordance with Article 68(5) of Commission Delegated Regulation 2015/35, the excess should be deducted as follows:

        (i) holdings of Additional Tier 1 instruments in excess of items included in Article 69(a)(iii), (v) and (b) of Commission Delegated Regulation 2015/35 are deducted from items included in Article 69(a)(i), (ii), (iv) and (vi) of Commission Delegated Regulation 2015/35;

        (ii) holdings of Tier 2 instruments in excess of basic own funds included in Article 72 of Commission Delegated Regulation 2015/35 are deducted first from items included in Article 69(a)(iii), (v) and (b) of Commission Delegated Regulation 2015/35, and then from items included in Article 69(a)(i), (ii), (iv) and (vi) of Commission Delegated Regulation 2015/35 until the deduction is made in full.

    (c) notwithstanding points (a) and (b), supervisory authorities may permit a participating undertaking not to deduct the value of its participation in a credit or financial institution, provided that the conditions set out in Article 92(1a) of Solvency II are met.

GUIDELINE 6 - ADJUSTMENTS DUE TO DEDUCTIONS OF INDIRECTLY-HELD PARTICIPATIONS IN FINANCIAL AND CREDIT INSTITUTIONS

28. Where a deduction of the value of a participation in a financial or credit institution held indirectly is required, in full or in part, in accordance with Article 68 of Commission Delegated Regulation 2015/35, participating undertakings should, only for the purposes of calculating the SCR:

    (a) reduce, by the amount of that deduction, the value of the directly-held related undertaking, which is an asset of the participating undertaking, through which the participation in the financial or credit institution is held indirectly;

    (b) for the adjustment described in point (a), follow the approach set out in Article 68(5) of Commission Delegated Regulation 2015/35 and in Guideline 5.

(c) notwithstanding points (a) and (b) above, supervisory authorities may permit a participating undertaking not to deduct the value of its participation in a credit or financial institution, provided that the conditions set out in Article 92(1a) of Solvency II are met.

COMPLIANCE AND REPORTING RULES

29. 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.
30. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
31. 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.
32. 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

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