

Response to questionnaire regarding the EIOPA consultation on the Supervisory Statement on ORSA in the context of COVID-19

Our reference:	ECO-SLV-21-093	Date:	15 March 2021
Referring to:	EIOPA consultation paper on the supervisory statement on ORSA in the context of COVID-19		
Related documents:			
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Pages:	8	Transparency Register ID	33213703459-54

Introduction

1. *The European Insurance and Occupational Pensions Authority (EIOPA) provides this Supervisory Statement on the basis of Article 29(2) of Regulation (EU) No 1094/2010 to promote common supervisory approaches and practices.*

- After reading the statement, it is unclear which aspects are new. While some of the examples of what to take into account in the ORSA are appreciated, as they provide some insight into the supervisory view, Insurance Europe does not feel that they require a separate supervisory statement. The requirements set out in this part of the statement are already in the Solvency II Regulation (and in many cases the statement simply reiterates and refers back to the Regulation) and it is therefore Insurance Europe's view that issuing a supervisory statement in the case of a specific risk or scenario such as the COVID-19 pandemic is unnecessary. This is a general comment that applies to the whole statement and not only this paragraph.

2. *This Supervisory Statement is based on Directive 2009/138/EC (Solvency II) and addressed to the competent authorities, as defined in point (i) of Article 4(2) of Regulation (EU) No 1094/2010.*

- No comment

3. *The COVID-19 pandemic has been affecting economies and societies leading to state and central banking measures being taken to combat its impact. This situation has resulted in a social and economic crisis, the effects of which are being felt throughout the world's and the EU's economy. The financial stress caused, the consequences of which are expected to extend much further in time, has underlined the need for insurance and reinsurance undertakings to assess the impact of the pandemic on their business from a forward looking perspective. The current pandemic is identified clearly as a new risk which needs to be assessed in the risk analysis of undertakings.*

- The industry fully agrees that the COVID-19 pandemic has had serious effects on economies and societies and that insurance undertakings should assess their solvency positions in light of the pandemic. However, the pandemic is

not a new risk in itself. Rather, the pandemic affects the various risks that insurance undertakings are exposed to, such as equity risk. Consequently, insurance undertakings should assess the impact on existing risks and/or identify and assess any additional risk that they have become exposed to due to the COVID-19 pandemic.

- In addition, while it is true that the COVID-19 pandemic triggered a need for insurance undertakings to assess the impact from a forward-looking perspective, it is not necessarily true that the pandemic is a new risk or cause. This view of the risk also depends on the undertaking's risk profile, business model, strategy, etc. What the COVID-19 pandemic has provided — so far — is an insight into what implications a pandemic could have on various measures and it therefore serves as a good example of how to define a scenario for an insurance undertaking's ORSA.
- Given that COVID-19 has affected insurance undertakings since at least March 2020, most should already have captured such a scenario in their regular annual ORSA. If due consideration of the pandemic is felt to be lacking in the ORSA, then supervisory authorities could always, as part of their ongoing dialogue with undertakings under their supervision, provide such feedback.

4. The Own Risk and Solvency Assessment (ORSA) was designed and considered as an important and effective tool for risk management. The performance of an ORSA under the current circumstances is to give insight into the potential impact of the COVID-19 pandemic on the undertaking's risk profile. In addition, it promotes the identification and effective management of the undertakings' risks to ensure they have sufficient capital to absorb possible losses and help steer their business through periods of adversity.

- Given that COVID-19 has affected insurance undertakings since at least March 2020 most undertakings should already have captured such a scenario already their regular annual ORSA. If due consideration of the pandemic is felt to be lacking in the ORSA, then supervisory authorities could always, as part of their ongoing dialogue with undertakings under their supervision, provide such feedback.

5. The aim of this Supervisory Statement is to promote convergence by guiding undertakings through common supervisory expectations on the ORSA in the current situation triggered by the COVID-19 pandemic, taking into account that the impact on each individual undertaking can differ depending on its specific risk profile.

- Insurance Europe is of the opinion that this supervisory statement provides little or no additional value in relation to what insurance undertakings already considered in their ORSA before COVID-19. Indeed, this statement may have the opposite effect insofar as "convergence" of supervisory guidance may lead to the ORSAs not taking into account an undertaking's specific risk profile, as the focus would be to comply with supervisory guidance. The effect would be a changed focus, away from other significant risks specific to the undertaking.
- Further more, the ORSA is a company's own risk and solvency assessment. The decision on the content and methods used, as well as on the level of detail in the presentation in ORSA reports is the sole responsibility of the companies. General requirements from EIOPA counteract this individual character of the ORSA and should be viewed very critically.

ORSA as a management tool

6. Undertakings should consider the ORSA as one of the fundamental tools in risk management to assess the impact of the COVID-19 pandemic and take the ORSA outcomes into account in the decision making by their administrative, management or supervisory body (AMSB).

■ No comment

7. The ORSA process and outcomes are expected to be used by the AMSB in any strategic discussion in general and in particular where developments are expected to materially impact the undertaking. The ORSA outcomes can influence strategic decisions on changes for instance to underwriting and pricing practices, to risk mitigation techniques, to investments strategy, to capital management or on improvements of operational and cyber resilience. Also, a review of the insurance contracts' terms and conditions including clarifications of coverage or exclusion clauses and further communication with policyholders might be needed.

■ No comment

Timing of the regular ORSA and/ or ad-hoc ORSA

8. EIOPA acknowledges that the regular ORSA is being submitted on an annual basis with different timings across Europe. In accordance with Article 45 of Solvency II, EIOPA expects undertakings to plan their ORSA process in a manner that allows the ORSA outcomes to be embedded in the strategic planning and / or other strategic decisions. This planning should take into account any ad-hoc strategic planning and/or other strategic decisions being taken as a result of the pandemic situation. This will allow undertakings to define the necessary changes to the business model or risk profile.

■ No comment

9. Undertakings should assess and decide if an ad-hoc ORSA is needed based on the analysis of any material changes to the risk profile. Material changes to the undertaking's risk profile can be observed, for example, due to:

- changes in the undertaking's market or credit risk exposure (including downgrade and/or default scenario);
- material changes in underwriting results in lines of business which are more affected by the pandemic;
- major amendments to business models, products offered, plans and strategies.

■ The industry recognises the need to assess whether an ad-hoc ORSA is needed based on material changes in the risk profile. Material changes are, however, generally not seen as a result of moderate changes in an undertaking's market or credit risk exposures. Therefore, the wording in the first bullet should be amended so that "material" is inserted before "changes" (ie, the wording should be "material changes in the undertaking's market or credit risk ...").

10. EIOPA believes that the current situation should trigger an ad-hoc/non-regular ORSA if the pandemic impacts materially the risk profile of the undertaking, in particular in those cases where the performance of the regular ORSA has not allowed the undertaking to assess and to take into account the impact of the COVID-19 pandemic.

■ No comment

11. *If there is any indication of a material impact, leading to a significant change in the risk profile, undertakings should perform an ad-hoc /non-regular ORSA to be submitted to the Competent Authority earlier than the regular one if needed. In the course of the evaluation of the need to perform an ad-hoc ORSA, the undertakings might engage in a supervisory dialogue with the relevant Competent Authority.*

■ No comment

12. *If the undertaking has taken the decision to develop an ad-hoc ORSA, the undertaking should assess whether the full ORSA is necessary or if the process will focus only on specific areas of the risk profile and its impact, for example on the ongoing compliance with the Solvency Capital Requirement.*

■ No comment

Scenarios used in the ORSA

13. *One component of the ORSA process is the forward-looking stress tests (including reverse stressing) and scenario analysis, taking into account the principle of proportionality. The development of the ORSA, either ad-hoc or regular, reflecting the impact of the COVID-19 pandemic, should:*

- *consider the conditions observed at a given moment and any expected stresses for example on capital markets, claims development for both non-life business (e.g. business interruption, travel, event cancellation, medical malpractice) and life-business (e.g. claims arising from higher mortality, sickness rates), and the impact on operational risks (e.g. digital resilience, business continuity);*
- *include an assessment of the soundness of the business model from a forward-looking perspective.*

■ Insurance Europe strongly opposes the prescription by EIOPA of the scenarios in the ORSA; these scenarios must be decided by the insurance undertakings. In addition, the results of an undertaking's ORSA are, in fact, an assessment of the soundness of the business model from a forward-looking perspective. Therefore, adding an assessment of the assessment appears to have limited value.

14. *As part of the assessment of the overall solvency needs (Article 45 (1)(a) of Solvency II) undertakings should consider the future impact of the pandemic, including potential litigation with regard to the coverage provided by insurance policies, the limited and comparable statistical data, the role of state support and other public backstops, the limitation of dividends distribution and other capital support in a group structure. Undertakings should use the latest available information from reliable sources in the different areas to be considered.*

■ The calculation method of the overall solvency need should not be subject to ad hoc adjustments based on current events, and the risks identified should be considered only to the extent that they are material and relevant for the overall solvency needs, taking into account the undertaking's specific risk profile, having regard to Article 45 of the Directive. Materiality/proportionality considerations have to be taken into account.

15. *Given the unprecedented nature of the current pandemic, a number of major uncertainties remain that are decisive for the future. The degree of uncertainty should be assessed for all relevant aspects, including, but not limited to, the volume of premiums, the development of claims, liquidity aspects and investment income. The identification of the sources and levels of uncertainty considered should be documented.*

■ Materiality/proportionality considerations have to be taken into account. The method of assessment and treatment of uncertainties should be left to the undertakings.

16. *Where the undertaking concludes, based on the analysis of its current risk exposure, that it is or could be materially exposed to risks revealed by the pandemic, this should be reflected in the decision of scenarios used and documented in the ORSA process. The undertaking should take into account the uncertainty in the duration and (macroeconomic) impact of the pandemic in its ORSA and, if relevant for its risk profile, consider multiple scenarios to capture this uncertainty in an appropriate manner. In this case the scenarios are expected to include several degrees of severity for the pandemic's impact on the undertaking's solvency and capital needs taking into account its individual situation.*

- Materiality/proportionality considerations have to be taken into account, in particular with regard to the selection/design of scenarios.

17. *The ORSA process includes an assessment of the undertaking's business exposures related to the risk coverages or guarantees of its insurance products. When performing this analysis, undertakings should include the assessment of possible policyholder actions such as lapses, cancellations, claims and potential litigation overcompensation disputes. In case the undertaking anticipates launching new products and/or stopping or substantially changing products, for example regarding their pricing or availability or application procedure, the ORSA should also contain the impact of this new or amended product portfolio on the overall solvency needs as well as on the regulatory solvency.*

- Materiality/proportionality considerations have to be taken into account.

18. *In order to ensure adequate risk management, undertakings should carry out scenario analysis covering the short and long term. They are expected to examine the effects of the COVID-19 pandemic on their solvency over a period that reflects the undertaking's risk exposure and to take into account second- order effects that may occur in the longer term. EIOPA expects an analysis over a three-year period as a minimum time horizon for the majority of the insurance undertakings.*

- The statement should not be prescriptive with regards to the time horizon of the scenario analysis and it should recognise that it is important to allow undertakings the flexibility to use different approaches to capture potential short-term and long-term impacts to the extent that they reflect the long-term risks faced and are appropriate for its risk profile. Beyond the short term, qualitative approaches may be appropriate and proportionate for the undertaking's risk profile and the range of uncertainties faced.
- Materiality/proportionality considerations have to be taken into account. For life insurance, interpreting the above wording literally would mean that the effect of the pandemic would have to be considered for the overall period of its risk exposure (50+ years).

19. *As part of the assessment of the compliance with the capital requirements and with the requirements regarding technical provisions (Article 45(1)(b) of Solvency II) undertakings should reflect on and assess the scenarios and assumptions for calculating the technical provisions in order to assess the continuous compliance with the regulatory requirements in the short and long term.*

- The phrase "in the short and long term" at the end of the sentence is unnecessary and confusing. It is sufficient to state that requirements should be complied with on a continuous basis.

20. *Capital requirements and eligible own funds should be recalculated according to each stressed scenario and to the valuation of assets and technical provisions. If, at any point in time, the solvency ratio should come under pressure or fall below the lower solvency limits set by the undertaking, it is important to formulate risk mitigating measures and/or management actions that can improve the solvency position, while taking into consideration the possible limited availability of those measures and/or management actions under a stressed situation. Undertakings are recommended to assess whether their internally set solvency limits are adequate and sufficient taking into account the applied stresses of the COVID-19 pandemic. The analysis should reflect upon:*

- *internal risk appetite;*
- *quantitative or qualitative indicators/measures;*
- *overall risk tolerance limits;*
- *metrics used within the risk management system to measure risks;*
- *stress test framework;*
- *monitoring process.*

- It is not appropriate to refer to “internally set solvency limits” in this statement, as this concept has no foundation in the regulation. The reference to the solvency ratio “coming under pressure or falling below the lower solvency limits” sets a supervisory expectation for action based on triggers that have no foundation in the regulation and the reference here should be to the solvency ratio falling below the SCR.

Questions to support the impact assessment

In preparing the Supervisory Statement on ORSA in the context of COVID-19, EIOPA took into consideration the general objectives of the Solvency II Directive, namely:

- adequate protection of policyholders and beneficiaries, being the main objective of supervision;
- financial stability; and
- proper functioning of the internal market.
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- The drafting of the Supervisory Statement is also guided by EIOPA's statutory objectives, as reflected in the Regulation of the Authority, notably:
 - improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
 - ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
 - preventing regulatory arbitrage and promoting equal conditions of competition,
 - ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised, and
 - enhancing customer protection.

To analyse the impact of the proposed supervisory convergence measures, the final impact assessment to be developed ex-post this public consultation foresees that a baseline scenario is applied as the basis for comparing supervisory convergence options. This will help to identify the incremental impact of each action considered in this supervisory statement. The aim of the baseline scenario is to explain how the current situation would evolve without additional intervention promoting a level playing field in supervisory expectations regarding ORSA, in particular addressing the current emerging situation caused by Covid-19 pandemic.

EIOPA is aiming a proper balance between flexibility and acknowledgment of the ORSA as an undertaking own exercise and clarification of supervisory expectations, in particular in specific circumstances.

The answers of the five last questions in the survey will be taken into account when assessing the impact of the suggested convergence practices.

3.1 *If there is any indication of a material impact, leading to a significant change in the risk profile, undertakings should perform an ad-hoc /non-regular ORSA to be submitted to the Competent Authority earlier than the regular one if needed. In the course of the evaluation of the need to perform an ad-hoc ORSA, the undertakings might engage in a supervisory dialogue with the relevant Competent Authority. EIOPA believes that the current situation should trigger an ad-hoc/non-regular ORSA if the pandemic impacts materially the risk profile of the undertaking, in particular in those cases where the performance of the regular ORSA has not allowed the undertaking to assess and to take into account the impact of the COVID-19 pandemic. Is the suggested convergence approach with regards to ORSA in the context of Covid-19 expected to help undertakings to better incorporate the expected impact of the current situation also in forward looking perspective?*

- Insurance Europe does not think the suggested approach will help undertakings. Indeed, the suggested approach may have the opposite effect insofar as "convergence" of supervisory guidance may lead to the ORSAs not taking into account an undertaking's specific risk profile, as the focus would be to comply with supervisory guidance. The effect would be a changed focus, away from other significant risks specific to the undertaking.

3.2 If the undertaking has taken the decision to develop an ad-hoc ORSA, the undertaking should assess whether the full ORSA is necessary or if the process will focus only on specific areas of the risk profile and its impact, for example on the ongoing compliance with the Solvency Capital Requirement.

Is the suggested convergence approach expected to limit the burden of preparing a full ad-hoc ORSA especially with regards to the ongoing compliance with the SCR when considered as not needed and to support the level playing field a national and European level?

- Insurance Europe does not think the suggested approach will reduce the burden.

3.3 *In order to ensure adequate risk management, undertakings should carry out scenario analysis covering the short and long term. They are expected to examine the effects of the COVID-19 pandemic on their solvency over a period that reflects the undertaking's risk exposure and to take into account second- order effects that may occur in the longer term. EIOPA expects an analysis over a three-year period as a minimum time horizon for the majority of the insurance undertakings. The undertaking should take into account the uncertainty in the duration and (macroeconomic) impact of the pandemic in its ORSA and, if relevant for its risk profile, consider multiple scenarios to capture this uncertainty in an appropriate manner. In this case the scenarios are expected to include several degrees of severity for the pandemic's impact on the undertaking's solvency and capital needs taking into account its individual situation.*

Is the suggested approach in relation to the analysis over a minimum of a three-year period expected to bring more convergence in terms of undertaking's effective continuous work on examining the effects of COVID-19, the interaction with the NCAs and level playing field at national and European level?

- Insurance Europe thinks that there are very limited benefits to the suggested approach. Indeed, the suggested approach may have the opposite effect insofar as "convergence" of supervisory guidance may lead to the ORSAs not taking into account an undertaking's specific risk profile, as the focus would be to comply with supervisory guidance. The effect would be a changed focus, away from other significant risks specific to the undertaking.

3.4 *Undertakings are recommended to assess whether their internally set solvency limits are adequate and sufficient taking into account the applied stresses of the COVID-19 pandemic. The analysis should reflect upon: internal risk appetite; quantitative or qualitative indicators/measures; overall risk tolerance limits; metrics used within the risk management system to measure risks; stress test framework; monitoring process.*

Is the suggested convergence approach in the assessment of the internally set solvency limits in the context of Covid-19 expected to help undertakings to better incorporate the expected impact of the pandemic in the ORSA?

- As insurance undertakings already take the pandemic into consideration in their ORSA, the industry does not see the benefit of the suggested convergence approach.
- The suggested approach will create significant uncertainty because the concept of "internally set solvency limits" does not exist in Solvency II and should not be part of this supervisory statement. Solvency II achieves convergence through compliance with the SCR and enforcing this message and approach is the only way to ensure the convergence of approaches.

3.5 Is there any other area regarding the supervisory practices and expectations towards undertakings ORSA in the context of the current situation triggered by the COVID-19 pandemic where you believe further supervisory convergence is needed?

- No, on the contrary, in terms of the COVID-19 pandemic and ORSA, less supervisory convergence is needed. As mentioned above, there is a risk that insurance undertakings deem this to be a supervisory measure.

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