

EIOPA Consultation on the Supervisory Statement on ORSA in the context of COVID-19

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.

We welcome EIOPA's efforts on promoting a common supervisory approach. In our view the convergence of supervisory practices should be focused on supervisory actions and avoid requiring equal outcomes to all undertakings.

As a preliminary comment we want to specify that, with reference to ORSA, the promotion of common supervisory approaches should be centered around the supervision of the internal processes of the (re)insurance undertakings required for delivering a good quality ORSA. Supervisors should control the risk management framework and its ability to identify and monitor risks, avoiding to steer undertakings own governance or forcing the risk appetite and the management of the insurer's risks.

Yet, common supervisory approaches should not be confounded with a goal of application identical methodologies and results. Differences in markets, products, insurers and finally business models yield to different risk profiles that are indeed best captured and reflected under entity proportionate approaches and risk management. The specificities of each (re)insurance undertaking are uniquely addressed under the ORSA which has been designed for the purpose of being the undertaking's own risk management tool and this is very much welcomed.

The expectations under the ORSA are very comprehensive; AMICE does not see a need to extend them, but rather to make sure that the ORSA produced by each (re)insurance undertaking is meeting the expectations set in article 45 of Directive 2009/138/EC and usefully complement the Pillar 1 outcome in a proportionate manner.

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.

As EIOPA states, the Supervisory Statement is addressed to national supervisory authorities (NSAs). Therefore, we suggest to change the wording of the Supervisory Statement in order to avoid specific requirements for undertakings and, instead, highlight EIOPA's expectations regarding NSAs' actions. All the Supervisory statement should be reviewed within this perspective.

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.

Solvency II has proved its efficiency, relevance and adequacy through the COVID 19 crisis, with insurers generally maintaining a strong solvency position. Insurance industry is already monitoring the consequences of COVID-19 financial stress and we want to underline that the standard formula already requires insurers to monitor and evaluate pandemics as a health catastrophe sub-module. Notwithstanding, we believe that the current COVID-19 crisis should not be identified as a single or "new" risk. The current pandemic is the manifestation of an existing risk which firms will already have identified within their risk frameworks where this risk is relevant for the firm's risk profile.

In our view the global aspect of the pandemic would have to be monitored through the EIOPA's Stress Tests. ORSA process provides a risk management framework dedicated to identify all the risks that the (re)insurance undertaking is or will be facing. Art. 45.5 of Solvency II Directive states that "*Insurance and reinsurance undertakings shall perform the assessment... regularly and without any delay following any significant change in their risk profile.*" In this perspective, our view is that the current ORSA framework already requires to monitor the effects of pandemics, which should be identified within the Risk Appetite Framework of each undertaking when their effects are relevant for the firm's risk profile.

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.

Please see comment on paragraph 3.

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.

The object of the ORSA is the own risk and solvency assessment that companies are requested to provide based on their specific risk profile. Economic and health emergency due to COVID-19 is still unfolded, therefore undertakings, whenever relevant, are already including in the ORSA stress tests and scenario analysis valuation of possible impacts of COVID related scenarios. In case COVID related stress scenarios would not be adequate to the expectations of NSA any follow up could be part of the ORSA supervisory review. In our opinion no particular convergence in guiding undertakings in their ORSA practices is required, as insurers already have all the processes, tools and key risk indicators to assess the impacts of the Covid-19 pandemic.

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).

The ORSA is a fundamental tool in risk management within the wider strategic decision-making process of the undertaking, including also, but not only, the strategic and commercial planning. Consequently, it is one of the available tools to assess the impact of the COVID-19 pandemic.

The modular approach of the Solvency II standard formula as well as the required identification of all the risks drivers under a business model profile are instrumental features that allow to capture whatever type of combination of shocks that might occur on the asset and the liability side of the insurer's economic balance sheet at a point in time as well as on a prospective basis.

The strength of such an approach is that it does not require to build an endless set of hypothetical scenarios in Pillar 1 that would act as double counting with the 99.5 VAR calibration of all identified risk drivers. Indeed, the unique combination of risks that COVID-19 has come up with has been encapsulated in the solvency ratios produced since the crisis started.

Under Pillar 2, and starting from reference dates already encapsulating COVID-19 impacts (on both sides of the balance sheet), central and adverse pathways are extrapolated with the adequate proportionate and entity specific determination.

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.

Please see the comments on paragraph 6. We believe that the review of contracts' terms and conditions is relevant only to the extent that ORSA identifies the risks associated with contract coverage. This applies in respect of both COVID-19 and non-COVID-19 impacts.

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.

Based on the current regulation, an update of the ORSA report is requested every time an event that could materially impact the undertaking's risk profile occurs. Therefore, any

particular outcome of the pandemic situation different from scenarios already included in the ORSA report that could materially impact undertaking's risk profile would require an ORSA update. Ad-hoc ORSA report updates are therefore already requested by the in-force regulation.

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.**

We believe that introducing an ad-hoc ORSA could generate confusion among the objectives of regular ORSA process. As stated by the Solvency II Directive, the ORSA Report should reflect all the material risks that affects the undertakings and their overall solvency needs, taking into account the undertaking's specific risk profile, approved risk tolerance limits and business strategy. We do not quite understand which are the main reasons for an ad-hoc ORSA; the strategic planning process should already take into account the economic and financial context, with a forward-looking approach, included a scenario characterized by Covid-19 provided the firm is affected. Furthermore, as specified in our response to question 8, ad-hoc ORSA report updates are already requested by in force regulation.

The supervision of the risk management practices of the insurance industry in the COVID-19 context should be part of the regular ORSA process and the continuous dialogue between national competent authorities (NSAs) and undertakings. Promoting common supervisory approaches on different types of ORSA reports would be a difficult task that would prevent reflecting the entity specific management of each firm.

To sum-up, we believe that an ad-hoc ORSA Report weakens the overall ORSA process and diverts NSAs from the main objective of achieving consistency in the supervisory practices on the ORSA process among EU Member States.

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.

Please see comments on paragraphs 8 and 9. Moreover, the regular ORSA should evaluate, through Covid-19 stress scenarios, the impact on the solvency position of the worsening financial and economic conditions stemming from the COVID-19 spread.

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.

Please see comments on paragraphs 6, 8, 9 and 10. We believe that a material impact on the risk profile should be included in the regular ORSA, and not sent earlier in an ad-hoc document. All the impacts on undertakings 'risk profile should be reflected in the Risk Appetite Framework

and in a forward-looking scenario analysis considering all the other risks. In the case of material change in the risk profile (due to COVID-19 if the case), according to current regulation, the undertaking is compelled to promptly elaborate and submit to NSA an update of the ORSA.

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.

Please see comments on paragraphs 6, 8, 9, 10 and 11. We recall comments to paragraph 9 to stress that regular ORSA should not be fragmented or weakened. We believe that ORSA process should be simplified in order to avoid overburdening the insurance undertakings; that being said, the integrity of the process should be preserved.

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.

We believe that risks should be considered only to the extent that they are relevant for the overall solvency needs, taking into account the undertaking specific risk profile, pursuant to Article 45 of the Directive. Similarly, the assessment of the soundness of the business model should only be relevant in this context where COVID-19 jeopardizes the business model impacting the insurer's assessment of overall solvency needs. For the reason given above, this kind of analysis should not be relegated to an ad-hoc document.

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.

Again, 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 specific risk profile, having regard to Article 45 of the directive. We believe that these requirements could be considered within stress test scenario design.

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.

The aspects identified should be considered only to the extent that they are material.

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.

This statement is redundant and repeats requirements already existing in the regulation for the ORSA process. In any case, proportionality should be taken into account.

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 over compensation 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.

This statement is redundant and repeats requirements already existing in the regulation for the ORSA process.

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 the time horizon of the scenario analysis and recognize that it is important to leave undertakings the flexibility to employ different approaches to capturing 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. In any case and given the uncertainty about the impact and the duration of the pandemic in relation to market, economic and insurance risk factors, we deem worthless or little reliable to evaluate the long-term impacts of COVID-19.

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 EIOPA guidelines on ORSA require the actuarial function of the undertaking to provide input as to whether the undertaking would comply continuously with the requirements regarding the calculation of technical provisions and to identify potential risks arising from the uncertainties connected to this calculation.

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.

We do not see the need to include this as it already exists in the regulation for the ORSA process.

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.

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.

We do not see the need to extend the expectations on the ORSA process but, with reference to ORSA, national supervisory authorities should ensure that the Report produced by each insurer is effectively meeting the expectations set out in Article 45 of Solvency II.

The promotion of common supervisory approaches should be focused on the supervision of the internal processes of the (re)insurance undertaking required for delivering a ORSA of good quality. Supervisors should control the risk management framework and its ability to identify risks and monitor them but should refrain from acting as if they were part of the (re)insurance undertaking's own governance forcing risk appetite and views of the risks.

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?

Please see comments on paragraph 11 and 3.2.

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?

As mentioned in the paragraph 11, in the case of a material change in the risk profile (due to COVID-19 if the case), according to current Regulation, the undertaking is compelled to promptly elaborate and submit to the NSA an update of the ORSA. So, we do not see the need to elaborate and define an ad-hoc ORSA.

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?

This Supervisory statement should not be prescriptive with regards the time horizon of the scenario analysis and recognize that it is important to leave undertakings the flexibility to employ different approaches to capturing 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.

Please also see comment on paragraph 18.

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?

In risk management practices, undertakings should define their own risk appetite, tolerance and capacity limits already considering relevant stress scenarios including the Covid-19 related scenarios. Therefore, there is no particular need for a convergent approach in the assessment of the internally set solvency limits is requested.

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?

We do not consider that other areas require supervisory convergence.