

**FEEDBACK STATEMENT
FROM COMMENTS RECEIVED
ON THE OPINION ON THE USE
OF RISK MITIGATION
TECHNIQUES BY INSURANCE
UNDERTAKINGS**

EIOPA-BoS-21/294
10 June 2021

Introduction

1. EIOPA would like to thank all the participants of the public consultation for their comments on the draft Opinion on the use of risk mitigation techniques by insurance undertakings.
2. The input received provided important guidance for EIOPA to finalise the Opinion. All of the comments submitted were given careful consideration by EIOPA. The individual comments received and EIOPA's response to them are published as a separate document.
3. In particular, the input received led EIOPA to reconsider the legal form of this document, which was publicly consulted as a Supervisory Statement and is finally published as an Opinion.

Aim and addressee of the opinion

4. Since the inception of Solvency II some new reinsurance structures started to appear and, in other cases, structures already existing that were not so common in the European market started to gain relevance.
5. Therefore, to ensure a convergent application of the existing regulation and a convergent supervision of these emerging structures that may require additional supervisory attention, EIOPA considers that additional guidance and clarifications are necessary.
6. This Opinion pursues this objective from two angles. From one side, EIOPA intends to clarify the practical application and implementation of the existing requirements within the Solvency II framework. Further, EIOPA has advised the European Commission to address this clarification in the revision of the Delegated Regulation¹.
7. To achieve this first part of the objective, the Opinion clarified the relevant elements to be considered while assessing whether a risk mitigation technique provides an efficient transfer of risk. In particular, the Opinion links this assessment with other existing provisions in the Solvency II framework, mainly the assessment whether the risk profile of the undertaking significantly deviates from the assumptions underlying the calculation of the SCR.
8. From the other side, with this Opinion EIOPA also provides clear guidance to all National Competent Authorities on the assessment of reinsurance structures. This should help National Competent Authorities to make more efficient use of their limited resources and to ensure a convergent assessment of reinsurance structures across Europe.
9. The Opinion highlights the key elements to be considered when assessing risk mitigation techniques and mentions some examples of reinsurance structures that are more complex or present an intricate relation with the Standard Formula and may deserve in some cases additional supervisory attention, highlighting the relevance of a case-by-case analysis.
10. Finally, the Opinion sets out some recommendations on good practices already in place in several Member States, as the ongoing communication between National Competent Authorities and undertakings regarding reinsurance structures that are more complex or present an intricate relation with the Standard Formula, or the coordination among National Competent Authorities when assessing reinsurance structures that are relevant across multiple jurisdictions.
11. Consequently, this Opinion is addressed to the competent authorities (CAs), as defined in point (i) of Article 4(2) of Regulation (EU) No 1094/2010.

¹ Section 5.7 of the [EIOPA Opinion on the 2020 review of Solvency II](#), paragraph 3.2.

Main comments received and how EIOPA addressed

The list included in the Annex could give a negative image of the structures included and prevent that other relevant structures receive enough attention

12. EIOPA agrees that including a list of examples in the Annex could lead to some unintended and undesirable side effects and therefore agrees to remove the examples from Annex of the Opinion. However, EIOPA wants to highlight that the examples never were intended as a blacklist, but indeed just examples of reinsurance structures that, in some cases, may require additional attention from supervisors due to its complex interaction with the Standard Formula.
13. For this reason, a general description of some of the examples that may deserve particular attention from supervisors was integrated within the body of Opinion where relevant, including a clarification that the structure used as example will not always lead to an unbalance between capital relief and risk mitigation.

Creation of new requirements through the Opinion

14. EIOPA considers that all the supervisory recommendations within the Opinion are an unavoidable consequence from existing Solvency II principles and requirements. Where there is a significant deviation of the SCR calculation the Solvency II framework requires this situation to be addressed. Since reinsurance structures may have a significant impact on the risk profile of the undertaking, this Opinion is addressing, among others, the particular case that deviation is linked to a reinsurance structure. As required by Solvency II this situation should be addressed, for example with a capital add-on or, as clarified in the Opinion, considering that the reinsurance structure does not provide an efficient transfer of risk.
15. However, for the sake of legal clarity, during the 2020 review EIOPA considered that explicitly mentioning in the Delegated Regulation that the relief in the SCR should be commensurate to the real risk mitigation would ease the assessment of risk mitigation techniques both for undertakings and supervisors. Therefore, EIOPA considers that the Opinion on the use of risk mitigation techniques by insurance and reinsurance undertakings does not add any new requirement.

Standard Formula is a model and, therefore, a simplification of the reality

16. The Standard Formula is a model and, therefore, a simplification of the reality, which is designed to capture the average risk profile, but not the specifics of all risk profiles, even if overall a balance is expected. However, where the risk profile of an undertaking significantly deviates from the assumptions underlying the Standard Formula, Solvency II regulation envisages different consequences depending on the situation to avoid material imbalances. This Opinion gives guidance to supervisors on potential situations where such deviations may be significant, even if case-by-case analysis is always necessary as stated in the Opinion.
17. It should be noted that the SCR scenarios are calibrated to reflect the overall capital requirements for a risk (e.g. lapse risk), but the scenarios themselves are not necessarily comprehensive in terms of the risk covered, i.e. they are a mean to an end, as the formulas in the risk sub-modules that are not scenario-based. For this reason, reinsurance structures only covering the particular scenarios of the Standard Formula (i.e. 1 in 200 event) and nothing else may lead in some particular cases to a SCR relief that is not commensurate to the real reduction of risk. This, as an element highlighted in this Opinion, needs to be assessed on case-by-case basis.

18. It should be noted that the Opinion recommends to assess whether the SCR relief is commensurate to the risk transfer, not whether both of them are equivalent. Therefore, the proposed wording already envisages the necessary flexibility that a simplified approach as the Standard Formula requires.
19. Finally, EIOPA understands the concerns raised by some stakeholders regarding potential deviations in the calibration in the Standard Formula. However, any potential deviation in the Standard Formula should be addressed from a policy perspective within the regulatory cycle, as it has been the case during the Solvency II 2020 review. In any case, EIOPA expects the effects of risk mitigation techniques to be fully considered where the Standard Formula properly captures the risk profile of the undertaking including all relevant risk mitigation techniques.

Better reflection of the key role of reinsurance in insurance business

20. EIOPA agrees that reinsurance is an efficient risk-mitigation technique that, among others, is beneficial for capital management purposes. EIOPA considers that the Opinion already reflected this consideration and recognises that a reduction of the SCR commensurate to the reduction of risk is reasonable and expected. However, following the feedback received, EIOPA has revised the text to strengthen these considerations and avoid any negative implications highlighted by some stakeholders.

Insufficient recognition of non-proportional reinsurance in the Standard Formula

21. It is commonly agreed that the risk mitigating impact of non-proportional reinsurance in the Solvency II Standard Formula is limited. The volume measure from premium and reserve risk is calculated on a 'net of reinsurance basis' and for some segments, the adjustment factor for premium risk is set to 80% (so 20% adjustment for non-proportional reinsurance). On top of that, in the Cat-risk calculation, non-proportional reinsurance is fully recognized. However, despite these provisions, there is room for improvement.
22. During the Solvency II 2020 review this issue was extensively discussed and EIOPA has developed a proposal to give specific recognition to adverse development covers (ADC). This proposal was included in the Solvency II 2020 Review.

Inclusion of materiality considerations

23. EIOPA considers that, as any other part of the Solvency II framework, the assessment of reinsurance structures is subject to the proportionality principle. However, EIOPA has explicitly included some materiality/significance considerations, in particular regarding the role of the actuarial function and the deviation of the SCR.

Ongoing communication as a new requirement

24. As discussed in the second comment highlighted, this Opinion is not creating any new requirement. In particular, regarding the recommendations on the ongoing communication, it should be noted it is a good practice that would avoid any potential issues that may arise if the supervisor is aware of these structures only once they are in place. Indeed, this is already a common practice in several Member States.
25. The identification of the relevant structures for this ongoing communication depends on the criteria of the undertaking and the supervisor. For example, if an undertaking belongs to a group where other undertakings with a similar risk profile have already entered into similar agreements

that have been discussed by the supervisor, it may be reasonable to consider that prior communication in this case would only add burden without any additional benefit. However, another undertaking may consider relevant to discuss the same contract with the supervisor.

Coordination of supervisors, in particular for multinational arrangements

26. EIOPA agrees on this suggestion, which has been included in the Opinion.