

Guidelines on contract boundaries

Introduction

- 1.1. According to Article 16 of Regulation (EU) 1904/2010 of 24 November 2010 (hereafter EIOPA Regulation)¹ EIOPA is issuing Guidelines based on 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)² and in particular Articles 76 (1) and 78 as well as Articles 17 and 18 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC (hereafter Commission Delegated Regulation 2015/35)³.
- 1.2. The Guidelines are addressed to supervisory authorities under Solvency II.
- 1.3. The Guidelines apply to insurance and reinsurance undertakings and promote a consistent application of an insurance or reinsurance contract boundary for the purpose of determining a boundary between existing and future businesses. The Guidelines provide guidance to determine which insurance or reinsurance obligations with regard to future premiums arise in relation to a contract in accordance with Articles 17 and 18 of Commission Delegated Regulation 2015/35.
- 1.4. For the purpose of these Guidelines, the expression “governance bodies” means internal bodies made up for the purpose of governing an insurance or reinsurance undertaking and which, as a result, must not be considered as a third party in the case they express a decision or an opinion on the exercise of the right to terminate a contract, to reject premiums payable under a contract or to amend the premiums or the benefits payable under the contract.
- 1.5. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
- 1.6. The Guidelines shall apply from 1 April 2015.

Guideline 1 – Consistent application of the principles

- 1.7. Insurance and reinsurance undertakings should ensure that the principles for determining contract boundaries are consistently applied to all insurance and reinsurance contracts, in particular over time.

Guideline 2 – Unilateral right

- 1.8. Insurance and reinsurance undertakings should consider the right to terminate, reject, or amend premiums or benefits payable under an insurance or reinsurance contract as being unilateral when neither the policy holder nor any third party can restrict the exercise of that right. For the purpose of this

¹ OJ L 331, 15.12.2010, p. 48–83

² OJ L 335, 17.12.2009, p. 1-155

³ OJ L 12, 17.01.2015, p. 1-797

guideline, third parties do not include supervisory authorities and governance bodies of insurance and reinsurance undertakings.

1.9. In particular:

- a) Where, in order to put the amendment of premiums and benefits into effect, the insurance or reinsurance undertaking is required to obtain an external assessment in accordance with the law or the terms and conditions of another agreement outside the insurance or reinsurance contract, the existence of such a requirement should limit the unilateral right of the undertaking only if the assessment gives the policy holder or any third party the right to interfere with the use of that right.
- b) Undertakings should not consider reputational risk or competitive pressures as limitations of the unilateral right.
- c) Undertakings should consider that national laws limit their unilateral right only if these laws restrict or give the policyholder or any third party the right to restrict the exercise of that right.
- d) Undertakings should disregard the right to unilaterally amend the premiums or the benefits payable under the contract if the premiums or benefits payable depend solely on the decisions of the policy holder or the beneficiary.
- e) Undertakings should disregard the right to unilaterally terminate the contract or reject premiums payable under the contract if the exercise of this right, as specified in the terms and conditions of the contract, is conditional on the occurrence of a claim event.

Guideline 3 – Ability to compel

1.10. Insurance or reinsurance undertakings should recognise their ability to compel a policy holder to pay a premium only if the policyholder's payment is legally enforceable.

Guideline 4 – Full reflection of the risk

1.11. When determining whether premiums are fully reflecting the risks covered by a portfolio of insurance or reinsurance obligations, insurance and reinsurance undertakings should assess whether, at the moment at which either premiums or benefits can be amended, under all circumstances the undertaking has the right to amend premiums or benefits such that the expected present value of the future premiums exceeds the expected present value of the future benefits and expenses payable under the portfolio.

1.12. For the purpose of assessing whether premiums are fully reflecting the risks covered by a portfolio of insurance or reinsurance obligations in accordance with Article 18 (3) and (7) of Commission Delegated Regulation 2015/35, insurance and reinsurance undertakings should ensure that this portfolio consists of obligations for which the insurance or reinsurance undertaking can amend premiums and benefits under similar circumstances and with similar consequences.

1.13. Insurance and reinsurance undertakings should take into account any individual assessment of relevant features of the insured person that allow the undertaking to gather sufficient information in order to form an appropriate understanding of the risks associated with the insured person. In the case of contracts covering mortality risks or health risks similar to life insurance techniques, the individual risk assessment can be a self-assessment by the insured person or can include a medical examination or survey.

Guideline 5 – Unbundling of the contract

- 1.14. Insurance and reinsurance undertakings should assess whether at recognition date it is possible to unbundle a contract and, at each valuation date, consider whether there has been any change which would affect the previous assessment.
- 1.15. Insurance and reinsurance undertakings should determine whether it is possible to unbundle a contract by assessing whether two or more parts of the contract are clearly identifiable, and for which it is possible to define different sets of obligations and premiums attributable to each part.
- 1.16. Insurance and reinsurance undertakings should, when an option or guarantee covers more than one part of the contract, determine whether it is possible to unbundle it or whether it should be attributed to the relevant part of the contract.
- 1.17. If a contract is considered to be an insurance contract under Solvency II, insurance and reinsurance undertakings should still consider all unbundled parts of the contract to give rise to insurance or reinsurance obligations.

Guideline 6 – Identification of a discernible effect on the economics of a contract

- 1.18. When determining whether the insurance coverage of an event or a financial guarantee has no discernible effect on the economics of a contract, insurance and reinsurance undertakings should take into account all potential future cash-flows which may arise from the contract.
- 1.19. Insurance and reinsurance undertakings should consider a financial guarantee of benefits as having a discernible effect on the economics of a contract only if the financial guarantee is linked to the payment of the future premiums and provides the policyholder with a discernible financial advantage with commercial substance.
- 1.20. Insurance and reinsurance undertakings should consider the cover of a specified uncertain event that adversely affects the insured person as having a discernible effect on the economics of the contract when the cover provides a discernible financial advantage to the beneficiary.

Guideline 7 – Estimation of obligations

- 1.21. Insurance or reinsurance undertakings should, where details of a contract or the full extent of the obligations covered by a contract are not available to the undertaking at the time of recognition of the contract, estimate the boundaries of the contracts using all available information in a manner consistent with the principles set out in these Guidelines.
- 1.22. Undertakings should revise this estimated assessment as soon as more detailed information is available.

Guideline 8 – Reinsurance contracts

- 1.23. Insurance and reinsurance undertakings should, for their accepted reinsurance contracts, apply the provisions of Article 18 of Commission Delegated Regulation 2015/35 independently from the boundaries of the underlying insurance or reinsurance contracts to which they relate.

Compliance and Reporting Rules

- 1.24. 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 shall make every effort to comply with guidelines and recommendations.
- 1.25. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.26. Competent authorities shall 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.
- 1.27. 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

- 1.28. The present Guidelines shall be subject to a review by EIOPA.