EIOPA: Q&A (grudzień 2020 r.)

Question ID: 1600

- **Question:**

Do capital redemption operations linked to investment funds comply with the definition of "capital redemption operations" as provided by article 2, paragraph 3, b) ii) of the Solvency II Directive and may these capital redemption operations fall under the scope of both the Directive n°2016/97 on insurance distribution ("IDD") and the Regulation n°1286/2014 on key information documents for packaged retail and insurance-based investment products ("PRIIPs") ?

- **EIOPA's Answer:**

Do capital redemption operations linked to investment funds comply with the definition of "capital redemption operations" as provided by article 2, paragraph 3, b) ii) of the Solvency II Directive?

As regards life insurance, Directive 2009/138/EC only applies to capital redemption operations in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance.

In that context, capital redemption operations are to be understood as operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken. The question does not give enough background to judge whether or not the product in question should be considered as capital redemption operation.

As regards non-life insurance, Directive 2009/138/EC does not apply to capital redemption operations as defined by the law in each Member State.

May these capital redemption operations fall under the scope of both the Directive n°2016/97 on insurance distribution ("IDD") and the Regulation n°1286/2014 on key information documents for packaged retail and insurance-based investment products ("PRIIPs") ?

Directive (EU) 2016/97 applies to natural or legal persons who are established in a Member State or who wish to be established there in order to take up and pursue the distribution of insurance and reinsurance products. If the product in question is an insurance product then the distribution of that product is consequently subject to the rules set out in Directive (EU) 2016/97.

Regulation (EU) 1286/2014 applies to PRIIP manufacturers and persons advising on, or selling, PRIIPs. PRIIPs are defined in point (3) of Article 4 of that Regulation. In particular, PRIIPs include insurance-based investment products (IBIPs). If the product in question is an IBIP or another type of PRIIP then the advising on, or selling of that product is consequently subject to the rules set out in Regulation (EU) 1286/2014.

It has to be noted that the definition of "insurance distribution" in point (1) of Article 2(1) of Directive (EU) 2016/97 entails the activity of advising, other work preparatory to the conclusion of contracts of insurance or concluding such contracts itself. As a consequence, persons involved in, for instance, advise on the sale of insurance-based investment products will be subject to both, the rules set out in Directive (EU) 2016/97 and in Regulation (EU) 1286/2014.

Question ID: 2167

- **Question:**

With the change of the Delegated Regulation on 8th June 2017 (2017/1542) you have specified the regulatory environment for qualified infrastructure. You also added a paragraph in articel 169 and 170. There you clearly state the percentage of decrease of a qualifying infratsructure. Of course the decrease is calculated on the basis of the investment "value". My question refers to that point: How is the value calculated in case of a leverage? For properties the leveraged part of the Investment will be added to the value. Due to that the calculated risk will raise. Is this calculation also applicable for qualified infrastructure?

- **EIOPA's Answer:**

The COMMISSION DELEGATED REGULATION (EU) 2017/1542 of 8 June 2017 amending Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) introduced modification to articles 169 and 170. In particular, the two new paragraphs aimed at providing the percentages of instantaneous decreases to apply to qualifying infrastructure corporate equities values for the purpose of the capital requirement calculation.

In case of debts contracted in order to invest in qualifying infrastructure investments, the debt value does not need to be added to the infrastructure value shocked for calculation of the capital requirements. The debt is simply present at the liability side of the prudential balance sheet of the insurer.

Question ID: 2164

- **Question:**

A freight forwarder is organising shipments of goods, from one place to another, on behalf of its customers. Therefore, the company arranges for packaging, stuffing/destuffing the goods in/from a container, road/air/marine transportation, customs procedures, et cetera and strives to successfully complete its mission, to safely deliver the cargo. Cargo insurance is a much needed complementary service that would certainly benefit all parties involved in our story. Furthermore, it covers damage, loss and theft of the shipment during transit and these risks are all linked to the services provided by the forwarder. The Directive has a broad applicability and I consider a freight forwarder is a perfect match for an ancillary insurance intermediary, just as a travel agency is for a travel insurance. Please share with me your opinion on this matter and if we all agree a freight forwarder should be considered an ancillary insurance intermediary, I kindly ask you to let me know what are the steps I should complete to work in full harmony with our local financial authority.

- **EIOPA's Answer:**

In order to guarantee that the same level of protection applies regardless of the channel through which customers buy an insurance product, either directly from an insurance undertaking or indirectly from an intermediary, the scope of the IDD needs to cover not only insurance undertakings or intermediaries, but also other market participants who sell insurance products on an ancillary basis, such as travel agents and car rental companies, unless they meet the conditions for exemption (recital 8 of the IDD).

The IDD does not provide an exhaustive list of ancillary insurance intermediaries, rather gives an exemplificative selection of natural or legal persons who can provide insurance distribution on an ancillary basis. IDD excludes specifically only credit institutions and investment firms from the possibility of conducting distribution activities on an ancillary basis. Recital 15 of the IDD gives examples of a good or service in relation to which insurance can be complementary, such as train journey, gym subscription or a seasonal theatre pass, other risks linked to travel such as travel cancellation or loss of baggage.

Consequently, a freight forwarder can be considered an ancillary insurance intermediary provided that all the conditions mentioned in Article 2(1) point 4 of the IDD are met. It should be noted that the IDD does not apply to ancillary insurance intermediaries carrying out insurance distribution activities where all the conditions under Article 1(3) of the IDD are met.

Question ID: 1728

- **Question:**

In the article 2. Definitions(4) it states 'ancillary insurance intermediary' means any natural or legal person, other than a credit institution or an investment firm as defined ...... based on 3 conditions (a) , (b) and (c)

Is it allowed (based on the scope of IDD) for a member state to create any other ""ancillary insurance intermediary"" registrar (or keep existing one) in order to be allowed for Credit Institutions or Investment Firms to takes up or pursues the activity of insurance distribution on an ancillary basis, since the principal activity of those Institutions is not the Insurance Distribution?

The possible creation of a registry other than ''Ancillary Insurance Intermediary'' as it is in the IDD, to allow Banking Institutions or investment firms to carry out insurance mediation work, does not constitute a breach of the Directive?

- **EIOPA's Answer:**

IDD defines the scope and meaning of ancillary insurance intermediaries. Article 2(4) of the IDD explicitly excludes credit institutions and investment firms from the scope of ancillary insurance intermediaries. Therefore, if credit institutions and investment firms intend to engage in insurance distribution activities, even if these are clearly ancillary to their main activities, they have to register as regular insurance intermediaries within the meaning of Article 2(1)(3) of the IDD and must comply with the full set of obligations applicable to intermediaries.

Members States will enrol such undertakings in register as regular insurance intermediaries.

Nevertheless, it is important to emphasize that Article 3(2) of the IDD provides the possibility for Member States to establish more than one register for insurance, reinsurance, and ancillary insurance intermediaries provided that they lay down the criteria according to which intermediaries are to be registered.

Question ID: 2158

- **Question:**

How do we deal with the issues below? 1. If a risk (insurance policy) is built up as Co-insurance, ie. two insurance companies that share the risk, it can be 50/50, 60/40, or a similar distribution: Should a standard IPID be drafted from both insurance companies and how should the fact that there are two insurance companies be communicated? 2. If the risk (insurance policies) is built up with a primary policy (lead), with the associated number of secondary policies: Can one draft a single standard IPID from the primary insurance company (lead), or should the secondary insurance company/agencies also draft one?. In relation to this problem, there may be up to 20 or more insurance companies listed on the insurance policy. How should this be communicated?

- **EIOPA's Answer:**

Further, where an insurance intermediary and an insurance undertaking are both manufacturers, details of the co-manufacturing partnership should be agreed in a written form as provided for in Article 3(4) of the Commission Delegated Regulation 2017/2358.

In case of co-manufacturing an insurance product, if separate IPIDs were provided for this product, several of the categories of the IPID would contain the same information e.g. payment and cancellation terms etc. which could lead to complex and overlapping information. In this case, the provision of more than one IPID would appear to be against the objectives of the IPID as the IPID is intended to be a short and stand-alone document which is accurate and not misleading and provides the customer with the relevant information about an insurance product in a comprehensible form to make an informed decision (Articles 20(4), 20(7)(a)(e), IDD). Therefore, only one IPID should be drawn up for one insurance product.

Further, in order to comply with Article 1(1) of Commission Implementing Regulation 2017/1469, in case of co-manufacturing, the co-manufacturers need to include in the IPID the names of all co-manufacturers, the Member States where the co-manufacturers are registered, their regulatory status, and, where relevant, their authorisation numbers shall immediately follow the title 'insurance product information document' at the top of the first page.

With regard to communicating the fact that there are two or more insurance companies, apart from including in the IPID the information related to co-manufacturers mentioned above, in accordance with Article 18(b) of the IDD, in good time before the conclusion of an insurance contract, an insurance undertaking has to make the disclosures to customers, with regard to its identity and address and that it is an insurance undertaking. This information should be provided separately, i.e. not in the IPID, since Article 18(b) covers information not encompassed in the IPID.

It should be kept in mind that when the insurance distributor carries out distribution activities in relation to the insurance of large risks, the IPID does not need to be provided.

Finally, Member States may impose stricter provisions since the IDD is a minimum harmonisation directive.

Question ID: 1670

- **Question:**

Please clarify how the insurance undertakings shall apply in practice the provisions under CHAPTER II of the Commission Delegated Regulation (EU) 2017/2358 and in particular Articles 4, 5, 6 and 7 when dealing with tailor-made insurance policies.

- **EIOPA's Answer:**

From a customer perspective, it does not make any difference whether the insurance product is sold to one customer or a group of customers. In contrast hereto, it could be argued that the POG arrangements are disproportionate if applied for tailor made products, in particular with regard to the identification of the target market and the product testing, taking into account that the insurance product is designed for the specific demands and needs of an individual customer.

When manufacturing tailor made insurance products, manufacturers shall apply the POG requirements set out in Chapter II of the Commission Delegated Regulation (EU) 2017/2358 in cases they decide to distribute or manufacture such products for customers (i.e. more than one customer). In fact, Article 3 of the Commission Delegated Regulation (EU) 2017/2358 provides that personalisation of and adaptation of existing insurance products in the context of insurance distribution activities for individual customers, as well as the design of tailor-made contracts at the request of a single customer, shall not be considered as manufacturing and therefore, in such cases, there would be no requirement for the manufacturer to apply the provisions of Chapter II of the Delegated Regulation.

On the other hand, personalisation of and adaptation of existing insurance products for more than one customer or design of a new tailor-made product for more than one customer cannot be exempt from the scope of product oversight and governance rules.

As explained in recital 49 of the IDD in case of group insurance, 'customer' should mean the representative of a group of members who concludes an insurance contract on behalf of the group of members where the individual member cannot take an individual decision to join, such as a mandatory occupational pension arrangement. The representative of the group should, promptly after enrolment of the member in the group insurance, provide, where relevant, the insurance product information document and the distributor's conduct of business information.

Question ID: 2224

- **Question:**

If in a specific corporate structure where, • a participating holding company A (non-insurer not supervised individually under Solvency II, without prejudice to Article 257 of the Solvency II Directive), holds directly 45% of the share capital of the insurer B (participation value of around 36mo) and 40% of the share capital of the insurer C (participation value of around 12mo), • insurer B holds directly 6% of the share capital of the holding company A (asset valued in the insurer B's Solvency II balance sheet (SII BS) by around 6mo), and 51% of the share capital of insurer C (asset valued in the insurer B's SII BS by around 15mo), • the insurer C holds directly 8% of the share capital of the holding company A (asset valued in the insurer C's SII BS by around 8mo), • there are no other assets held by the holding company A besides the equity instruments described above, and • the holding company A, insurer B and insurer C are not listed; participations are not valued by quoted market prices in active markets, should the own funds of the individual insurers B and C be reduced to reflect the existence of an encumbrance, and if yes how and in what amount(s)?

- **EIOPA's Answer:**

This Answer is specific to the case and specifications described and does not prejudge other cases.

As stated in the EIOPA Guidelines on classification of own funds (EIOPA-BoS-14/168) (Guidelines 13), undertakings should consider an encumbrance arising from a transaction or group of transactions, which is equivalent to the holding of own shares, as including the case where the undertaking holds its own Tier 1, Tier 2 or Tier 3 own-fund items.

It should be considered as equivalent to the holding of own shares the case, as applicable to the current example, when an insurer invests in the equity of a company that has invested directly or through some intermediate party/parties (i.e. indirectly) in own funds items of the insurer.

The amount to be deducted in the case presented should be determined as described in the explanatory text of Guideline 14 in the EIOPA Final Report on Public Consultation No. 14/036 on Guidelines on classification of own funds (EIOPA-BoS-14/168) i.e. the reconciliation reserve of the insurers should be reduced by the amount of the encumbered item, as clearly stated in the Guidelines.

Based on the information provided, the own funds of the insurer B includes in its assets 6mo representing its participation in the holding company A which holds 36mo of the share capital of insurer B (without prejudice of the holding of other own funds items such as subordinated liabilities that if applicable should also be considered). As such, the part of the assets generated by the reciprocal cross holding (i.e. 6mo based on the information provided) shall be deducted from B’s own funds (i.e. from its reconciliation reserve). The amount to be deducted is the lower amount of the reciprocal financing that closes the circularity (i.e. the item participation or the holding of share capital plus holding of other own funds if applicable) as the circularity may impair the loss absorption capacity of the share capital of the insurer B.

Likewise, the insurer C’s reconciliation reserve shall be deducted by the amount of the encumbered item, i.e. 8mo as it is the lower amount that closes the circularity based on the information provided, i.e. considering the participation of insurer C in the holding company A and the direct and indirect investment of the holding company A in insurer C. To be noted that, if applicable, the holding of other own funds items such as subordinated liabilities shall also be considered.

The impact of the adjustment of the reconciliation reserve of insurer C on the SII BS of insurer B, which is not valued by using quoted market prices in active markets, shall be further considered. E.g. if the SII BS of insurer B reflects 15mo from its participation in insurer C valued by the adjusted equity method, when calculating the excess of assets over liabilities of insurer C the adjustment performed in C to ensure the elimination of any artificial creation of capital shall be considered.

Question ID: 2217

- **Question:**

I understand as per Article 180 2) that local authorities issuers benefit from a 0% SCR. Metropole de Lyon, as per Article 72 of the constitution, is considered as a local authority. Local authorities include ""communes, départements, régions, collectivités à statut particulier and collectivités d'outre-mer"" Metropole de Lyon is considered a ""collectivité à statut particulier"". There are 6 of them in total. However, Article 1 of Commission Implementing Regulation (EU) 2015/2011 specifies that only ""communes, départements, régions"" are eligible to 0% SCR for credit risk. Could you please let us know whether ""collectivités à statut particulier"", such as Metropole de Lyon could be eligible to 0% SCR? Or if we should rather have a litteral reading of the rule.

- **EIOPA’s Answer:**

The provision set out in article 180 2. of Solvency II COMMISSION DELEGATED REGULATION (EU) 2015/35 cannot be applied to entities which are not included in the list set out in Commission Implementing Regulation (EU) 2015/2011. French “collectivités à statut particulier” are currently not included in the Regulation and exposures to them can therefore not be treated as exposures to the French central government.

The shocks to be applied in this case are specified in article 180 paragraph 3a. of the Delegated Regulation 2015/35 providing that “Exposures in the form of bonds and loans to Member States' regional governments and local authorities not listed in Article 1 of Implementing Regulation (EU) 2015/2011 shall be assigned a risk factor stress i from the table in paragraph 3 corresponding to credit quality step 2.