

EBA/GL/2017/08

12/09/2017

Guidelines

on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of Directive (EU) 2015/2366

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA that they comply or intend to comply with these guidelines, or otherwise give reasons for non-compliance, by 13.11.2017. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2017/08'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter and scope of application

5. These guidelines specify criteria and indicators on how to stipulate the minimum monetary amount of the professional indemnity insurance (PII) or other comparable guarantee to be held by undertakings that apply for:
 - i. authorisation to provide payment services under point (7) of Annex I (payment initiation services, PIS) in accordance with Article 5(2) of Directive (EU) 2015/2366 of the European Parliament and of the Council on payment services in the internal market (PSD2);
 - ii. registration to provide payment services under point (8) of Annex I (account information services, AIS) in accordance with Article 5(3) of PSD2;
 - iii. authorisation to provide both payment services under point (7) and (8) of Annex I to PSD2.

6. The guidelines also set out a formula for the calculation of the minimum monetary amount of the PII or comparable guarantee.

Addressees

7. These guidelines are addressed to competent authorities as defined in point (ii) of Article 4(2) of Regulation (EU) No 1093/2010 by reference to PSD2.

Definitions

8. Unless otherwise specified, terms used and defined in PSD2 have the same meaning in the guidelines. In addition, for the purpose of these guidelines, the following definitions apply:

Undertaking	<p>A provider that applies for authorisation to provide payment services as referred to in point (7) of Annex I to PSD2, i.e. to provide payment initiation services (PIS).</p> <p>A provider that applies for registration to provide payment services as referred to in point (8) of Annex I to PSD2, i.e. to provide account information services (AIS).</p> <p>A provider that applies for authorisation to provide payment services as referred to in points (7) and (8) of Annex I to PSD2, i.e. to provide payment initiation services (PIS) and account information services (AIS).</p>
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3. Implementation

Date of application

9. These guidelines apply from 13 January 2018.

4. Guidelines on the criteria on how to stipulate the minimum monetary amount of the PII or other comparable guarantee

Guideline 1: Professional indemnity insurance and comparable guarantee

- 1.1 Competent authorities should consider the PII and comparable guarantee mutually exclusive and should require undertakings that apply for authorisation or registration to hold either the PII or the comparable guarantee.
 - 1.2 Competent authorities should ensure that the PII or comparable guarantee held by undertakings, for the purpose of Article 5(2) and (3) of PSD2, covers their liabilities as follows:
 - (a) in the case of undertakings that apply for authorisation to provide PIS, the liabilities specified in Articles 73, 89, 90 and 92 of PSD2;
 - (b) in the case of undertakings that apply for registration to provide AIS, liabilities vis-à-vis the account servicing payment service providers (ASPSP) or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information;
 - (c) in the case of undertakings that apply for authorisation to provide PIS and AIS, the liabilities referred to in both point (a) and point (b) of this Guideline.
 - 1.3 Competent authorities should also ensure that the minimum monetary amount of the PII or comparable guarantee covers costs and expenses incurred by payment service users and ASPSPs who request undertakings to refund losses resulting from one or more of the liabilities referred to in Article 5(2) and (3) of PSD2.
 - 1.4 Competent authorities should ensure that the minimum monetary amount of the PII or comparable guarantee allows undertakings to effectively meet their liabilities in relation to their activities by verifying that the PII or comparable guarantee does not have any excess, deductible or any threshold that could prejudice repayments resulting from the requests for refunds of payment service users and ASPSPs, and is valid when the liability occurs.
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- 1.5 Competent authorities should ensure that the minimum monetary amount of the PII or comparable guarantee covers the territories in which undertakings offer services, regardless of the countries where their users are established or the place in which the services are provided.

Guideline 2: Criteria and indicators

- 2.1 When stipulating the minimum monetary amount of the PII or comparable guarantee to be held by undertakings, competent authorities should use the following criteria and their indicators:
- a. the risk profile criterion:
 - i. value of requests for refunds, for the liabilities referred to in Article 5(2) and (3) of PSD2, received by the undertaking;
 - ii. number of initiated payment transactions by an undertaking that provides PIS;
 - iii. number of payment accounts accessed by an undertaking that provides AIS;
 - b. the type of activity criterion:
 - i. whether the undertaking provides exclusively PIS or AIS, or both;
 - ii. whether the undertaking provides other payment services as referred to in Annex I to PSD2;
 - iii. whether the undertaking is engaged in business other than payment services;
 - c. the size of activity criterion:
 - i. for undertakings that provide PIS, the value of the transactions initiated;
 - ii. for undertakings that provide AIS, the number of clients that make use of the AIS;
 - d. the comparable guarantee criterion:
 - i. specific characteristics of the comparable guarantee;
 - ii. triggers for the implementation of the comparable guarantee.

Guideline 3: Formula

- 3.1 To calculate the minimum monetary amount of the PII or comparable guarantee to be held by undertakings, competent authorities should use the following formula:

$$\begin{array}{l}
 \text{Minimum monetary} \\
 \text{amount of PII} \\
 \text{or comparable} \\
 \text{guarantee}
 \end{array}
 =
 \begin{array}{l}
 \text{Amount} \\
 \text{reflective of risk} \\
 \text{profile criterion}
 \end{array}
 +
 \begin{array}{l}
 \text{Amount} \\
 \text{reflective of type} \\
 \text{of activity} \\
 \text{criterion}
 \end{array}
 +
 \begin{array}{l}
 \text{Amount reflective of} \\
 \text{size of activity} \\
 \text{criterion}
 \end{array}$$

- 3.2 To calculate the minimum monetary amount of the PII or comparable guarantee, competent authorities should populate the indicators under each criterion with the relevant values as specified in Guidelines 5 to 7, they should calculate the amount reflective of each criterion separately by adding up the amounts reflective of the indicators and they should use the resultant amounts in the formula.
- 3.3 Values in these Guidelines are expressed in euros. In Member States where the official currency is not the euro, competent authorities may convert the amounts reflective of the criteria into the national currency equivalent.
- 3.4 The minimum monetary amount of the PII or comparable guarantee calculated by competent authorities, and by implication also by undertakings that apply for authorisation or registration, should be expressed as a figure per year.

Guideline 4: Publication

- 4.1 Competent authorities should make the criteria, the indicators and the formula publicly available in their jurisdiction, to enable undertakings to calculate the minimum monetary amount of the PII or comparable guarantee before they apply for authorisation or registration.

Guideline 5: Calculation of risk profile criterion

Value of requests for refunds received

- 5.1 When calculating the value of the indicator 'requests for refunds received', competent authorities should use the aggregated value of all requests for refunds made by the payment service users of the undertaking and by ASPSPs, in the previous 12 calendar months, for losses resulting from one or more of the liabilities referred to in Article 5(2) and (3) of PSD2.
- 5.2 If no requests for refunds have been made to the undertaking in the previous 12 months, competent authorities should set to 0 the value for this indicator in the formula.

- 5.3 For undertakings that have not offered services at any time in the previous 12 months, competent authorities should use the aggregated value of all requests for refunds forecasted by the undertaking for the purpose of its application for authorisation/registration.
- 5.4 If the undertaking does not provide any forecasts relating to requests for refunds, or if the amount resulting from the application of the forecasted total value of requests of refunds is lower than EUR 50 000, competent authorities should set to 50 000 the value for this indicator in the formula.

Number of initiated payment transactions by undertakings that provide PIS

- 5.5 Competent authorities should calculate the value of the indicator ‘number of initiated payment transactions’ as the sum of the following elements, where N represents the number of payment transactions initiated by the undertaking in the previous 12 months:
- (a) 40% of the slice of N up to and including 10 000 initiated payments;
plus
 - (b) 25% of the slice of N above 10 000 initiated payments up to and including 100 000 initiated payments;
plus
 - (c) 10% of the slice of N above 100 000 initiated payments up to and including 1 million initiated payments;
plus
 - (d) 5% of the slice of N above 1 million initiated payments up to and including 10 million initiated payments;
plus
 - (e) 0.025% of the slice of N above 10 million initiated payments.
- 5.6 For undertakings that have not offered services at any time in the previous 12 months, competent authorities should use the number of initiated payment transactions forecasted by the undertaking for the purpose its application for authorisation.
- 5.7 If the undertaking does not provide any forecasts relating to the number of initiated payment transactions, or if the amount resulting from the application of the forecasted number of initiated payment transactions is lower than 50 000, competent authorities should set to 50 000 the value for this indicator in the formula.

Number of payment accounts accessed by undertakings that provide AIS

5.8 Competent authorities should calculate the value of the indicator ‘number of accessed payment accounts’ as the sum of the following elements, where N represents the number of different payment accounts accessed in the previous 12 months by an undertaking that provides AIS:

(a) 40% of the slice of N up to and including 10 000 accessed accounts;

plus

(b) 25% of the slice of N above 10 000 accessed accounts up to and including 100 000 accessed accounts;

plus

(c) 10% of the slice of N above 100 000 accessed accounts up to and including 1 million accessed accounts;

plus

(d) 5% of the slice of N above 1 million accessed accounts up to and including 10 million accessed accounts;

plus

(e) 0.025% of the slice of N above 10 million accessed accounts.

5.9 For undertakings that have not offered services at any time in the previous 12 months, competent authorities should use the number of accessed payment accounts forecasted by the undertaking for the purpose of its application for registration or authorisation, where relevant.

5.10 If the undertaking does not provide any forecasts relating to the number of accessed payment accounts, or if the amount resulting from the application of the forecasted number of accessed accounts is lower than 50 000, competent authorities should set to 50 000 the value for this indicator in the formula.

Guideline 6: Calculation of type of activity criterion

6.1 Competent authorities should set to 0 the value for this indicator in the formula for those undertakings that apply for authorisation to provide only PIS.

6.2 Competent authorities should set to 0 the value for this indicator in the formula for those undertakings that apply for registration to provide only AIS.

- 6.3 If an undertaking applies for authorisation to provide both PIS and AIS, competent authorities should calculate the minimum monetary amount separately for each service and add the resultant amounts to get the minimum monetary amount covering both services. Furthermore, competent authorities should ensure that the PII or comparable guarantee arrangements cover the provision of both PIS and AIS, reflecting the different liabilities referred to in paragraphs (2) and (3), respectively, of Article 5 of PSD2.
- 6.4 If an undertaking provides any other payment service as referred to in points 1 to 6 in Annex I to PSD2, in parallel with either PIS or AIS, or both, competent authorities should calculate the minimum monetary amount of the PII or comparable guarantee for providing PIS or AIS, or both, without prejudice to requirements relating to the calculation of initial capital according to Article 7 of PSD2 and/or own funds according to Article 9 of PSD2.
- 6.5 If an undertaking is also engaged in business other than providing payment services as referred to in Annex I to PSD2 (non-payment services activities), competent authorities should add in the formula, in addition to the values required for the type of activity the undertaking aims to provide, the value of 50 000.
- 6.6 However, if an undertaking that is engaged in other, non-payment services, activities can prove that its engagement does not have an impact on the provision of PIS/AIS, either because it holds a guarantee that covers its liabilities arising from the other, non-payment, services activities or because the competent authority has requested the establishment of a separate entity for the payment service business, in accordance with Article 11(5) of PSD2, competent authorities should set to 0 the value in the formula.

Guideline 7: Calculation of size of activity criterion

- 7.1 Competent authorities should calculate the amount reflective of the size of activity criterion for an undertaking that provides PIS as the sum of the following elements, where N represents the total value of all transactions initiated by the undertaking in the previous 12 months:
- (a) 40% of the slice of N up to and including EUR 500 000;
plus
 - (b) 25% of the slice of N above EUR 500 000 up to and including EUR 1 million;
plus
 - (c) 10% of the slice of N above EUR 1 million up to and including EUR 5 million;
plus
 - (d) 5% of the slice of N above EUR 5 million up to and including EUR 10 million;

plus

(e) 0.025% of the slice of N above EUR 10 million.

7.2 Competent authorities should calculate the amount reflective of the size of activity criterion for an undertaking that provides AIS as the sum of the following elements, where N represents the number of users of the AIS (clients), where each client is considered separately, that made use of the AIS in the previous 12 months:

(a) 40% of the slice of N up to and including 100 clients;

plus

(b) 25% of the slice of N above 100 clients up to and including 10 000 clients;

plus

(c) 10% of the slice of N above 10 000 clients up to and including 100 000 clients;

plus

(d) 5% of the slice of N above 100 000 clients up to and including 1 million clients;

plus

(e) 0.025% of the slice of N above 1 million clients.

7.3 For undertakings that have not offered services in the previous 12 months, competent authorities should use the value of all transactions initiated in the case of an undertaking that provides PIS, or the number of clients, in the case of an undertaking that provides AIS, forecasted by the undertaking for the purpose of its authorisation/registration.

7.4 If the undertaking does not provide any forecasts relating to the value of all transactions initiated, in the case of an undertaking that provides PIS, or relating to the number of clients, in the case of an undertaking that provides AIS, or if the amount resulting from the application of the forecasted value of all transactions initiated, in the case an undertaking that provides PIS, or of the number of clients, in the case of an undertaking that provides AIS, is lower than 50 000, competent authorities should set to 50 000 the value for these indicators in the formula.

Guideline 8: Comparable guarantee criterion

8.1 Competent authorities should require undertakings to hold either the PII or a comparable guarantee.

Guideline 9: Review

- 9.1 Competent authorities should ensure that undertakings review, and if necessary recalculate, the minimum monetary amount of their PII or comparable guarantee, and that they do so at least on an annual basis.