

<b>Comments Template on EIOPA-CP-14-062</b> <b>Draft proposal for the Advice to the European Commission</b> <b>in response to the Call for Advice on recovery plan, finance scheme</b> <b>and supervisory powers in deteriorating financial conditions</b>		<b>Deadline</b> <b>18.Feb.2015</b> <b>23:59 CET</b>
Company name:	Actuarial Association of Europe (AAE)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.  Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not</u> introduce any change in column "Reference".</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below.               <ul style="list-style-type: none"> <li>○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.</li> <li>○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:Consultation_Set2@eiopa.europa.eu">Consultation_Set2@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-062.</p>		
<b>Reference</b>	<b>Comment</b>	
General Comment	We highly appreciate the opportunity to support the drafting of the legal basis for the processes to be followed in a critical situation for the undertaking concerned and the supervisory authority being in charge of finding and supporting decisions to best care for the protection of policyholders.  As actuarial considerations are of central importance for finding adequate solutions we especially	

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would like to underline:

- focus should be set to develop recovery measures rather than on reporting
- special care should be taken for small undertakings where capacity is tight and the same people to develop appropriate measures will typically have to set up (formal) reporting; irrespective of the size of the undertaking any required calculations might interfere with the calculations for regular reporting and thus take place in a time of stretched resources
- the timeframe set (by the framework directive) for recovery and setting up the recovery plan resp. finance scheme is proportionate for a crisis situation but is also quite ambitious which has to be reflected in the formal requirements as well as to be supported by a close cooperation of undertakings and supervisory authorities concerned as it is implemented for banking supervision
- usage of QRTs is a natural choice and will support processes within the undertaking concerned as well as within the supervisory authorities nevertheless information resp. granularity should be proportionate to allow for concentration of capacity on developing and implementing measures to recover from the breach of capital requirements, quarterly templates rather than the full granularity of annual submissions should be the first choice
- for effort and time reasons calculations of both SCR and MCR should follow regular reporting dates rather than newly set out time spans
- the delegated acts should make use of legal concepts established within the framework directive rather than setting up indeterminate legal concepts as e.g. "short timeframe"
- "pro-cyclical" should be understood with respect to actions taken by the undertaking concerned and not refer to pro-cyclical influences on the local or European financial market; nonetheless, observed macroeconomic environments need to be taken into account within the recovery measures set out in the plans
- measures taken by the supervisory authority (ladder of intervention in practice, esp. withdrawal of authorisation) should be proportionate to the risk exposure for policyholders; in particular, only measures that are effective for the restoration of the security of policyholders can be imposed on undertakings; the measures should take into account local prudent accounting principles and safety buffers vs. volatility from the market in comparable short recovery periods. (Cf. our comment on the level playing field with banking supervision and the duration of liabilities and former regulation

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	<p>e.g. in Directive 2002/83/EC).</p> <p>To ease reference we would like to propose to introduce the following abbreviations: Use Draft-Article RPFS x for “<b>R</b>ecovery <b>P</b>lan and <b>F</b>inance <b>S</b>cheme” with x chosen in the order of appearance e.g. Draft-Article RPFS 1 for “Content of the recovery plan and finance scheme”.</p>	
Legal background		
Recovery plan and finance scheme: analysis		
Content of the recovery plan and finance scheme (1)	<p>With respect to the arguments given below we propose the following amendments to the draft:</p> <p>Add a new guiding paragraph:</p> <p>(1) The actions taken by the insurance and reinsurance undertaking concerned to set up the recovery plan and finance scheme to be submitted by insurance or reinsurance undertakings to the supervisory authority according to Article 138(2) respectively Article 139(2) of Directive 2009/138/EC shall be focussed on implementing remedial measures to re-establish the compliance with the capital requirements and to support these by particulars and evidence on items specified in Article 142(1) of Directive 2009/138/EC and below to prove the adequacy of measures and foster the assessment and approval. Documentation and evidence should reflect nature, scale and complexity of the undertaking concerned as well as the measure to be assessed for approval.</p> <p>Change former draft paragraph (1) to the following where c) and d) only have editorial changes:</p> <p>(2) In accordance with paragraph 1 of this article the recovery plan and the finance scheme supplementing Article 142(1) of Directive 2009/138/EC should additionally include particulars or evidence concerning the following:</p> <p>a) estimates of the solvency capital requirement and the minimum capital requirement;</p> <p>b) assumptions and methods used for deriving the estimates referred to in Article 142(1) of Directive 2009/138/EC and above, including economic scenarios;</p> <p>c) own analysis of the causes for the non-compliance performed by the insurance or reinsurance undertaking;</p>	

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d) remedial measures already taken and remedial measures planned by the insurance or reinsurance undertaking, including their time schedule, and their effects with regard to re-establishing compliance with the solvency capital requirement, minimum capital requirement or both and with regard to the undertaking's overall business;

e) adequacy of the measures to re-establish compliance with the solvency capital requirement, minimum capital requirement or both on a continuous basis;

f) approval of the recovery plan respectively finance scheme by the administrative, management or supervisory body.

Add a new paragraph on formats:

(3) Preparing the recovery plan and the finance scheme in accordance with paragraphs 1 or 2 the insurance or reinsurance undertaking shall as far as possible make use of the standard reporting templates used within in regular supervisory reporting or the own risk and solvency assessment to assure a consistent and coherent submission.

Reasoning:

Ad new paragraph (1):

Rather than providing full information e.g. given with QRTs the undertakings and supervisory authorities joint priority should be set on the impact and adequacy of remedial measures or key figures behind SCR and MCR calculation respectively with regard to the tight time frame defined in the Directive 2009/138/EC.

Ad amending former paragraph (1):

Besides editorial changes:

ad a): Frequency and key date for calculation should be defined by the draft "Forecast balance sheet and estimates", please refer to our respective proposals.

ad b): Reference made explicit and thus best case improved.

ad c): editorial moving item at the beginning of the sentence.

ad d): editorial replacing "it" by "insurance or reinsurance undertaking".

ad e): Replace indeterminate legal concept "short timeframe" by requirement set by the framework

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	<p>directive; calculation respectively key date will be set below (cf. lit. a)).</p> <p>ad f): Delete "any concerns before approval was given". Evidence should be focussed rather on the adequacy of the measures proposed than on historical information. Concerns will have been dealt with and will have been respected in the final recovery plan resp. finance scheme. Documentation of discussions is neither necessary nor proportionate and will be an undue burden in a stressed situation.</p>	
Content of the recovery plan and finance scheme (2)	<p>We propose to delete this paragraph.</p> <p>Reasoning: Appropriate evidence will have to be given for every measure including commitments from third parties. Evidence for every measure should be proportionate to nature, scale and complexity of the measure and its "exposure" but with this reference to the proportionality principle will have to comply with requirements set by Solvency II regulation. Please also refer to our proposal to add a guiding subparagraph.</p>	
Forecast balance sheet and estimates	<p>With respect to the arguments given below we propose the following amendments to the draft:</p> <p>Change the heading: "Forecast balance sheet and Estimates: Reporting dates and assumptions"</p> <p>Extend scope to the estimates of SCR and MCR required by the draft DA above referred to as "Draft-Article RPFS 1":</p> <p>"The forecast balance sheet and all estimates referred to in Article 142(1) of Directive 2009/138/EC or by Draft-Article RPFS 1" are to be submitted by insurance or reinsurance undertakings as part of the recovery plan or finance scheme shall comply with the following:"</p> <p>Leave (a) and (b) unchanged.</p> <p>Change c) to:</p> <p>"c) they shall be provided as estimates for the reporting date which is the nearest future reporting date to the date of finding the non-compliance and additionally for the nearest regular reporting date by which the undertaking is to have reached sustainable recovery."</p> <p>Deleted d).</p> <p>Add the following requirement:</p> <p>"Additionally the insurance or reinsurance in accordance with Article 45 (5) of Directive</p>	

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	<p>2009/138/EC the undertaking should perform an own risk and solvency assessment or at least update the last one performed taking into account the remedial measures immediately after having successfully passed the supervisory approval of the recovery plan respectively finance scheme and the recovery period."</p> <p>Reasoning:</p> <p>Ad Scope / first sentence:</p> <p>We propose to define calculation dates in one article rather than in two.</p> <p>Ad c) and additional sentence:</p> <p>End of the recovery period will not necessarily be a typically reporting date or a quarter end. As technical requirements for sub-quarterly and even sub-annual calculations cause some effort we would like to propose to restrict calculations to those reporting dates for which processes are properly implemented.</p> <p>Additionally we would like to propose to avoid to introduce the indeterminate legal concept of "short timeframe" and refer to processes and concepts well established within the the Solvency II framework e.g. "to achieve sustainable recovery" and use the ORSA processes including its forecast requirements. But as a full ORSA would not be proportionate within the recovery period we would like to propose to restrict the calculations for the recovery plan to two reporting dates and add an ORSA performance afterwards as requirement.</p> <p>Ad d): Submission format is dealt with in our proposal for Draft-Article RPFS 1 and thus can be deleted here.</p>	
Overall reinsurance policy	<p>We suppose that this draft Delegated Act takes up Article 142(1)(e) of Directive 2009/138/EC and is about evidence on the impact of the measures taken on the overall reinsurance policy but not setting up a new policy requirement i.e. changes in the reinsurance treaties and cover are to be documented.</p>	
Non-compliance with both the MCR and the SCR at the same time	<p>We appreciate this proposal and would like to see it supported by replacing "may allow" by "upon request should allow".</p>	

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Approval of the recovery plan and finance scheme

We appreciate this proposal and would like to propose the following supplements:

(1) e) "the recovery plan or finance scheme does not have potential significant pro-cyclical effects on the undertakings financial position."

(2) replace "within a short timeframe" by "within the time up to the next regular reporting date".

(4) Ad "respective" at the end of this paragraph to refer to the relevant breach: "submitted within the original respective submission period."

Add two new paragraphs:

"(5) In their assessment the supervisory authorities should take into account potential adverse situations as referred to in Article 138(4) of Directive 2009/138/EC. In assessing the ultimate risk for payments to policyholders, means from local prudent accounting principles and additional safety buffers may be taken into account."

"(6) The supervisory authority should offer timely response, close co-operation and active involvement to support the insurance or reinsurance undertaking in setting up the recovery plan or finance scheme within the prescribed timeframe especially by answering questions in due course."

Reasoning:

Ad (1) e): Explicitly state a common understanding.

Ad (2): Change to achieve consistency with our proposals made above.

Ad (4): Rather editorial.

Ad (5): Although the current proposals deal with individual undertakings the macroeconomic background has to be reflected as it is done in Article 138(4) of Directive 2009/83/EC. Furthermore the ladder of intervention in practice has to be calibrated with care and proportionate to the risk exposure for policyholders taking into account e.g. local prudent accounting principles and safety buffers vs. volatility from the market in comparable short recovery periods. Cf. our comment on the level playing field with banking supervision and the duration of liabilities. Please also refer to the former regulation e.g. in Directive 2002/83/EC. where especially the withdrawal of the authorisation was a "may" and based on prudent accounting rather than (volatile) market values.

Ad (6): Referring to our general comments from our point of view the timeframe is ambitious and

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	thus close cooperation of undertaking concerned and supervisory authority will be essential. To our knowledge such a close cooperation and short feedback times are implemented in the corresponding banking supervision.	
Supervisory powers in deteriorating financial conditions:analysis		
Supervisory powers in deteriorating financial conditions (1)		
Supervisory powers in deteriorating financial conditions (2)		
Supervisory powers in deteriorating financial conditions (3)		
Supervisory powers in deteriorating financial conditions (4)		
Supervisory powers in deteriorating financial conditions (5)	We highly appreciated this paragraph and would like to add the following sentence or put it as a new paragraph: "To the extent possible the measures taken should follow a hierarchy starting with light intervention with high positive impact to expensive intervention with low impact."	
Annex I – General		



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Comment		
Annex I – Section 1		
Annex I – Section 2		
Annex I – Section 3		
Annex I – Section 4	Concerning the policy options we support choices for Policy issues 1 and 3 and would like to propose to amend the drafts for policy issue 2. Please refer to our proposals above.	
Annex I – Section 5	We support the choice of an open list of supervisory actions giving the supervisory authority more flexibility to adapt to specific circumstances of a particular case of non-compliance.	
Annex I – Section 6		