EIOPA-22-112
01/01/2022

Resolution of comments

Public consultation on the Supervisory statement on supervision of run-off undertakings

2. Content and objective

No	Response to the public consultation question	EIOPA's comments
1	Par. 2.1. It would be useful to properly define what "run-off business model" encompasses. We would expect the run-off business model to resemble a business model which is closed to new policyholders but still have the ability for renewals with existing policyholders based on the same terms and conditions. Basically, the current policyholders decide how long the run-off business model exists up to a certain extent in which the policyholder base is too thin and the run-off insurer is to make more drastic measures.(AMICE)	Noted. The definition of run-off is introduced in par. 3.1 where indeed this clarification has not been foreseen in the original text for the public consultation. Since the aim of the definition in par. 3.1. is to distinguish between types of run-off with regards to part of the business in run-off within a (re)insurance undertaking a reference note has been added to clarify the situation highlighted on your side.
2	Par. 2.1. Assuralia agrees with the responses of Insurance Europe to this consultation. The Belgian insurance companies contributed to Insurance Europe's response. (Assuralia)	Noted.

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3	Par. 2.1. The run-off business model can bring benefits to (re)insurers and to others including policyholders and supervisors. The risks to policyholders increase as time passes where a run-off undertaking is left isolated from an ongoing group and the resources that it can provide including scale efficiencies, management, governance, services and capital support. In addition, run-off businesses provide a viable and sustainable option for insurers considering pre-emptive recovery or capital management planning. (Catalina Holdings LtD.)	Agree. This is the reason why par. 21 elaborates on the possible benefits. However, EIOPA has amended Par. 2.1. accordingly by referring to the benefits also for policyholders depending on their profit participation. EIOPA has also included specific consumer protection aspects and measures which should be looked at to manage risks for policyholders.
4	Par. 2.1. It would be helpful if EIOPA could fully define the scope of "run-off business models" that are intended to be covered by the supervisory statement: eg does it cover businesses that are closed to new policyholders, but still have the ability for renewals for existing policyholders based on the same terms and conditions? The principle-based regulation of Solvency II is suitable for the specific risk profile of a run-off company. Supervision must deal with the respective risk profile, not only for run-off companies. The benefits of run-off business models are only partially covered in the statement. The industry suggest that EIOPA considers the following amendments, especially for life business: - High focus and efficiency to improve management of life books. - Reduce complexity. - Enable effective investments to modernise life operations, eg IT upgrades. - Improve long-term stability for policyholders. - Attract specialised human and material resources. - Free-up capital and resources on cedant undertakings to invest in key development areas (eg new products, distribution and digitalisation). (Insurance Europe)	Noted. The definition of run-off is introduced in par. 3.1 where indeed this clarification has not been foreseen in the original text for the public consultation. Since the aim if the definition in par. 3.1. is to distinguish between types of run-off with regards to part of the business in run-off within a (re)insurance undertaking a reference note has been added to clarify the situation highlighted on your side. Noted. EIOPA belives that the potential benefits of the run-off business model are all sufficiently included in par. 21, which by the way is an introductory statement (without claiming to be exhaustive). There is however a reference added to 'complexity reduction' which was not covered in the previos version.
5	Par. 2.1. The benefits of run-off to the insurance market are only partially covered. We propose to consider the following amendments especially for life business: - high focus and efficiency to improve management of life books, - reduce complexity - enable effective investments to modernize life operations, e. g. IT upgrades,	Partially agree. EIOPA belives that the potential benefits of the run-off business model are all sufficiently included in par. 21, which by the way is an introductory statement (without claiming to be exhaustive). There is however a reference added to 'complexity reduction' which was not covered in the previos version.

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	- improve long-term stability for policyholders. Runoff business is a growing and increasingly commoditised market, and where properly and fairly managed, it does not change the risk for the participants involved, but can even be beneficial for all parties involved including the primary insureds. (German Insurance Association)	Agree. EIOPA has amended Par. 2.1. accordingly by referring to the benefits also for policyholders depending on their profit participation.
6	Par. 2.1. It should be noted that in this regard due to cost reduction and reduction of complexity the run-off business model can even be advantageous to the policy holder as well. (Actuarial Association of Europe)	Agree. EIOPA has amended Par. 2.1. accordingly by referring to the benefits also for policyholders depending on their profit participation.
7	Par. 2.2. As long as the insurer is subject to Solvency II, the Solvency II regime is effective. In our opinion, there is no need for a special legislation. The remaining policyholders are currently still treated with a protection based on the 1:200 and all other requirements embedded in the Solvency II framework including guidelines and local Q&As. The distinct nature and issues with respect to run-off business models should be included in the ORSA and if needed discussed in the supervisory review process. (AMICE)	Noted. EIOPA Supervisory Statement is not special legislation but is rather setting expectations to ensure that a high quality and convergent supervision is applied to run-off undertakings/portfolios, subject to Solvency II, taking into account their specific nature and risks as well as the principle of proportionality and the prudent person principle. There is already reference made to ORSA and including in issues such as significant change in the risk profile following run-off business model in section 6 of the Supervisory Statement.
8	Par. 2.2. Ongoing experienced run-off acquirers have the requisite skills, focus and infrastructure to manage the specific challenges of run-off undertakings. (Re)insurers regularly decide to run-off some or all of the undertaking. Leaving these run-off undertakings isolated (solo) presents far higher challenges for supervisors than does permitting the undertaking to be transferred to an ongoing entity such as ourselves, an ongoing run-off acquirer and specialty loss portfolio reinsurer. (Catalina Holdings LtD.)	Noted. EIOPA belives this aspect is covered in par. 2.2, in particular with the redrafted version of the last sentence.
9	Par. 2.2. Insurance Europe understands the purpose of the supervisory statement is to attempt to ensure consistent supervisory practices by member states' competent authorities (eg Article 29(2) Regulation 1094/2010) and recognises that it is important to build up expertise on all aspects of run-off businesses to ensure that risk is adequately evaluated.	Noted and correct. EIOPA Supervisory Statement is not special legislation but is rather setting expectations to ensure that a high quality and convergent supervision is applied to run-off undertakings/portfolios, subject to Solvency II, taking into account their specific nature and risks as well as the principle of proportionality and the prudent person principle.

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	Insurance Europe agrees that it is of great importance to understand the motivation behind the transaction and to ensure adequate capitalisation of the company taking over the risks/portfolio. As long as the insurer is subject to Solvency II, the normal Solvency II legislation is effective. Creating new obligations for run-off companies, which are not explicitly stated in Solvency II legislation, might result in discriminatory treatment for run-off undertakings compared to other insurance entities. The distinct nature and issues with respect to run-off business should be included in the own risk and solvency assessment (ORSA) and discussed in the supervisory review process if needed. In addition, the supervisory statement should avoid treating issues that apply to all companies, regardless of whether they are in run-off or not, as issues specific for run-off business models. Finally, there might be circumstances where the proportionality principle should be applicable in a run-off context. This aspect of supervision of run-off undertakings should be made clear in the statement. (Insurance Europe)	As mentioned in par. 2.5. this Supervisory Statement 'addresses some issues that are not exclusive to run-off undertakings/portfolios, however, experience has shown that some of them may lead to stronger and more concerning consequences in that context.' which explains why EIOPA would like to keep these references. This supervisory statement is assuming that the proportionality principle is applied. Reference added in par. 2.4.
10	Par. 2.2. We believe that it is important to build up expertise on all sides with respect to run-off business to ensure that risk is adequately evaluated. We also agree that it is of great importance to understand the motivation behind the transaction and to ensure adequate capitalisation of the company taking over the risks / portfolio. While effective supervision is important, it should not hinder business transactions. In particular, supervision should recognize the diversity of insurers' different risk profiles. Bearing this in mind, the principle-based regulation through Solvency II ought to be generally suitable for the specific risk profile of a run-off company. Supervision must deal with the respective risk profile, in general but also specifically for run-off companies. (German Insurance Association)	Noted.
11	Par. 2.2. The structure of the document makes it unclear which sections apply to which situation (partial run-off, full run-off, specialised run-off undertakings other than Private Equity, Private Equity) plus the "distance" of the transfer/acquisition compared to the original situation (see 3.1 below). Clearly, Solvency II regulation is intended to be risk and principle based. -Hence, the specific risks, details in modelling, parameters for the valuation of the technical	Noted. The first part of the comment is dealt within par. 3.1. below. EIOPA Supervisory Statement is not special legislation but is rather setting expectations to ensure that a high quality and convergent supervision is applied to run-off undertakings/portfolios, subject to Solvency II, taking into account their specific nature and risks as

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	provision may be different but the general methodology and regulatory requirements are the same. Thus, we don't see any need for specific regulation on run-off undertakings/portfolios in the Solvency II framework. However, it should be supported that the supervisory authority understands the motivation, procedure, measures and design of run-off companies. Additionally it is very important that run-off undertakings identify and manage operational risks, especially concerning IT systems (adjustments after life cycle). (Actuarial Association of Europe)	well as the principle of proportionality and the prudent person principle. Reference added to understanding the design (including procedures and measures) of run-off companies together with the measures to discontinue the business. The management of operational risks especially on IT side is dealt in par. 6.5 where there is a reference already made to effective management of operational risks.
12	Par. 2.3. This development is not strange as parties see the benefit of synergies of scale with respect to the run-off portfolios. This could have a positive impact on the costs and interests of the policyholders. (AMICE)	Noted. EIOPA doesn't consider this as a negative development but it is worth being mentioned as a fact that – among other things – has led EIOPA to issue this Supervisory Statement.
13	Par. 2.3. The insurance market has been growing with new investors entering the market. Insurance companies and their investors prefer to focus their expertise and capital on new business and unexpired risk. Relatively recent changes to solvency capital calculations have highlighted the capital cost of technical provisions. Given scarce resources, insurance companies and investors are now more actively monitoring their business and more regularly ceasing to write less profitable business. A run-off portfolio's financial performance is considered to be uncorrelated with the underwriting cycle and to some extent less correlated with stock and bond market performance. This is attractive to institutional investors seeking diversified portfolio returns. The ability of run-off insurers to provide more bespoke solutions to insurers on a full range of reserves have allowed the run-off industry to use its expertise to satisfy a need that was underserved by the traditional reinsurance markets and this has also fueled growth. (Catalina Holdings LtD)	Noted.
14	Par. 2.3. Many European insurers, particularly those with long-term life businesses, trade at a heavy discount to Solvency II own funds, making growth and investments in new developments challenging. Therefore, this is a normal development, due to the synergies and economies of scale with respect to the run-	Noted. EIOPA doesn't consider this as a negative development but it is worth being mentioned as a fact that – among other things – has led EIOPA to issue this Supervisory Statement.

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	off portfolios. In addition, this could have a positive impact on specialisation and costs both on cedants and acquirers. (Insurance Europe)	
15	Par. 2.3. Where the legal environment allows transfers, re/insurance companies see transfers as a tool adding value to capital and improving their cost situation. Run Off Management has become a management topic and, thus, is no longer just an administrative, but a steering task. (German Insurance Association)	Noted.
16	Par. 2.3. Some undertakings are outsourcing the administration of the portfolio – so-called third party administration (TPA). The insurance risk remains in the undertaking whereas the administration of the policies is done by an external provider. This is regulated by the well-known requirements for outsourcing. (Actuarial Association of Europe)	Noted.
17	Par. 2.4. The expense assumptions for run-off business undertakings should still be based on the actual expenses directly related to the insurance obligations. There is no need to make a differentiation as the best estimate definition is unchanged. The assumptions are still based on the notion of what third parties would incur as expenses (exit value notion). (AMICE)	Do not agree. EIOPA recently advised European Commission to amend the Solvency II framework with regard to the expenses assumptions considered in the calculation of technical provisions of undertakings not underwriting new business (see section on expenses of the EIOPA's Opinion on the 2020 review of Solvency II).
18	Par. 2.4. It is of utmost importance to differentiate between life and non-life business, as in the calculation of technical provisions, the motivation behind transfers as well as the business itself are completely different. (German Insurance Association)	Do not agree. EIOPA recently advised European Commission to amend the Solvency II framework with regard to the expenses assumptions considered in the calculation of technical provisions of undertakings not underwriting new business (see section on expenses of the EIOPA's Opinion on the 2020 review of Solvency II).
19	Par. 2.5. Are the experiences analysed in such a manner that general conclusions can be drawn? It would be useful to get a flavour of the experiences and how this is translated into actual risks for the general cases of run-off business models. (AMICE)	Noted. Indeed EIOPA has analysed run-off business models which has led to the conclusions listed in the paper . EIOPA belives that based on the expectations listed within the paper general conclusions can be drown with regards to supervion of run-off business.
20	Par. 2.5. EIOPA should confirm whether it has analysed experiences providing sufficient insights and justification in order to draw general conclusions, including the absence of the same issues in non run-off portfolios and undertakings. EIOPA should also elaborate further on these experiences and how these translated into actual risks for the general cases of run-off business models.	Partially agree. Indeed EIOPA has analysed run-off business models which has led to the conclusions listed in the paper. Clarification has been made in par. 3.1., foot note 13. EIOPA belives that keeping the structure already set without further splitting the different cases reads better and in line with the risk-

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	It should be clarified that every form of portfolio transfer involving portfolios with limited or no new business (local and cross border) are in scope of this supervisory statement. Moreover, it is important to define and differentiate clearly between: - Non-life insurance companies with run off business. - Non-life insurance companies in run off. - Life insurance companies with in force business no longer actively underwritten. - Life insurance companies in run off (see answers below for details). In this context it would be reasonable to also highlight the need for a proportionate supervision, as mentioned above. Supervision of run-off business should in this regard not be less flexible than supervision of other business models. (Insurance Europe)	based approach of Solvency II, clarification has been added in foot note 12 what is meant with 'undertaking'. The split suggested on your side basically fits within the already existing categories 1 and 2. This supervisory statement is assuming that the proportionality principle is applied. Reference added in par. 2.4
21	Par. 2.5. It should be clarified that every form of portfolio transfers involving portfolios with limited or no new business (local and cross border) are considered in this supervisory statement. Moreover, it is important to define and differentiate clearly between (1) non-life insurance companies with run off business, (2) non-life insurance companies in run off, (3) life insurance companies with in force business no longer actively underwritten and (4) life insurance companies in run off; see answers below for details. (German Insurance Association)	Partially agree. The aim of the Supervisory statement is to set out recommendations to address risks, independently from the type of transaction made. Clarification has been made in par. 3.1., foot note 13. EIOPA belives that keeping the structure already set without further splitting the different cases reads better and in line with the risk-based approach of Solvency II, clarification has been added in foot note 12 what is meant with 'undertaking'. The split suggested on your side basically fits within the already existing categories 1 and 2.
22	Par. 2.6. As part of the context of this Supervisory Statement, a reference should be made to the general principles of supervision in Solvency II. In particular an explicit reference to Article 29 of the Solvency II Directive should be added, highlighting that supervision shall be based on a prospective and risk-based approach, and should comply with the proportionality principle to ensure that the requirements are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an undertaking. (Insurance Europe)	Agree. Reference to Article 29 of Solvency II Directive added in this paragraph. This supervisory statement is assuming that the proportionality principle is applied – explicit reference added in par. 2.4.
23	Par. 2.6. We agree that it is key that any new guidelines and regulations be considered in the context of the wider governance regulations of Solvency II. (Actuarial Association of Europe)	Noted.

3. Definition of run-off

No.	Response to the public consultation question	EIOPA's comments
24	Par. 3.1. As mention in section 2.1, the definition should be unambiguous. The question is how EIOPA defines new business? Is that only related to new policyholders or does this also encompass renewals (if possible)? Does this imply that run-off would imply no written premiums or is that still possible? (AMICE)	Noted. The definition of run-off is introduced in this paragraph where indeed this clarification has not been foreseen in the original text for the public consultation. Since the aim if the definition to distinguish between types of run-off with regards to part of the business in run-off within a (re)insurance undertaking a reference note has been added to clarify the situation highlighted on your side.
25	Par. 3.1. We believe that to be included in this Supervisory Statement the run-off undertaking must be wholly or partly isolated (or stand-alone or solo) from its ongoing group. Isolation is the key determinant when considering any additional risks that policyholders might face in a run-off portfolio. This appears to be in line with the broad theme of the Supervisory Statement. It is also in line with market reality. (Re)insurers often start/stop/increase/reduce their underwriting activities in focused areas and run-off the claims. Policyholder protection is not negatively impacted. They continue to share in all of the resources of the ongoing group. Taking a risk based approach to supervision, and in keeping with consistent and convergent regulation, it is paramount that the Supervisory Statement recognizes the substantially reduced risk to policyholders from an ongoing experienced run-off consolidator as compared with isolated run-off undertakings. The definition above and/or the extent of supervisory intervention should focus on isolated run-off undertakings mainly or solely. (Catalina Holdings LtD)	Noted. It is true that the negative impact of run-off business in an isolated undertaking is stronger, however EIOPA considers that the guidance in this document should be applied also in cases where the run-off company/ business is within a group. In this case the supervisory intervention would ensure that the potential negative impact to polcyholders is not spread within the group.
26	Par. 3.1. As mentioned in section 2.1, the industry would like to see a clear and unambiguous description of a "run-off" undertaking. At the moment it is unclear how EIOPA interprets new business, whether this implies new policyholders or whether this also encompasses renewals. EIOPA should therefore clarify whether it implies that run-off would mean no written premiums, or would written premiums still be possible. Even in a run-off business situation, policyholders could be required to pay premiums. If this is not possible, EIOPA should then make a distinction between a closed book and a run-off business model. This would imply in the closed book, future written premiums and additional policyholder	Agree. The definition of run-off is introduced in this paragraph where indeed this clarification has not been foreseen in the original text for the public consultation. Since the aim if the definition to distinguish between types of run-off with regards to part of the business in run-off within a (re)insurance undertaking a reference note has been added to clarify the situation highlighted on your side.

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	behaviour would be expected whereas in the run-off business model, there would only be the possibility of cash out flows (with the exception of future discretionary benefits). It remains unclear what is meant by "portfolio of contracts". EIOPA is asked to clarify whether undertakings with cancelled contracts, which together could be regarded as a portfolio, are subjected to run off supervision, even if such a portfolio does not constitute an entire line of business. And if the line of business should become the decisive factor, EIOPA should clarify what governs the bounds of a line of business. (Insurance Europe)	Partially agree. A reference note has been added to clarify that 'portfolio of contracts' is covering also the cases for undertakings with contracts, which together could be regarded as a portfolio, even if such a portfolio does not constitute an entire line of business. This implies that line of business is not the decisive factor when applying this definition. As mentioned in par. 3.2. the definition excludes the cases where a minority of non-material products/line of business is discontinued.
27	Par. 3.1. The definition and differentiation of partial run-off undertakings from those with new business appears difficult and is not made clear here. In particular, it remains unclear what is meant by portfolio of contracts: Are undertakings with canceled contracts, which together could be regarded as a portfolio, subjected to run off supervision, even if such portfolio does not constitute an entire line of business? And if the line of business should become the decisive factor, what governs the bounds of a line of business? As a general principle any rules to be set up should be applicable alike to run off business in general, taking into account the nature of the business but being blind to the origin of the business. So, it also should be applicable to old underwriting years of an active portfolio to be transferred from one active insurance carrier to another. (German Insurance Association)	Partially agree. A reference note has been added to clarify that 'portfolio of contracts' is covering also the cases for undertakings with cancelled contracts, which together could be regarded as a portfolio, even if such a portfolio does not constitute an entire line of business. This implies that line of business is not the decisive factor when applying this definition. As mentioned in par. 3.2. the definition excludes the cases where a minority of non-material products/line of business is discontinued. Agree. This clarification has been included in par. 3.1.
28	Par. 3.1. The location of business might necessitate a different supervision approach; - National - EU - Outside EU with third country equivalence - Outside EU with no equivalence The definition of run-off is more complex than described in the 3 points There is a difference between the following kinds of portfolios of contracts: i. no more premiums will be paid (full run-off)	Partially agree. EIOPA considers there is no need of further clarification of the supervisory approach specifically for this Supervisory statement as the same rules are applicable which are applicable in the supervision of all other issues. Partially agree. Point (i) is already covered in the definition; with regards to (ii) a reference note has been added in par. 3.2. in order to capture this specificity; with regards to (iii) and (iv) a reference note has been added in par. 3.3.

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	ii. premiums are still paid due to contractual conditions (with contractual guarantees on these future premiums - integrated in the contract boundaries) (almost full-run-off) iii. premiums can still be paid with new liabilities of the insurer(no contractual guarantee on these future premiums - included or not included in the contract boundaries), such as contracts with flexible premiums or universal life (partial run-off) iv. premiums can be paid with new liabilities of the insurer (no contractual guarantee on these future premiums - integrated or not integrated in contract boundaries), such as future premium increases due to salary increases or new premiums of new members in group insurance contracts of the 2nd pension pillar (partial run-off). Even in case of a run-off of a sub portfolio there might be a strong linkage with the segments open for new business (e.g. profit participation, common base of assets covering the liabilities etc.). In this case ab "run-off" of a collective whose customers are connected via such mutual interrelations is only present if no new business is written into this sub portfolio which is required by legal or contractual obligations Instead of partial run-off, we can then speak of a full run-off of a partial portfolio. We suggest to clarify the definition. (Actuarial Association of Europe)	
29	Par. 3.2. EIOPA did not define or describe what material means in the definition "partial run-off refers to the cases where a material part of the undertaking's business is stopped". It is therefore assumed that material means that most of the portfolio is in run-off. As the consultation warns about risks of companies in run-off — such as no new business to cover a potential rise in costs, no proper customer service etc — the consultation only seems relevant when the product offering is decimated. It is a normal and frequent occurrence that certain products are closed to new business, often due to externally triggered changes (eg changed taxation of products). But the insurer continues to write new business with other/adapted products. It certainly does not make sense for the extensive requirements of this statement to apply in such a case. This case should therefore be explicitly excluded, as the sole reference to materiality is not sufficient. Instead of partial run-off, it is then possible to speak of a full run-off of a partial portfolio.	Noted. Consistently with other aspects of Solvency II, it is not envisaged to include a specific definition of materiality as it depends on the profile, business model and the complexity of the business run by the particular (re)insurance undertaking. It is possible to refer to most of the portfolio, but not solely as also the way the run-off is impacting the undertaking should be considered in the assessment (regardless of the weight of the run-off compared to the other business). Please take a look into the clarification notes added in par. 3.2 and 3.3 in response of the rest of your comment.

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	With regard to non-life, Insurance Europe suggests, in the context of this supervisory statement, that run-off be described as "any contract respective contract year (underwriting year) which is not ongoing": ie, the contractual term of which has elapsed. Any such business can be subject to a business transfer. (Insurance Europe)	
30	Par. 3.2. It is a normal and frequent occurrence that certain products are closed to new business - often due to externally triggered changes (e.g., changed taxation of products). But the insurer continues to write new business with other/adapted products. It certainly does not make sense for the extensive requirements of this statement to apply in such a case. This case should therefore be explicitly excluded. The sole reference to materiality is not sufficient. A practical example: a life insurer concludes long-running contracts with its customers (> 30 years, e.g. annuity). The tariffs are regularly revised and replaced by new ones. In this case, over time, more than 90% of the tariffs are no longer open for new business AND the insurer has a current complete product range. In addition, there is often a joint investment and risk equalisation for these products. However, these parts are typically linked to the segments open for new business through mutual effects (e.g. profit sharing, common basis of assets to cover liabilities, etc.). For this reason, it does not seem appropriate to speak of partial run-off in such situations. Instead of partial run-off, we can then speak of a full run-off of a partial portfolio. We suggest to clarify the definition or even to abstain from using the term "partial run-off" at all. With regard to non-life, we suggest run off to be defined as "any contract resp. contract year (underwriting year) which is not ongoing", i.e., the contractual term of which has elapsed. Any such business can be subject to a business transfer. (German Insurance Association)	Noted. As mentioned in the comment above EIOPA is of the view that materiality should be defined depending on the profile, business model and the complexity of the business run by the particular (re)insurance undertaking. In this context the example brought on your side is the relevant one to explain that the run-off business (the old tarrifs) should be seen as run-off in the timeframe in which it represents material component of undertaking's business. If the new tariffs and the other business run by the undertaking 'cover' the run-off so it looks inmaterial there will be no reference to partial run-off. Partially agree. See clarification added in par. 3.1 under reference note 13.
31	Par. 3.2. This definition seems quite broad and vague in terms of how materiality is defined. Would it be better to only include partial cases where the decision creates a question in relation to the Company's strategy for fulfilling its obligations? 'Minority' is open to interpretation and so more clarity would be appreciated. It should also be clarified what is considered to be partial run-off in context of this paper. As defined in this paragraph the term partial run-off is linked to any discontinued business. If considered on the level of tariffs, it is quite common that there is a material part of the business portfolio subject to tariffs which are no longer offered to the market. In our understanding such business would not be considered as run off as long as the same product or the corresponding line of business is still open for new business. The definition of partial run-off is unclear and not useful – for both Life and Non-Life. (Actuarial Association of Europe)	Noted. As mentioned in the comment above EIOPA is of the view that materiality should be defined depending on the profile, business model and the complexity of the business run by the particular (re)insurance undertaking. In this context the example brought on your side is the relevant one to explain that the run-off business (the old tarrifs) should be seen as run-off in the timeframe in which it represents material component of undertaking's business. If the new tariffs and the other business run by the undertaking 'cover' the run-off so it looks inmaterial there will be no reference to partial run-off. Please take a look into the clarification notes added in par. 3.2 and 3.3 in the context of your comment.

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32	Par. 3.3. We do not concur with the statement that a "search for yield" is directly associated with the active management of these run-off portfolios. Also, for this part of the business, the normal Solvency requirements are in place such as the prudent person principle, ALM, etc. A "search for yield" would also be met by higher capital requirements which in their turn would result in higher capital costs. This is contrary to the goal of cost reductions. (AMICE)	Agree. The reference to 'search for yield' is removed in order not to create confusion in reading the text.
33	Par. 3.3 The industry does not agree with the statement that a "search for yield" is directly associated with the active management of these run-off portfolios. Also for this part of the business, the normal Solvency II requirements are in place, such as the prudent person principle, asset liability matching (ALM) etc. (Insurance Europe)	Agree. The reference to 'search for yield' is removed in order not to create confusion in reading the text.
34	Par. 3.3. This wording seems to imply that assumptions can only be changed for profitable business. We assume it should be permissible to change assumptions for loss making business also to reflect the new situation e.g. different expected expenses. (Actuarial Association of Europe)	Don't agree. Par. 3.3. simply refers to the more commonly strategies implemented to improve the profitability of the run-off business (both in case of profit-making or loss-making business)
35	Par. 3.4. It is likely that at first look, many might think that Catalina was a specialised run-off undertaking. This description assumes that the different acquisitions are isolated from one another including say management, governance, resources and access to capital. In our case, this isn't true. We acquire new legacy portfolios and undertakings in the same way that traditional (re)insurers write new business. Our management, governance, resources and capital are available to all of our policyholders. Catalina's legal structure, operating model and past examples of intra-group transactions confirms this assertion. The Supervisory Statement should consider the meaning of "legacy". In the past, a run-off undertaking's legacy portfolios were generally non-core, distressed or unprofitable lines/portfolios. In recent years, specialised run-off undertakings have been supporting active insurers who continue to underwrite business in a profitable way. The specialized run-off undertaking provides loss portfolio transfer reinsurance on the prior years that provide the insurer with capital relief. Often these transactions operate in a partnership and repeat over time much like traditional reinsurance. Policyholders remain to be protected by the active insurer in these transactions. Again, it is important for this Supervisory Statement and the supervisors to recognize that many run-offs are not isolated from an ongoing group and that many loss portfolios that specialised run-off undertakings reinsure are not legacy business. (Catalina Holdings LtD)	Noted. The wording of the statement in par. 3.4. doesn't oppose to the details shared on your side. The description doesn't refer to isolated acquisitions, it just refers to the fact that those undertakings are focused in this job without referring to more details. This paragraph shouldn't be read in 'negative' context. Indeed, the case you described is mentioned in par. 3.4 of the statement. Agree. Additional clarification added in par. 3.4. in order to capture this aspect.

No.	Response to the public consultation question	EIOPA's comments
36	Par. 3.4. While this is true, a caveat may be in order, as many of the specialized non-life run off undertakings keep their underwriting license: eg by renewing just a handful of policies. At the same time, there are (re)insurance companies seeking to actively acquire legacy portfolios or undertakings in run off in addition to their usual activities, which are not to be considered as "specialised run off undertakings". (Insurance Europe)	Noted. The wording of par. 3.4. doesn't oppose to your statement. The meaning of the paragraph is that the undertakings are specialized in acquiring run-off portfolios while there is no limitation in keeping the underwriting license.
37	Par. 3.4. While this is true, a caveat may be in order, as many of the specialized non-life run off undertakings keep their underwriting license, e.g., by renewing just a handful of policies. At the same time there are re-/insurance companies seeking to actively acquire legacy portfolios or undertakings in run off in addition to their usual activities, which are not to be considered as "specialised run off undertakings". (German Insurance Association)	Please see above comment.
38	Par. 3.4. The business model described is connected with legal actions in the future, i.e. acquisitions and/or transfers of portfolios. In many jurisdictions such type of transactions are subject to regulatory approval (e.g. "Inhaberkontrollverfahren" in Germany). This constitutes a major difference compared to new business written under an insurance license in a going concern situation. This should be considered appropriately. (Actuarial Association of Europe)	Agree. Clarification added in a reference note.
39	Par. 3.5. As noted above, the statement should clearly differentiate between life and non-life business. (Insurance Europe)	Noted. EIOPA belives that keeping the structure already set without further splitting the different cases reads better, clarification has been added in foot note 12 what is meant with 'undertaking'. The split suggested on your side basically fits within the already existing categories 1 and 2.
40	Par. 3.5. As noted, the statement should clearly differentiate between life and non-life business. (German Insurance Association)	Please see above comment.
41	Par. 3.6. In some European markets there are national insurance guarantee schemes, whose concept is to transfer portfolios in case of a needed winding-up to insurance companies which have been set up just for this purpose. In Germany, for example, this is the case for life insurance business via Protektor Lebensversicherungs AG. We suggest to exempt such cases and the respective insurance companies from the Supervisory Statement as well. (Actuarial Association of Europe)	Agree. Clarification added in a reference note in the paragraph.

4. Decision to go into run-off

No.	Response to the public consultation question	EIOPA's comments

No.	Response to the public consultation question	EIOPA's comments
42	Par. 4.1. We do not question the need for the above assessment but we are struggling why EIOPA does not refer to the need of an ad-hoc ORSA if these decisions are made. The decision would imply a significant change in the risk profile for which an ad-hoc ORSA is needed (as indicated in section 6.26). This should be the appropriate course of action i.e. following the requirements of an ad-hoc ORSA. Therefore, no new process is needed. (AMICE)	Partially agree. EIOPA is of the view that an ad-hoc ORSA should indeed reflect this decision, but in the same time it is an internal tool for the solvency assessment of the (re)insurer. It would therefore not address the fact that the supervisor needs further information on the decision to enter into run-off at the moment it is being taken. However, a reference to the ad-hoc/non regular ORSA has been included in section 4.
43	Par. 4.1. While the industry does not question the need for the requested information, it is unclear why EIOPA is not referring to the need for an ad-hoc ORSA if these decisions are made. As such a decision would imply a significant change in the risk profile for which an ad-hoc ORSA is needed (as represented in section 6.26). Therefore adhering to the requirements of an ad hoc ORSA is deemed the right course of action. Moreover, no legal notification requirement applies. Though EIOPA is using the term "expected", the subsequent enumeration of extensive information to be submitted may suggest a reference to a legal requirement. (Insurance Europe)	Partially agree. EIOPA takes note that an ad-hoc ORSA should reflect the change in the risk profile linked to the decision to go into run-off. EIOPA also takes note that the expectation to notify supervisors is not based on legal notification requirements but the objective is to inform the supervisor ahead of a significant change in the risk profile. In this context EIOPA has added a specific reference to ad-hoc/non regular ORSA has been included in section 4.'
44	Par. 4.1. While we agree that it is in the best interest of undertakings to inform supervisory authorities once they settle on the decision to suspend their underwriting activities, and discuss the aspects mentioned above, it is worth to clarify that no legal notification requirement applies. Though EIOPA is using the term "expected", the subsequent enumeration of extensive information to be submitted may suggest a reference to a legal requirement. In addition, it should be noted that for undertakings with a run off business model, the requirement of a financial projection of the assets until the final expiry of the business is subject to many imponderables as this requires the acquisition of further portfolios with further assets. (German Insurance Association)	Noted. EIOPA confirms that the intention is not introduce a newlegal notification requirements. EIOPA further notes also that for undertakings with a run-off business model, the financial projection of assets until final expiry of the business is subject to many imponderables.
45	Par. 4.1. As part of the on-going dialogue of the company several reports are already provided to the supervisor. Some of these (i.e. ORSA, RSR, risk reports) can already be used as a basis. On a national level additional reports e.g. requested by local GAAP accounting, are available. Based on these specific information should be required with a sense of proportionality. Regarding the listed documents: • When is notification expected to take place – before or after the decision on stopping writing new business has been made?	Noted. EIOPA takes note of the questions asked as regards the listed documents and need to communicate them to the supervisor: - When is the notificiation expected to take place? As soon as the decision on stopping writing new business has been made.(also included in the statement) - What powers do supervisors have once notified? The objective is to provide them with the

No.	Response to the public consultation question	EIOPA's comments
	• What powers do supervisors have once notified – can they prevent certain decisions being made? • A proportional approach should be taken here with only a subset of information required depending on the specific situation in question. • For how long into the future are financial projections expected. As the level of uncertainty increases a very long projection period can lead to spurious accuracy. • When might stress and scenario tests be deemed appropriate – will companies have the power to decide on appropriate stresses? • When could an ad-hoc ORSA and an analysis of the impact on the existing contracts be necessary? To consider: Regulations of general interest might remain applicable to some LoBs in some countries (e.g. group insurance and work accident in Belgium). For example, for group insurance contracts of the 2nd pension pillar, the insurance company is also a pension institution (within the social regulations) and has to respect social and tax regulations, even if it decides to put its portfolio in run-off (calculation of the social vested rights, declaration of the vested rights to the data bank on the supplementary pensions, benefits with tax deductions,..). We suggest that the listed requirements should be marked as examples. (Actuarial Association of Europe)	possibility for an early pre-assessment of the operation. - A proportional approach with only a subset of information required depending on the specific situation in question. Yes, the approach should be proportionate and the documents provided according to availability and the nature and materiality of the operation. - Future projections The expectation for non-life business would be the minimum of 3 years, however in case of life company this minimum is not applied and the period would depend on the specific business model of the company (e.g.10-15 years). This is the reason why EIOPA is not convinced about including any minimum period for the future projections. - When might stress and scenario tests be deemed appropriate – will companies have the power to decide on appropriate stresses? It will depend on the materiality of the operation. Appropriate scenarios will be defined by undertakings. - When could an ad-hoc ORSA ad an analysis of the impact of the existing contracts be necessary? Depending on the materiality of the involved change in the risk profile. This supervisory statement is assuming that the proportionality principle is applied. Reference note added in par. 2.1. EIOPA takes note that regulations of general interest might remain applicable to some LoBs in some countries.

No.	Response to the public consultation question	EIOPA's comments
		As regards marking listed requirements as examples, please note the list in this Supervisory statement should be considered as non-exhaustive.
46	Par. 4.2. The industry agrees that the information to stop writing new business is material. But it does not think that this should immediately cause an ad-hoc Solvency and Financial Condition Report (SFCR) because the information should be spread after conclusion of the contracts (sale, purchase, outsourcing, service level agreement). An earlier information would disturb the negotiations concerning the contracts. (Insurance Europe)	Agree. The following clarification has been made through reference note in par. 4.2.:'The paper does not necessarily imply that the ad-hoc SFCR publication is done before the conclusion of the contracts.'
47	Par. 4.2. We agree that the information to stop writing new business is material where a company decides to go into runoff. This would usually not be material where a company decides to run-off (a) particular portfolio(s). We do not think that this should cause immediately an ad-hoc SFCR because the information should be spread after conclusion of the contracts (sale, purchase, outsourcing, service level agreement, ...). An earlier information would disturb the negotiations concerning the contracts. (German Insurance Association)	Please see above comment.
48	Par. 4.2. We agree that the information to stop writing new business is material. But we don't think that this should cause immediately an ad-hoc SFCR because the information, especially in case 3) of the full run-off, should be spread after conclusion of the contracts (sale, purchase, outsourcing, service level agreement ...). An earlier information would disturb the negotiations concerning the contracts. (Actuarial Association of Europe)	Please see above comment.
49	Par. 4.3. The statement should distinguish between cross-border run-off transfers and run-off of cross-border business without a transfer. In cases where there are cross-border run-off transfers, both supervisory authorities jointly cooperate. On the other hand, in a normal run off of a portfolio of cross-border business with the company having underwritten the book of business, it is not clear why a different treatment or additional supervision would be necessary. (Insurance Europe)	Partially agree. The supervisory statement does not require additional supervision in case of run-off of cross-border business without a transfer. However, in case needed, home and host supervisory authorities should cooperate and exchange any information at their disposal which could affect policyholder's right.
50	Par. 4.3. The statement should distinguish between cross-border run-off transfers and run-off of cross-border business without a transfer. In case of cross-border run-off transfers both supervisory authorities jointly cooperate. On the other hand, in a normal run off of a portfolio of cross-border business with the company having underwritten the book of business, it is not clear why a different treatment or additional supervision would be necessary. (German Insurance Association)	Please see above comment.
51	Par. 4.3. The term "cross-border run-off" should be included in the definition section further above. We would welcome more details on cross-border insurers in this document. (Actuarial Association of Europe)	Agree. Further definition of cross-border run-off is added in section 3 of this Supervisory Statement.

No.	Response to the public consultation question	EIOPA's comments
52	Par. 4.4. The need for increased protection might exist with a cross border transfer of an insurance company, but it is already acknowledged by requesting an appropriate contact for the policyholders. With regard to reinsurance transfers, which are by nature in most cases cross-border transactions, there is no need for additional protective actions, as all parties are sophisticated participants of the market and no consumer needs to be protected. (Insurance Europe)	Partially agree. The paragraph does not necessarily request additional protective actions but emphasises the actual need for identification of specific areas of potential risk.
53	Par. 4.4. The need for an increased protection might exist with a cross border transfer of an insurance company but is already acknowledged by requesting an appropriate contact for the policy holders. With regard to reinsurance transfers, which are by nature in most cases cross-border transactions, there is no need for additional protective actions as all parties are sophisticated participants of the market and no consumer needs to be protected. (German Insurance Association)	Please see above comment.

5. Specialized run-off undertakings - early dialogue & identification of risks of the acquisition transfer

	Response to the public consultation question	EIOPA's comments
54	Par. 5.1. We understand that those paragraphs apply on top of the global requirements in case of shareholders specialised in the run-off business of insurance portfolios. It should be noted that IFRS3 makes a distinction between business combination and portfolio transfer. We recommend investigating whether this should also result in a different supervision approach. (Actuarial Association of Europe)	Agree. The reference to the need for supervisory authorithies to receive accurate and timely information to assess (and eventually approve) the acquisition a run-off undertaking/portfolio or a transfer of a run-off portfolio applies on top of other global requirements
55	Par. 5.2. It is not practical to require that an external actuarial report be provided to the supervisor for every change in control application. Large, experienced ongoing run-off acquirers with a proven track record of carrying appropriate technical provisions should be exempt from this unnecessary burden. We underwrite many transactions that do not proceed. Given the timing of the process we would be required to obtain numerous external reports each year for transactions which do not proceed. (Catalina Holdings LtD)	Agree. The external actuarial report is recommended only in case of portfolio transfer for which undertakings request the authorisation (in accordance with Article 39 of Solvency II Directive) to their supervisory authority.
56	Par. 5.2. Concerning the mentioned external actuarial report, the industry would like to emphasize that there are already actuarial and risk reports written by the key functions (AF, RMF) within companies which could fulfil such required analysis. Additionally, actuarial reports would comply with relevant standards of the actuarial profession. Such standards require appropriate levels of documentation to enable third party experts to come up with their own judgment. Due diligence on portfolios or undertakings may not include a buyer's actuarial report in the terms expressed above and this report may not be available before signing an acquisition. The	Noted. The mentioned actuarial and risk reports written by the relevant key functions are only available some time after the conclusion/approval of the transaction while the purpose of the recommendation is make more efficient the early dialogue among undertakings and supervisory authority before the transation is concluded.

	Response to the public consultation question	EIOPA's comments
	underwriting risk is addressed by a combination of other due diligence findings and risk assessments, representations, guarantees, price adjustments and indemnities that are particular to every deal. The obligation of such a report is not present in the regulation and certainly not applied to any other type of acquisitions and should not be included here as it prevents normal market functioning. (Insurance Europe)	However, the external actuarial report is now requested for all portfolio transfers portfolio transfers for which undertakings request the authorisation (in accordance with Article 39 of Solvency II Directive) to their supervisory authority.
57	Par. 5.2 Concerning the mentioned external actuarial report we would like to emphasize that there are already actuarial und risk reports written by the key functions (AF, RMF) within the companies which could fulfil such required analysis. Additionally, actuarial reports would comply with relevant standards of the actuarial profession. Such standards require appropriate level of documentation to enable third party experts to come up with their own judgement. (German Insurance Association)	Please see above comment.
58	Par. 5.2. When is the external actuarial report required? The wording refers to, "The undertaking intending to acquire a run-off portfolio." which could be taken to imply a report is needed very early in the process before a high-level sale agreement is put in place. Such a requirement creates additional barriers to progressing with such transactions and will increase the costs for those involved, without necessarily enhancing protection for policyholders. In Ireland, for life assurance transfers there is a concept of an independent actuary, but their report is needed only as part of a court approval process which is the last step in the process when other terms have been agreed. We note that the independent actuary's review likely implicitly includes an assessment on the adequacy of technical provisions, and that there would also typically be an internal assessment of the technical provisions. Would that suffice here? Otherwise, could two separate external reports be required at different times – this would appear to be overkill? We suggest that the requirement for this assessment to be external be removed; alternatively, should there remain a preference to require an external assessment, we propose that the independent actuary's review noted above should be considered sufficient in this regard. Actuarial und risk reports written by the key functions (AF, RMF) within the companies could fulfil such required analysis. - Actuarial reports would comply with relevant standards of the actuarial profession. Such standards require appropriate level of documentation to enable third party experts to come up with their own judgement. (Actuarial Association of Europe)	Partially agree. The external actuarial report is recommended only in case of portfolio transfer for which undertakings request the authorisation (in accordance with Article 39 of Solvency II Directive) to their supervisory authority. The external nature of the report was kept in order to assure the independence of the valuation/verification.
59	Par. 5.3. A 15-year horizon or more might not necessarily be relevant given uncertainty. Depending on the risk profile and the contract period the respective national supervisory authority should suggest an appropriate projection horizon case by case. (Actuarial Association of Europe)	Agree. The reference to "15-year horizon or more" has been replaced with the reference to "expected duration and uncertaintly of technical provisions"
60	Par. 5.4. GENERAL COMMENT ON THIS SECTION: As a general comment for this section (points 5.4 to 5.12) there is nothing in them that should not be included in every transaction in the insurance market. Not only is it important to have a dedicated team with adequate expertise	Noted

	Response to the public consultation question	EIOPA's comments
	looking at the transactions, but it also needs to be ensured that the assessment and the full process do not exceed a given time limit (for example 6-12 months) to ensure that the data provided is not outdated. Moreover, with run off portfolios having become increasingly commoditised, the duration of the supervisory process is a necessary precondition for the development of a run-off market in a given jurisdiction. (Insurance Europe).	
61	Par. 5.4. Not only is it important to have a dedicated team with adequate expertise looking at the transactions but it also needs to be ensured that the assessment and the full process do not exceed a given time limit (for example 6-12 months) to ensure that the data provided is not outdated. Moreover, with run off portfolios having become increasingly commoditized, the duration of the supervisory process is a necessary precondition for the development of a run-off market in a given jurisdiction. (German Insurance Association)	Noted
62	Par. 5.5. The Supervisory Statement should include some recognition of the upper boundary of policyholder protection. It should state that it is not the intention to hold the acquiring run-off undertaking to a higher level of policyholder protection than it sets for all (re)insurers. (Catalina Holdings LtD)	Noted. The aim of the Supervisory statement is not introduce additional requirements to run-off undertakings but simply remind that the transactions should not impair the level of insurance service to the policyholders and their protection, which is the ultimate goal of Solvency II.
63	Par. 5.5. The description seems to be applicable only to life business transfers by an insurance company. It does not fit the circumstances and requirements of non-life business transfers or reinsurance transfers (life and/or non-life). A clear distinction between the different types of insurance and reinsurance business is required throughout the paper. (Insurance Europe)	Don't agree. The recommendation to assess undertakings' business model, after the transaction, their capital/solvency position, the system of governance, the financial strengths of the group, among the others, are also valid in case of acquisition of non-life run undertakings or portfolios. As already mentioned in the answers to previous comment, EIOPA prefers to refer generically to risks, in line with the risk-based approach of Solvency II.
64	Par. 5.5. The description seems to be applicable only to life business transfers by an insurance company. It does not fit the circumstances and requirements of non-life business transfers or reinsurance transfers (life and/or non-life). A clear distinction between the different types of insurance and reinsurance business is required throughout the paper. (German Insurance Association)	Please see above comment.
65	Par. 5.5. Is it envisaged that supervisory bodies will develop "a comprehensive understanding" based in the information listed in 4.1 above? Will supervisors have the power to request additional material and ask further questions? Could this requirement be updated to refer to a group's "ability and commitment to provide support". In some cases a Group may not be willing to support an undertaking and a	Noted. EIOPA confirms that the Statement recommends supervisory authorities to idently and evaluate the risks of the acquisition / transfer of portfolio, based on the information available as well additional information might be needed (Article 34 of Solvency II Directive)

	Response to the public consultation question	EIOPA's comments
	commitment to support might be needed to ensure the economic situation of the undertaking is positive. We would recommend specifying what the alternative for solvency position is if the acquirer is not subject to SII. (Actuarial Association of Europe)	
66	Par. 5.6. The Supervisory Statement should include some recognition of the upper boundary of policyholder protection. It should state that it is not the intention to hold the acquiring run-off undertaking to a higher level of policyholder protection than it sets for all (re)insurers. (Catalina Holdings LtD)	Noted. The aim of the Supervisory statement is not introduce additional requirements to run-off undertakings but simply remind that the transactions should not impair the level of insurance service to the policyholders and their protection, which is the ultimate goal of Solvency II.
67	Par. 5.6. While Insurance Europe agrees with the first part of the statement, it understands this applies to primary insurance business only and thus not to reinsurance. It should be made clear in the entire statement if paragraphs refer to insurance and/or reinsurance business, life and/or non-life business and transfers/M&A transactions. (Insurance Europe)	Noted. EIOPA belives that keeping the structure already set without further splitting the different cases reads better and in line with the risk-based approach of Solvency II
68	Par. 5.6. While we broadly agree with the first part of the statement, we understand this applies to primary insurance business only and thus not to reinsurance. It should be made clear in the entire statement if paragraphs refer to insurance and / or reinsurance business, life and / or non-life business and transfers / M&A transactions. (German Insurance Association)	Please see above comment.
69	Par. 5.9. Proportionality must be taken into account. At least for non-life transfers, this statement may go beyond an adequate assessment, especially as the portfolio might be only one of many taken over. (Insurance Europe)	This supervisory statement is assuming that the proportionality principle is applied. Reference was included in par. 2.4.
70	Par. 5.9. Proportionality must be taken into account. At least for non-life transfers, this statement may go beyond of an adequate assessment, especially as the portfolio might be only one of many taken over. (German Insurance Association)	Please see above comment.
71	Par. 5.9. It would be useful to note that a proportional approach could be justifiable here with less monitoring needed as the business runs off. (Actuarial Association of Europe)	Please see above comment.
72	Par. 5.10. The two aforementioned principles ("not unreasonably reduced" and "broadly in line with the previous policy") for future benefits are acceptable and appropriate, but also sufficient. The latter principle ("reasonable policyholder expectations"), on the other hand, creates more confusion than clarity and is also superfluous in view of the other two principles. This principle should therefore be omitted. The concept of "reasonable policyholder expectations" is generally unsuitable and dates back to times when a "rational investor" was assumed. With "normal investors", who are influenced by their own biases and make cognitive errors, the concept of "reasonable policyholder expectations" makes no sense anymore. Additionally, it should be clarified that discretionary benefits depend on the financial situation	Partially agree. The reference to the reasonable policyholder expectation was kept but reference to external, non-discretionary, factors (e.g. market conditions) was also added.

	Response to the public consultation question	EIOPA's comments
	of the company and not run-off vs new business. In special cases it could be necessary to reduce or increase discretionary benefits compared to the prior situation. It depends, not only on the financial situation of the company, but also on exogenous factors such as the general market conditions. Finally, this paragraph only applies to life and only to insurance business transfers. The statement should clearly distinguish this and state what type of business it is referring to in its paragraphs. (Insurance Europe)	
73	Par. 5.10. The two aforementioned principles ("not unreasonably reduced" and "broadly in line with the previous policy") for future benefits are acceptable and appropriate but also sufficient. The latter principle ("reasonable policyholder expectations"), on the other hand, creates more confusion than clarity and is also superfluous in view of the other two principles. This principle should therefore be omitted. The concept of "reasonable policyholder expectations" is generally unsuitable and dates back to times when a "rational investor" was assumed. With "normal investors", who are influenced by their own biases and make cognitive errors, the concept of "reasonable policyholder expectations" makes no sense anymore. Additionally, it should be clarified that discretionary benefits depend on the financial situation of the company and not run-off vs new business. In special cases it could be necessary to reduce or increase discretionary benefits compared to the prior situation. Again, this paragraph only applies to life and only to insurance business transfers. This paper should clearly distinguish and state what type of business it is referring to in its paragraphs. (German Insurance Association)	Please see above comment.
74	Par. 5.10. For this special case it is important to reflect peculiarities of European countries and their regulation. In most cases, it is an illusion to believe that Profit Sharing will not be significantly reduced. The situation can differ between countries: Belgium: For contracts invested in the general fund, the profit-sharing which comes in addition to the guaranteed rate is discretionary. The General Assembly of the insurance company may therefore unilaterally decide to no longer allocate a profit sharing. On the other hand, for contracts invested in dedicated asset funds, the allocation of the profit sharing is contractual. A company that places a portfolio of contracts invested in a dedicated asset fund in run-off must its contractual obligations. The same applies to a company that takes over this portfolio of contracts. Germany: The appointed actuary as an independent control function has to ensure policyholder's adequate participation in future surplus. Since the acquired portfolio has to be valued in a new environment (especially no new business anymore) the appointed actuary recognizes the need to adapt (reduce) policy holder participation. This role of the appointed	Agree. The reference to the "country specific regulation" as added on top of "external, non-discretionary, factors (e.g. market conditions)" as elements that will influce the profit sharing mechanism.

	Response to the public consultation question	EIOPA's comments
	actuary has to be considered. Thus, we suggest to add in this sentence in the end 'considering country-specific regulations'.(Actuarial Association of Europe)	
75	Par. 5.11. The industry interprets this sentence as meaning that, for example, if the contractually agreed guarantees can no longer be fulfilled, the acquiring/accepting undertaking must be able to take remedial measures. Since this statement refers exceptional cases in which the situation of policyholders is improved after the run off, these cases should be specified precisely. The industry therefore recommends that the "eg" in the parentheses should be replaced by "ie". (Insurance Europe)	Noted. This sentence includes the example given but it also includes instances where certain risks initially covered under the policy can no longer be covered. Hence, in line with the obligation under the Product Oversight and Governance Delegated Regulation (Art. 7.3) the acquirer should be able to take relevant remedial measures if detriment occurs. The paragraph has been rephrased to clarify that it applies on to products within the scope of Product Oversight and Governance and also to clarify what would be the relevant expectations. While this statement refers to exceptional cases it could be that because of extrinsic or intrinsic events detriment to the consumer materializes; hence remedial measures should be taken.
76	Par. 5.11. First of all: We understand the sentence to mean that, if – for example - the contractually agreed guarantees can no longer be fulfilled, the acquiring/accepting undertaking must be able to take remedial measures. Since we are speaking here about exceptional cases in which the situation of policyholders is improved after the run off, these cases should be specified precisely. We therefore recommend that the "e.g." in the parentheses should be replaced by "i.e.") (German Insurance Association)	See answer above to comment 81. This also refers to events which may materialize after the portfolio is transferred. As part of the product monitoring and review obligations under Product Oversight and Governance the acquirer should be able to take remedial measures.

5. Specialized run-off undertakings – involvement of private equity or similar investment entities

No.	Response to the public consultation question	EIOPA's comments

No.	Response to the public consultation question	EIOPA's comments
77	Par. 5.12. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Please see above comment.
78	Par. 5.12. General comment: There is nothing in points 5.13 to 5.17 that should not be part of usual supervision of any undertaking. It would be logical for private equity parties to assess whether they are able and willing to continue to manage the business and safeguard the interest of the policholders throughout the portfolio roll-out. However, investment horizon or dividend policy should not be put in conflict with policyholder protection. Any change of control is subject to regulatory approval and any dividend policy is subject to compliance with Solvency II regulation. (Insurance Europe)	Don`t agree. Investment horizont and dividend policy may be in conflict with policyholder protection.
79	Par. 5.12. With acquiring a run off undertaking a private equity fund or similar investment becomes – at least in part - an owner of such undertaking and is bound to keep the undertaking capitalised sufficiently in line with the general capitalisation requirements at all times. Consequently, there is no need for differentiation based on the structure of the undertaking's owners. Exceptions where problems have arisen should not be generalised in this statement. For a balanced view, this paragraph should also include a reference to the potential advantages of run-off in 2.1. (German Insurance Association)	Noted. The aim of the Supervisory statement is to emphasize the risks that may accur in connection with run-off undertakings.
80	Par. 5.13. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Please see above comment.
81	Par. 5.13. This paragraph should also mention that a private equity investor can seek to increase their return on investment by reducing costs and more efficient management. Apart from that, an increase of investment returns may also benefit policyholders in case of profit-sharing contracts. These management tools are not exclusive of private equity investors and many insurers are pursuing profitability enhancement programs that include some or all of those.(Insurnace Europe)	Please see above comment.
82	Par. 5.13. The control approach should be different in a proportionate way to avoid regulatory arbitrage and a different protection level of policyholders in line with SII philosophy. (Actuarial Association of Europe)	Noted. It is not clear where there may be regulatory arbitrage in connection with a portfolio transfer or acquisition based in EU.
83	Par. 5.14. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Noted. The aim of the Supervisory statement is to emphasize the risks that may accur in connection with run-off undertakings.

No.	Response to the public consultation question	EIOPA's comments
84	Par. 5. 14. Solvency II already provides for a risk-based capital requirement which provides a high degree of policyholder protection. In this respect, there is a certain bias in the first bullet of the statement, as it seems to suggest that contractual agreements with clients are not going to be respected (Insurance Europe)	Please see above comment.
85	Par. 5.14. This paragraph should also mention that a private equity investor can seek to increase his return on investment by reducing costs and more efficient management. Apart from that, an increase of investment returns also benefits the policyholders in case of profit-sharing contracts. (German Insurance Association)	Please see above comment.
86	Par. 5.15. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Noted. The aim of the Supervisory statement is to emphasize the risks that may accur in connection with run-off undertakings.
87	Par. 5.16. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Please see above comment.
88	Par. 5.16. The reference to "private equity investors" is not understood when these requirements apply to all types of investors. The outsourcing regime is already covered by the requirements for outsourced activities in other guidelines and regulations. The industry does not see any specific difference for private equity. As a general comment: Points 5.13 to 5.17 apply to all undertakings and are not specific to run-off business. (Insurance Europe)	Please see above comment.
89	Par. 5.16. Ensuring sufficient workforce until effective transfer should be applicable to any situation and not only PE. Furthermore it should be ensured, that the IT-systems guarantee a sufficient service level and a reliable administration. Therefore the appropriateness of the IT infrastructure should be taken into account. (Actuarial Association of Europe)	Agree. The following clarification has been made through reference note in par. 5.17.
90	Par. 5.17. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Noted. The aim of the Supervisory statement is to emphasize the risks that may accur in connection with run-off undertakings.
91	Par. 5.17. This paragraph is not clear as to which sections apply to Private Equity. (Actuarial Association of Europe)	Please see above comment.
92	Par. 5.18. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings LtD)	Please see above comment.

No.	Response to the public consultation question	EIOPA's comments
93	Par. 5.18. While this may be true for legacy platforms, this may be a broader trend and a reaction to changing legal environments not intimately connected with the nature of the runoff market. (Insurance Europe)	Please see above comment.
94	Par. 5. 18. While this may be true of legacy platforms, this may be a broader trend and a reaction to changing legal environments not intimately connected with the nature of the runoff market. (German Insurance Association)	Please see above comment.
95	Par. 5.19. This statement 5.12 to 5.19 inclusive is not specific to run-off undertakings and as such it would be better placed in a separate Supervisory Statement applying to all regulated entities. (Catalina Holdings)	Please see above comment.
96	Par. 5.19. Section 5.20 should be removed because it will be a requirement that goes beyond the requirements of the current legal framework and discriminates against other type of investors. (Insurance Europe)	Please see above comment.

6. Ongoing supervision – business model analysis & assessment of TP

NO.	Response to the public consultation question	EIOPA's comments
97	Par. 6.1. The industry agrees to the overall observations in this section. Some run-off undertakings deliver special and beneficial solutions for the overall cost topics. Overall, it should be made clear that all companies are regulated by the same requirements. (Insurance Europe)	Noted. All companies are regulated by the same requirements
98	Par. 6.1. We agree to the overall observations in this section. Some run-off undertakings deliver special and beneficial solutions for the overall cost topics. Overall: it should be made clear that all companies are regulated by the same requirements. (German Insurance Association)	Please see above comment.
99	Par. 6.1. We identify here a potential issue of level-playing field: a differentiated approach could only be justified in case of higher perceived risk following an assessment. (Actuarial Association of Europe)	Agree. SII employs a Risk based approach whereby areas of greater risk will receive greater supervisory attention
100	Par. 6.2. This analysis should be part of the "normal" supervisory review process and the assessment by the supervisory authorities of the different documents produced by the undertaking such as the ORSA and section A and C of the Regular Supervisory Report. (AMICE)	Agree. Business Model Analysis would form part of the normal supervisory engagement that takes place. If additional risk is identified with a particular business

NO.	Response to the public consultation question	EIOPA's comments
		model then additional engagement will take place to ensure the risk is properly addressed.
101	Par. 6.2. The industry would expect this to be part of the "normal" supervisory review process and the assessment of documents such as the ORSA, Regular Supervisory Report (RSR - section A and C). (Insurance Europe)	Please see above comment.
102	Par. 6.2. In any case the supervisory authority should take into account the different types of business models in order to supervise the undertakings effectively. Hence it is of utmost importance that this paper as well as the supervisory authorities differentiate between property & casualty business and life & health business and between in force and run off contracts and/or portfolios at either going concern undertakings or run off providers. And it is understood that the target is that the involved parties in the transfer will 1) continue to have appropriate financial resources, 2) have appropriate resources to manage and monitor risk, 3) be fit and proper to conduct their business prudently; and 4) be capable of being effectively supervised. (German Insurance Association)	Agree. When developing its supervisory strategy for a regulated entity, the relevant NCA would take the different types of business models (P&C, Health, Life etc.) into account.
103	Par. 6.3. The industry would like to mention that the (re)insurance industry as a whole is committed to provide cover for the (re) insured business. A more efficient handling of claims does not necessarily have negative effects. It could also reduce administration costs and thus increase discretionary benefits. (Insurance Europe)	Noted
104	Par. 6.3. We want to mention that the (re-) insurance industry as a whole is committed to provide cover for the (re-) insured business. A more efficient handling of claims does not necessarily have negative effects. It could also reduce administration costs and thus increase discretionary benefits. (German Insurance Association)	Noted
105	Par. 6.5. The description concerning IT platform does not cover all aspects. Migration to a new, more modern IT system can also reduce operational risks, especially if a large number of older IT systems can be switched off as a result. Obsolescence is a risk and keeping old systems for closed business is a source of higher fixed costs that will negatively impact the undertaking over the long term. This is a situation that can happen in both companies in run-off and others, which is quite subjective and goes beyond the requirements of the regulations. Again, references made to the business model are not particular to run-off portfolios/undertakings. (Insurance Europe)	Noted. Eiopa acknowledges that Migration to a new IT system can also reduce risks. The paper is simply highlighting the need for Supervisory assessment / review of these changes when they occur.
106	Par. 6.5. We think that the description concerning IT platform does not cover all aspects. Migration to a new, more modern IT system can also reduce operational risks. Especially if a large number of older IT systems can be switched off as a result. (German Insurance Association)	Please see above comment.

NO.	Response to the public consultation question	EIOPA's comments
107	Par. 6.5. We agree that Operational Risk may be introduced in the short term but that such decisions can have long term benefits. We would suggest that the potential benefits should also be acknowledged rather than focusing solely on risks. We think that the description concerning IT platform doesn't cover all aspects. In the case that IT systems already include operational risks a new IT platform could reduce operational risk, especially in the context of third party administration. Apart from that the life-time-cycle of the IT systems has to be analysed. The analysis should include considerations whether the current IT-system is appropriate to be used until the termination of every contract (especially in life insurance business covering many decades in the future). One result of the business model analysis should be a solid strategy for IT systems in order to guarantee a service level and the long-term administration of contracts. Generally, a migration to a new IT platform will be necessary when the current system comes to the end of its lifecycle. The cost-benefit consequences of such effects should be reflected adequately in projections (Actuarial Association of Europe)	Noted. Eiopa acknowledges that while that migration to new IT systems can reduce risks. It can also lead to new operational changes and as such the Supervisory statement is highlighting the need for Supervisory assessment / review of these changes when they occur.
108	Par. 6.6. The technical provisions are calculated based on the business covered and do not change following a company's decision to run off its entire business. This is evidenced by the fact that undertakings under going concern do not change their projection methodology the moment a single contract goes into run off: ie, the moment its term ends. This is true for insurance policies as well as for reinsurance contracts. (Insurance Europe)	Don't agree. Policyholder's might react to the pure decision to put the business in run-off or to accompanying management action (e.g. reducing discretionary profit sharing). Furthermore, as indicated in Q&A 1037, expense assumptions should be realistic. When the portfolio is put in run-off, the expense projections are expected to no longer consider new business.
109	Par. 6.6. The technical provisions are calculated based on the business covered. They do not change just because the undertaking choses to run off its entire business. This is evidenced by the fact that undertakings under going concern do not change their projection methodology the moment a single contract goes into run off, i.e., the moment its term ends. This is true for insurance policies as well as reinsurance contracts. (German Insurance Association)	Please see above comment.
110	Par. 6.6. A distinction should be made between life and non-life activities given their long-term nature and objective of fair treatment of policyholders. (Actuarial Association of Europe)	Noted. Both life as non-life activities might have changes in financial and non-financial assumptions. This might depend on the risk-profile of the undertaking. However , we expect that both life as non-life activities have possible assumption changes.
111	Par. 6.8. In the definition of the best estimate, expenses are directly related to insurance liabilities and are assessed with respect to the exit value notion. EIOPA should clarify that	Noted. In line with Q&A 1037, expense assumptions should be realistic. When the portfolio is put in run-off, the expense projections are expected to no longer consider new business.

NO.	Response to the public consultation question	EIOPA's comments
	expenses which are going beyond the market standard should not be included in the best estimate. Any risk of considering too high expense assumptions are then mitigated. The insurer in a run-off business model is still required to make projections in their ORSA and financial planning. The expenses and costs will be a material part of these projections and should be scrutinized. (AMICE)	
112	Par. 6.8. For run-off undertakings expenses and their management are very important. Costs per policy will be reduced concerning existing IT systems which produce only low current expenses. The life-time-cycle of IT systems (renewing the systems) should be analysed. This could lead to a reduction of administration costs through full time equivalent (FTE) reduction or by keeping the administration costs constant. The costs of renewing IT systems should be considered and balanced with the reduction of personnel costs. Also, run-off undertakings,, as part of group structure where the main carrier still underwrites new business, will also lead to scalability of costs via an appropriate cost allocation. (Insurance Europe)	Agree. In some cases, expenses might be reduced. A change was introduced in section 6.8.
113	Par. 6.8. For run-off undertakings expenses and their management are very important. Costs per policy will be reduced concerning existing IT systems which produce only low current expenses. The life-time-cycle of IT systems (renewing the systems) should be analysed. This could lead to a reduction of administration costs through FTE reduction or keep the administration costs constant. The costs of renewing the IT systems should be considered and balanced with the reduction of personnel costs. Another aspect: Run-off undertakings as part of group structure where the main carrier still underwrites new business will lead also to scalability of costs via an appropriate cost allocation. (German Insurance Associaion)	Please see above comment.
114	Par. 6.8. With regard to 6.8. we would like to reference also the ongoing consultation on TP guidelines (CONSULTATION PAPER ON THE REVISION OF THE GUIDELINES ON VALUATION OF TECHNICAL PROVISIONS) and in particular what guideline 33 and the associated explanatory text say about expenses for companies in run-off. Expenses adjustments should ensure that overhead w.r.t. support functions is still included at an appropriate level. For run-off undertakings expenses and their management are very important and crucial for the development of the undertaking. Costs per policy can be reduced concerning existing IT systems which produce only low current expenses. The life-time-cycle of IT systems (renewing the systems) should be analysed. This could lead to a reduction of administration costs through staff reduction or hold the administration costs constant. The costs of renewing the IT systems should be considered and balanced with the reduction of personnel costs.	Please see above comment.

NO.	Response to the public consultation question	EIOPA's comments
	Another aspect: Run-off undertakings as part of group structure where the main carrier still underwrites new business will lead also to scalability of costs via appropriate cost allocation. The run-off business models described are connected with the future acquisition/transfer of new portfolios. However, in many jurisdictions such transactions are subject to regulatory approval (e.g. "Inhaberkontrollverfahren" in Germany). This should be considered appropriately. (Actuarial Association of Europe)	
115	Par. 6.9. There are some aspects which mitigate the fix the cost problem, especially in the case of life insurance: - The problem typically does not arise in the initial decades, and so adequate management actions can be foreseen. - Then, the portfolio may be transferred to a run-off platform or to a third-party adminsitrator. The development of this market will ultimately lead to specialised firms that are able to achieve sufficient economies of scale and ready to acquire suboptimal portfolios/undertakers. - The problem should not be expected to materialise if the run-off undertaking belongs to a group because in this case the problem can be tackled via goup internal outsourcing. (Insurance Europe)	Noted. Such elements can be considered when defining possible management actions.
116	Par. 6.9. There are some aspects which mitigate the fixed cost problem, esp. in the case of life insurance: - The problem typically does not arise in the first decades. So, adequate management actions can be foreseen. - Then, the portfolio may be transferred to a run-off platform or to a third-party administrator. - The problem should not be expected to materialise if the run-off undertaking belongs to a group because in this case the problem can be tackled via group internal outsourcing. (German Insurance Association)	Please see above comment.
117	Par. 6.9. Should there be something added here to reflect how policyholders' interests will be protected if it is not economically viable to continue the business operation. This could result in an extra outlay at that point. Should there also be a reference to the time it might take to implement management actions at that point? Insurance companies as a part of an insurance group can try to handle the fix cost problem via group-internal outsourcing of special tasks. Using these efficiencies inside an insurance group helps to handle the long term cost problems, especially within a group, where other legal entities still write new business. (Actuarial Association of Europe)	Agree.Outsourcing can lead to a reduction in costs. A change is added in section 6.8.

NO.	Response to the public consultation question	EIOPA's comments
118	Par. 6.10. The switch to products with lower guarantees is addressed here in a one-sided negative manner. A change can also be positive for the policyholder if the guarantee severely restricts a better performance of the capital investment and significantly better returns are in prospect with moderately higher risks. The change in the risk-return profile is therefore not disadvantageous per se. Moreover, it should be noted that this paragraph only applies to life in-force business. Run-off business in non-life cannot be cancelled as the contractual policy periods are already finished. (Insurance Europe)	Partially agreed. The paragraph already stated that the new product needs to be aligned with the policyholders' needs, objectives and characteristics implying that the new product may be better suited. It should be furthermore highlighted that in its supervisory statements EIOPA is addressing only risks ('bad behaviour') to be monitored by NCAs.
119	Par. 6.10. The switch to products with lower guarantees is addressed here in a one-sided negative manner. A change can also be positive for the policyholder if the guarantee severely restricts a better performance of the capital investment and significantly better returns are in prospect with moderately higher risks. The change in the riskreturn profile is therefore not disadvantageous per se. Moreover, it should be noted that this paragraph only applies to life in-force business. Run-off business in nonlife cannot be cancelled as the contractual policy periods are already finished. (German Insurance Association)	Please see above comment.
120	Par. 6.10. Is supervisory approval needed before lapse incentives are offered? The wording just refers to assessment. We should avoid any confusion between lapse (incentives where the acquiring entity would actually make a profit) versus switch (where an equivalent product would be offered to the policyholder). We agree that "encouragements" must not be to the disadvantage of the policyholder. Such an activity would lead to changes in lapse rates for a homogenous risk group concerned. This had to be considered in the calculation of technical provisions and in the report of the actuarial function as well. The likelihood for such an unfair treatment might not differ between a run-off undertaking and an undertaking writing new business. (Actuarial Association of Europe)	Agreed. The assessment should be part of the broader assessment carried out by supervisory authorities and not specific approval is envisaged. The text has been also revised to reflect the difference between switches and lapses.
121	Par. 6.11. Experience from the German life market has not shown an increase of surrenders for run-off portfolios. The statement on losses of reputation is not based on actual experience and there is no empiric evidence on how reputation, which is a subjective concept, would impact lapses. The acquirer may have a better, equal or worse reputation than the seller and this will be always difficult to evaluate on an objective basis. The use of this concept for the calculation of technical provisions is dangerous and goes beyond what the Solvency II legal framework states. Either the sentence should be removed or at least amended as follows:	Noted. The experience in some markets has shown that when portfolios are put in run-off, surrender rates and paid-up rates can increase. This can depend on the specific portfolio of the undertaking. However the possibility of increased lapse behaviour should be reflected.

NO.	Response to the public consultation question	EIOPA's comments
	"Furthermore, supervisory authorities should assess whether the risk of higher surrenders or lapses, where relevant, caused by loss of reputation is reflected in the calculation of technical provisions". (Insurance Europe)	
122	Par. 6.11. Experience from German life market has not shown an increase of surrenders for run-off portfolios. (German Insurers Association)	Please see above comment.
123	Par. 6.11. The development of surrenders and lapses will be observed over time. The risk of a change has to be assessed by the actuarial function and has to be considered appropriately. No further regulation seems to be necessary. (Actuarial Association of Europe)	Please see above comment.
124	Par. 6.12. This is the standard procedure for needed for the calculation of the technical provisions. Nevertheless the new environment might necessitate a change of the assumptions. Should there be a reference to the time it might take to implement management actions? Also, the viability of these actions, if there is a stressed environment, should also be considered. (Actuarial Association of Europe)	Noted. In the context of run-off undertakings, management action might however be a particular point of attention.
125	Par. 6.13. It is important to acknowledge here that, in most EU jurisdictions, reinsurance does not novate automatically to the transferee along with the transferring business to the benefit of which it inures. There are exceptions (eg on application in the UK, Ireland, Belgium), but the general rule is that the insurance business transfers without its reinsurance protection. It is of utmost importance that the company acquiring the portfolio: Is financially sound enough to take on the portfolio without any reinsurance on the balance sheet; or Has adequate (new) reinsurance protection in place; or Agrees with the transfee's reinsurer to novate its reinsurance along with the transferring policies/risks. There could be a variety of reasons why the reinsurance recoverables in the balance sheet of the ceding undertaking are not in line with the gross technical provisions of the accepting reinsurer. For example, in non-life, the gross technical provisions shall never be less than the cedent's reinsurance recoverables, unless there is a dispute over the coverage. The fact that the differences might be larger in some cases may have to do with perfectly reasonable economic explanations (eg risk diversification; different valuation methodologies applied which could vary depending on the nature and relative materiality of the business lines and granularity at which the best estimate liabilities are calculated; different assumptions about the emergence of future experience (the reinsurer may have a broader portfolio on which to base assumptions); a different level of granularity at which assumptions are set given the	Noted. As indicated in the draft statement, it is expected that often the reinsurance recoverables of the insurer and the best estimate of the reinsurer should be broadly in line. EIOPA acknowledges, as stated in the text, that circumstances can exist where differences may arise which are economically sound. However, since it has been observed that for some differences go beyond what is reasonable, the NCA should be aware of these cases.

NO.	Response to the public consultation question	EIOPA's comments
	relative sizes of the portfolios, different expense bases etc). These differences ought not to call into question the reasonableness of the reinsurance arrangements. (Insurance Europe)	
126	Par. 6.13. It is important to acknowledge here that, in most EU jurisdictions, reinsurance does not novate automatically to the transferee along with the transferring business to the benefit of which it inures. There are exceptions (eg on application in the UK, Ireland, Belgium), but the general rule is that the insurance business transfers without its reinsurance protection. It is of utmost importance that the company acquiring the portfolio: 1. is financially sound enough to take on the portfolio without any reinsurance on the balance sheet o 2. has adequate (new) reinsurance protection in place or 3. agrees with the transferor's reinsurer to novate his reinsurance along with the transferring policies/risks. Moreover, the expectation that where both ceding undertaking and accepting reinsurer are subject to Solvency II the reinsurance recoverables are in line with gross technical provisions is not to be found in such a form under Solvency II and such differences in the valuation could arise for a variety of reasons. For example, in non-life the gross technical provisions shall never be less than the cedent's reinsurance recoverables unless there is dispute over the coverage. Apart from this, the points in this section apply in principle to all insurers. EIOPA should present the specifics of the run-off for the purposes of this publication. Otherwise, only text from other publications is duplicated. (German Insurance Association)	Please see above comment.
127	Par. 6.13. This commentary does not appear to be specific to run-off undertakings. Would this be better dealt with in a different consultation on valuation of assets and liabilities on the Solvency II balance sheet? Comment on whole subsection (6.13-6.15): The topics addressed are of general nature and do not only apply to the run-off situation. EIOPA should consider to delete this part here and to address topics in a more suitable place. Practically there will be always a different value of the reinsurance recoverable in the balance sheet of the ceding undertaking compared to that of the accepting reinsurer. This because of lack of information, different management rules and, as indicated, diversification effects. We suggest to change the expression "are broadly in line with" to "should be broadly in line with". The assumptions used by the reinsurer to value the technical provisions may differ from those of the primary insurer. Thus, there are often factually justifiable deviations in the valuation of	Please see above comment.

NO.	Response to the public consultation question	EIOPA's comments
	gross reserves and reinsurance recoverable. This is the case, for example, if the reinsurer has more data or better data quality than the primary insurer. Therefore, such a reconciliation does not seem to make sense. In addition to the practicability considerations, there is the question of how companies should ensure that the valuation of insurance reserves is similar without disclosing business secrets, such as management rules. If necessary, it would have to be examined whether the reconciliation of assumptions is permissible under antitrust law. (Actuarial Association of Europe)	
128	Par. 6.13. Comparing reinsurance recoverables in the ceding company balance sheet to the gross technical provisions of the reinsurer will not be valid or practical in most cases. An underlying basis of reinsurance is that the reinsurer and cedent have different views of the underlying risk for various reasons including different risk profiles and this is reflected in the technical provisions. Leaving aside that the gross technical provisions would include the accepting reinsurer's risk margin, there are perfectly valid reasons why the best estimate liabilities may be different in the balance sheet of the reinsurer and the ceding company for a reinsured block of business, including different valuation methodologies applied which could vary depending on the nature and relative materiality of the business lines and granularity at which the best estimate liabilities are calculated, , different assumptions about the emergence of future experience (the reinsurer may have a broader portfolio on which to base assumptions), a different level of granularity at which assumptions are set (given the relative sizes of the portfolios), different expense bases and so on. This is not to mention that reinsurer technical provisions by client (or by treaty) are not publicly available and the ceding company will have no means to carry out the check proposed. Furthermore, reinsurers are unlikely to be in a position to share details of their technical provisions (and by implication potentially how business is priced) at the level of granularity that would be required without undermining sensitive commercial treaty negotiations. (IRSG)	Partially agree. EIOPA adjusted the wording to Best Estimate instead of technical provisions. As indicated in the draft statement however, it is expected that often the reinsurance recoverables of the insurer and the best estimate of the reinsurer should be broadly in line. EIOPA acknowledges, as stated in the text, that circumstances can exist where differences may arise which are economically sound. However, since it has been observed that for some differences go beyond what is reasonable, the NCA should be aware of these cases.
129	Par. 6.14. The first sentence in the above paragraph should be more specific, referring to the regulatory framework in place rather than the generic comment on what is deemed typical practice: ie "Article 42 of the Solvency II delegated act specifies how adjustments to take into account losses due to default of a counterparty shall be calculated as the expected present value of the change in cash flows underlying the amounts recoverable from that counterparty if the counterparty defaults". While an economic portrayal of cash flows is certainly warranted, it cannot be reasonable to require all companies to have an intimate knowledge of the insolvency legislation of all of their reinsurers' jurisdictions. This should be reserved only for those cases where a very material counterparty risk concentration exists vis-à-vis either one or very few reinsurers, and where there is also reason to believe that such a risk concentration is not already appropriately accounted for in the counterparty default risk SCR. Apart from these exceptional cases, the Solvency II standard formula capital requirements under the counterparty default risk must be deemed adequate and sufficient for the prudential	Agree. EIOPA has considered your redrafting proposal and made additional adjustments. Furthermore, EIOPA clarified that these considerations should depend on the materiality of the risks ceded.

NO.	Response to the public consultation question	EIOPA's comments
	assessment of this risk. In fact, such a rule could even have the unintended effect of discouraging cedents from purchasing reinsurance from third-country reinsurers, thereby decreasing the size of their reinsurance panel and increasing their counterparty default risk. This would also not be in policyholders' interests. (Insurance Europe)	
130	Par. 6.14. While an economic portrayal of cash flows is certainly warranted, it cannot be reasonable to require all companies to have intimate knowledge of the insolvency legislation of all of their reinsurers' jurisdictions. This should be reserved only for those cases where a very material counterparty risk concentration exists vis-à-vis a single or very few reinsurers, and where there is also reason to believe that such a risk concentration is not already appropriately accounted for in the counterparty default risk SCR. Apart from these exceptional cases, the Solvency II standard formula capital requirements under the counterparty default risk must be deemed adequate and sufficient for the prudential assessment of this risk. In fact, such a rule could even have the unintended effect of discouraging cedents from purchasing reinsurance from third-country reinsurers, thereby decreasing the size of their reinsurance panel and increasing their counterparty default risk. That would also not be in policyholders' interests. (German Insurance Association)	Please see above comment.
131	Par. 6.14. We need here to make sure that risk transfer programs to third country reinsurance undertakings do not lead per se to regulatory arbitrage. (Actuarial Association of Europe)	Noted
132	Par. 6. 14. The first sentence in the above paragraph should be more specific, referring to the regulatory framework in place rather than the generic comment on what is deemed typical practice i.e. "Article 42 of the Solvency 2 delegated act specifies how adjustments to take into account losses due to default of a counterparty shall be calculated as the expected present value of the change in cash flows underlying the amounts recoverable from that counterparty if the counterparty defaults." It is unlikely to be proportionate to require all companies to have intimate knowledge of the insolvency legislation of all of their reinsurers' jurisdictions. This should be reserved only for those cases where a very material counterparty risk concentration exists vis-à-vis a single or very few reinsurers. (IRSG)	Please see comment 142.
133	Par. 6.15. The underlying basis of reinsurance is that the reinsurer has a different view of the underlying risk for various reasons, such as geographical or Lines of Business (LoB) diversification. The fact that a difference in valuation exists cannot be by itself a reason to settle recoverables, and certainly not before claims have been made, as such an action would create a misalignment of incentives between cedent and reinsurer. In addition, if such a rule was put into place in other international jurisdictions, it would potentially give cause to a wealth of unjustified settlement requests due to inevitable valuation differences that would not be in the interest of the EU. More generally, Solvency II provides a robust framework for ensuring that ceding companies' reinsurance management is appropriate having regard to their overall risk management	Noted. EIOPA proposed to move this paragraph to 6.25 (4) since is more part of the reinsurance strategy than of the valuation. As stated in 6.25, credit risk can become very material when high cession rates are used. They are an appropriate instrument for the supervisor to mitigate these risks.

NO.	Response to the public consultation question	EIOPA's comments
	framework. Article 44 of the Solvency II Directive requires that the risk management system covers reinsurance and Article 260 of the delegated acts requires the insurer's policies to ensure selection of suitable reinsurance and the assessment of the most appropriate arrangements. Given the robust and coherent Solvency II framework in place and the principles underlying this framework, it is not appropriate to prescribe or recommend specific points on how reinsurance contracts should be drafted. The reinsurance treaty contract represents the outcome of a commercial negotiation between the ceding company and the reinsurer. The ceding company and the reinsurer will negotiate the treaty in the round having regard to their reinsurance risk management policies and framework and Solvency II regulation. (Insurance Europe)	
134	Par. 6.15. The underlying basis of reinsurance is that the reinsurer has a different view of the underlying risk for various reasons, such as geographical or LoB diversification. The fact that a difference in valuation exists is to be expected and cannot be by itself a reason to settle recoverables, and certainly not before claims have been made, as such an action would create a misalignment of incentives between cedent and reinsurer. In addition, if such a rule was put into place in other international jurisdictions, it would potentially give cause to a wealth of unjustified settlement requests due to inevitable valuation differences that would not be in the interest of the EU. As the proposed approach does not seem practical, if required the parties can alternatively agree on a change in accounting frequency. German Insurance Association)	Please see above comment.
135	Par. 6.15. Such a change to an existing treaty is not something that is easily done and would be very difficult to look for after the treaty is agreed. Therefore, it's not clear why such a suggestion is outlined in the paper. Also, it is unclear why this requirement would be imposed just on reinsurers of undertakings in runoff. In non-cash RI contracts, liquid settlement is only provided for at the inception of the contract. Liquid settlement is not provided for such contracts.(Actuarial Association of Europe)	Please see above comment.
136	Par. 6.15. Solvency 2 provides a robust framework for ensuring that ceding companies' reinsurance management is appropriate having regard to their overall risk management framework. Article 44 of the Solvency 2 directive requires that the risk management system covers reinsurance and article 260 of the delegated acts requires the insurer's policies to ensure selection of suitable reinsurance and the assessment of the most appropriate arrangements. Given the robust and coherent Solvency 2 framework in place and the principles underlying this framework, it is not appropriate to prescribe or recommend specific points on how reinsurance contracts should be drafted. The reinsurance treaty contract represents the	Please see comment 146.

NO.	Response to the public consultation question	EIOPA's comments
	outcome of a commercial negotiation between the ceding company and the reinsurer. The ceding company and the reinsurer will negotiate the treaty in the round having regard to their reinsurance risk management policies and framework and Solvency 2 regulation. Furthermore, as noted, the underlying basis of reinsurance is that the reinsurer and cedent have different views of the underlying risk for various reasons including different risk profiles and this is reflected in the technical provisions. The fact that a difference in valuation exists cannot be by itself a reason to settle recoverables and certainly not before claims have been made, as such an action would create a misalignment of incentives between cedent and reinsurer. (IRSG)	

6. Ongoing supervision – assessment of investment strategy & assessment of reinsurance strategy

No.	Response to the public consultation question	EIOPA's comments
137	Par. 6.16 Also, these types of insurers are bound by their policies which are approved by the AMSB. Any shift will have to be discussed within the governance structure. In EIOPA's view the shift could easily be made while the costs of the shift could be high. By requiring the undertaking to be within the remits of the Solvency legislation, the normal pillar 2 requirements are still in place. (AMICE)	Partially agree. Pillar 2 applies to all types of insurers, including run-off undertakings, where the Board must approve any changes to the investment policy. However, EIOPA isn't evaluating whether these strategy changes can be easily made or not, it only draws attention to the fact that such changes often take place in the management of run-off portfolios. Indeed, when run-off portfolios do not provide sufficient profitability, experience has shown that insurers tend to shift their investment strategy to achieve a riskier asset mix. This doesn't affect the fact that all insurers should always comply with Solvency II requirements.
138	Par. 6.16. The sentence "run-off undertakings typically focus on increasing their investment returns." is too one-sided and therefore not accurate. Run-off undertakings typically aim to manage their insurance portfolio as efficiently as possible. This is achieved in particular by means of a modern and efficient IT infrastructure to which the acquired portfolios are migrated. In terms of investment, run-off undertakings benefit from the fact that economies of scale can be generated through larger portfolios. Due to the better plannability of expenses and the lack of expenses for distribution, advantages are also possible for ALM. In addition, customers continue to participate in the surpluses that accrue, if contractually agreed. The sentence therefore could give a misleading impression, so the industry suggests deleting it.	Noted. In managing run-off portfolios, it is not unusual for insurers to seek for higher investment returns, even if it may not be their primary or sole objective. Therefore, we do not agree with deleting this sentence entirely. However, par. 6.16 slightly amended to: "one of the common objectives of run-off undertakings is to increase their investment returns". This section refers to some of the investment strategies that have been implemented to search for higher profits

No.	Response to the public consultation question	EIOPA's comments
	In addition, the definition of a strategy with more risk may not be in line with reality; a portfolio with a greater diversification of low-correlated assets may lead to lower risk and higher profitability scenarios than many of the current highly concentrated portfolios in the industry. The same is true for investments in private debt that may include protections and guarantees arrangements that have lower expected default losses than public instruments. The prudent person principle should be applied to all portfolios regardless of the institution's business strategy. Additionally, the Solvency II capital requirement adequately reflects the risks of the individual assets and a riskier investment strategy will carry a higher capital charge to protect policyholders from the undertaking increased risk profile. (Insurance Europe)	in run-off businesses, making it is important to point out the direct relationship between profitability and risk. Therefore, EIOPA sees the need to emphasise that an increase in returns often entails the assumption of greater risks. Regarding the prudent person principle, as mentioned in par. 2.5., this Supervisory Statement "addresses some issues that are not exclusive to run-off undertakings/portfolios, however, experience has shown that some issues may lead to stronger and more concerning consequences in that context". The statement is assuming that the prudent person principle is applied (see the clarification added in par. 2.4. of the statement) and simply stressing the need to comply with it where it is deemed more appropriate. Certain investment strategies can lead to specific risks that may not be properly captured by the Standard Formula. For example, liquidity risk or supervisory challenges derived from complex structures are not adequately reflected in the Solvency II capital requirements, but still need to be monitored and managed.
139	Par. 6.16. The sentence, " Run-off undertakings typically focus on increasing their investment returns." is, in our opinion, too one-sided and therefore not accurate. Run-off undertakings typically aim to manage their insurance portfolio as efficiently as possible. This is achieved in particular by means of a modern and efficient IT infrastructure to which the acquired portfolios are migrated. In terms of investment, run-off undertakings benefit from the fact that economies of scale can be generated through larger portfolios. Due to the better plannability of expenses and the lack of expenses for distribution, advantages are also possible for ALM. In addition, customers continue to participate in the surpluses that accrue, if contractually agreed. The sentence therefore could give a misleading impression, so we suggest deleting it. (German Insurance Association)	Noted. We believe that in managing run-off portfolios, it is not unusual for insurers to seek for higher investment returns, even if it may not be their primary or sole objective. Therefore, we do not agree with deleting this sentence entirely. See the amended text of the par. 6.16.
140	Par. 6.16. In general we don't see why undertakings that underwrite new business should not focus on increasing their investment returns given their risk appetite. In our opinion this should be normal for all undertakings. (Actuarial Association of Europe)	Noted. All undertakings can focus on increasing their investment returns. However, the means to do so often differ from run-off undertakings to those that underwrite new business.

No.	Response to the public consultation question	EIOPA's comments
		In new business the conditions and characteristics of the contract are yet to be defined, while in run-off portfolios they are already agreed. This usually provides a limited profitability which may result in the search for higher investment returns. This section simply refers to some of the investment strategies that have been implemented in order to seek for higher profits in run-off businesses.
141	Par. 6.17. In the case of a run-off, the investment strategy does not necessarily become more complex. Without new business, for example, cash flows can be better planned, as no distribution and acquisition costs are incurred. Furthermore, synergy effects can be achieved if several portfolios are merged. In cases where portfolios of different companies continue to be managed separately, the complexity of the investment strategy should not change at all. The sentence: "Furthermore, due to the complexity of the investment strategy or the complexity of the inter-company structure used, it may not always be possible to adequately assess the risks" therefore seems misleading. References to "higher investment return should also be passed to policyholders (via the discretionary participation features in case of with – profits contracts)" should also be clearly framed under the obligation to respect policy contract. (Insurance Europe)	Noted. In run-off undertakings, the strategy or structure may not always become more complex. However, in the the specific cases that are described in the statement NCAs have often identified assets and/or structures that are not typical of most insurance companies, thus making the assessment of these companies more challenging. In these cases, higher yields usually underlie as an economic background of the operations. As a consequence, new risks arise and its assessment becomes more difficult. Agree. Contractual terms and conditions shall be complied with as established, regardless of whether the policy provides for profit-sharing or not. Clarification note added in par. 6.17.
142	Par. 6.17. In the case of a run-off, the investment strategy does not necessarily become more complex. Without new business, for example, cash flows can be better planned, as no distribution and acquisition costs are incurred. Furthermore, synergy effects can be achieved if several portfolios are merged. In case that portfolios of different companies continue to be managed separately, the complexity of the investment strategy should not change at all. The sentence: "Furthermore, due to the complexity of the investment strategy or the complexity of the intercompany structure used, it may not always be possible to adequately assess the risks" therefore seems misleading. (German Insurance Association)	Noted. In run-off undertakings, the strategy or structure may not always become more complex. However, in the specific cases that are described in the statement NCAs have often identified assets and/or structures that are not typical of most insurance companies, thus making the assessment of these companies more challenging.
143	Par. 6.18 to Par. 6.21. Comment to 6.18 to 6.21: the description of the second strategy is rather confusing. This should be clarified. We understand that construction as follows:	6.18. Noted. 6.19. Partially agree. The SCR calculation would not capture the new SPV assets, but the original ones that appear in the balance sheet, as a consequence of the retention of risks and rewards. 6.20. Noted.

No.	Response to the public consultation question	EIOPA's comments
	- Transfer of an activated portfolio to an SPV: the SPV is only obliged to deliver the payment cashflows of the original portfolio (repayment and coupon) - 6.18 - Under IFRS the insurance company continues to book essentially the original portfolio. Derived from this IFRS classification, the new "Asset SPV" is treated in the SCR calculation in the same way as the original portfolio - 6.19 first dash - The SPV, on the other hand, invests in riskier assets that appear only in the group via consolidation - but not in the individual IFRS balance sheet. Thus the assumption is that they are irrelevant for the SCR calculation. We have identified several contradictions and difficulties to create such a construction. Especially we think that such a construction would require collateral or other risk mitigating techniques and consider it otherwise as regulatory impossible, agreeing with 6.20. Despite this in our opinion the existing regulatory and governance system in Germany with trustee (Treuhänder), regulator, auditor, actuarial function and risk management function should be in a place to properly analyse such a construction and evaluate whether all requirements are fulfilled for an implementation that is compliant with the existing relevant laws and regulations in their in force interpretations. (Actuarial Association of Europe)	Indeed, the key is to provide collateral to mitigate the counterparty risk arising as a result of the transfer of assets, as stated in par. 6.20. Certainly, the entity will have to provide the necessary means for the correct implementation of this type of structure. However, the supervisor, even if only for information purposes, must also take these considerations into account.
144	Par. 6.22. It should not be generally assumed that the impact of reinsurance treaties is only partially compensated by an increase in the SCR counterparty default risk, as this paragraph seems to imply. Rather, this should be the general case and any suggestion otherwise would imply a miscalibration of the standard formula counterparty default risk. In addition, it is of utmost importance to acknowledge that reinsurance does not novate automatically to the transferee along with the transfer of the underlying business, as in most jurisdictions this underlying business is transferred gross (without its reinsurance). (Insurance Europe)	Agree. Please see the redrafted version of par. 6.22.
145	Par. 6.22. It should not be generally assumed that the impact of reinsurance treaties is only partially compensated by an increase in the SCR counterparty default risk, as this paragraph seems to imply. Rather, this should be the general case and any suggestion otherwise would imply a miscalibration of the standard formula counterparty default risk. In addition, it is of utmost importance to acknowledge that reinsurance does not novate automatically to the transferee along with the transfer of the underlying business, as in most jurisdictions this underlying business is transferred gross (without its reinsurance).(German Insurance Association)	Please see the above comment.
146	Par. 6.22. See our comment to 6.13.-6.15: The whole section should be more focused on the run-off situation. For example it could be elaborated how to deal with changes of the	Agree. Please see the redrafted version of par. 6.22.

No.	Response to the public consultation question	EIOPA's comments
	reinsurance strategy after a run-off decision is made. Specific remarks could be included for each of the possible situations as described in 3.1. (Actuarial Association of Europe)	
147	Pr. 6.23. Assuming EIOPA refers to the company taking up the run-off book, novation of reinsurance (RI) in a ptf transfer is not automatic, and issues described are not typical in runoff. EIOPA support for collateral (COL) arrangements in RI treaties is implied and must be removed.Such implication for treaties with reinsurers (reins) subject to SII (or equivalent framework) must be avoided. Art134 prohibits requirements for pledging assets for EU authorized reins (also for art173 for equivalent reins),and the para goes further in describing how COL arrangements should be structured. COL is not a costless method for reducing risk.Increasing COL demands would increase the cost of (re)insurance.Agreeing on the risk appetite and price should be left to the parties of a transaction. Encouraging COL across the board is not aligned with such a principle.Expecting a cedent to scrutinise reins retr arrangements is unreasonable and disproportionate. Unsuitable reins retrocession (retr) arrangement is reflected in credit rating.Information which the reins can provide to the ceding company on its retr arrangements is likely to be limited to publicly available information.SII already provides for extensive disclosure for EU reins and this is sufficient.If the local NCA has any concerns about the EU reins, it should first consult that reins NCA.In a retr contract,a reins remains liable for claims from the RI contract with the cedent with all its assets.Cedent claims will be paid by the reins even if the reins does not get retr recoverables from the retr contract.It is discriminatory to blame non-EU reins as an equivalence assessment is part of SII and there is a level playing field with EEA reins.Where failure is imminent and not reflected in credit ratings, protection is available. (Insurance Europe)	Agree. EIOPA has redrafted the paragraph in order to capture the aspects mentioned on your side.
148	Par. 6.23. We assume throughout that EIOPA is referring to the company taking up the run-off book. We remind that the novation of reinsurance in a portfolio transfer is not automatic. Partly for this reason, we also do not believe that the issues described above are typical in runoff situations. With regards to concentration risk, EIOPA fails to explain the reasons why a high concentration might not be fully reflected in the SCR, since the rating and the number of reinsurers are part of the formula to calculate the counterparty default risk. In the exceptional cases where a failure of the reinsurer is imminent which is not reflected in credit ratings, it should be noted that the idea is that there are still enough assets in the case of the failure of a (re)insurer to pay all the claims at a 99.5% VaR level.	Please see the above comment.

No.	Response to the public consultation question	EIOPA's comments
	EIOPA's suggestion on collaterals seems to imply that demanding collateral is a costless method for reducing risk. It is not. Were collateral demands to become more widespread, this would inevitably increase the cost of (re)insurance. With regards to retrocession arrangements, it is not reasonable to expect a cedent to scrutinise the retrocession arrangements of its reinsurer as this would not be proportionate to the resources of the insurance undertaking. It should also be noted that even upon entering a retrocession contract, a reinsurer remains liable to pay any claims deriving from the reinsurance contract with the cedent with the entirety of its assets. In addition, it is discriminatory to point the finger at non-EU reinsurers where an equivalence assessment is an integral part of Solvency II and at the very least reinsurers based in equivalent jurisdictions can be expected to be under a level playing field with EEA reinsurers. (German Insurance Association)	
149	Par. 6.23. If reinsurance cover is renewable or of a different duration to the liability, should there be an assessment of how likely it is that renewal of the reinsurance arrangement is possible, at a desirable cost, as the book decreases in size? Collateralization or deposit is an appropriate means of reducing default risks. Both in the case of reinsurance with non-EU reinsurers, especially in the case of non-Solvency II-equivalent supervisory regimes, and in the case of retrocession to such reinsurers, we consider it appropriate that the ceding primary insurers are required to obtain information in order to be able to identify resulting risks at an early stage. This applies in particular if capital is invested abroad within the scope of a coinsurance. See comment to 6.22; (actuarial Association of Europe)	Agree. The text of the paragraphs is amended accordingly.
150	Par. 6. 23. Concentration risk management is already reflected in the Solvency 2 delegated regulation, whereby companies are required to have policies to identify and limits concentration risk as part of risk management framework as per article 260. As the purpose of the first point above seems to be to remind supervisors of points in the existing regulation, then it should just refer to the existing regulation. The second point on collateral implies EIOPA support for collateral arrangements in reinsurance treaties. This point should be removed, as any such implication for treaties with reinsurers subject to Solvency 2 (or any equivalent framework) must be avoided, having regard to the principles underlying Solvency 2 and the regulation of EU reinsurers under that Directive. In particular Article 134 of the Solvency 2 directive prohibits regulatory requirements for the pledging of assets where the reinsurer is EU authorised (similarly for article 173 for equivalent reinsurers). The paragraph also goes further in describing how	Agree. The text of the paragraphs is amended accordingly.

No.	Response to the public consultation question	EIOPA's comments
	collateral arrangements should be structured. Please refer to comments on 6.15 regarding the inappropriateness of potentially influencing contract negotiations in this way. The final point on retrocession seems to have very particular arrangements in mind i.e. where risks are fully retroceded outside the EU. If this is the case then it should be made fully transparent, otherwise this point risks a broader application than is intended, creating confusion and uncertainty. As a general comment, the information which the reinsurer can provide to the ceding company on its retrocession arrangements is likely to be limited to publicly available information. Solvency 2 already provides for extensive disclosure for EU reinsurers and this is sufficient. To the extent that the local NCA has any concerns about the EU reinsurer it should consult that reinsurer's NCA in the first instance. (IRSG)	
151	Par. 6.24. While this is true and welcome the principle-based assessment underpinning this paragraph, the industry notes that those situations where the reduction of SCR is not commensurate with risk transfer ought not to be the rule and should be subject to a materiality assessment in line with the comments in the Opinion referred to. It is not clear to us what material new risks would be acquired with a reinsurance cession (except for counterparty default risk, which is dealt with elsewhere), and how these might be so material to question the effective transfer of risk. In contrast, creating barriers to the recognition of risk-mitigation techniques could discourage insurance undertakings from transferring risks to reinsurers and thus reduce risk diversification. The second sentence in the above paragraph should be deleted as it does not provide the full context, but rather a selected excerpt of the EIOPA opinion and the regulation. (Insurance Europe)	Noted. EIOPA considers the text as aligned with the text of EIOPA Opinion on the use of risk mitigation techniques, therefore a redrafting of the paragraph is not considered.
152	Par. 6.24. While this is true in general and we welcome the principle-based assessment underpinning this paragraph, we note that those situations where the reduction of SCR is not commensurate with risk transfer ought not to be the rule and should be subjected to a materiality assessment. Counterparty default risk is already dealt with through the SCR. One would expect that it is desirable to involve a reinsurer as evidence of risk-management considerations. In contrast, creating barriers to the recognition of risk-mitigation techniques could discourage insurance undertakings from transferring risks to reinsurers and thus reduce risk diversification. (German Insurance Association)	Please see the above comment.
153	Par. 6.24. We would welcome more details and pitfalls related to "exotic" risk-mitigation techniques. (Actuarial Association of Europe)	Noted. The intention of EIOPA with this paragraph is to make reference to the Opinion on the use of risk mitigation techniques rather than add any new guidance.

No.	Response to the public consultation question	EIOPA's comments
154	Par. 6.24. The second sentence in the above paragraph should be deleted as it does not provide the full context, but rather a selected excerpt of the EIOPA Opinion and the regulation. (IRSG)	Pelase see the above comment.
155	Par. 6.25. Simply reinsuring a large proportion of risk by itself does not result in an underestimation of the counterparty default (and, where applicable, concentration) risks. If it did then the formula for the counterparty SCR is called into question. Insurance Europe further notes that remoteness in the attachment point does not by itself basis risk. Only in exceptional cases where the counterparty SCR for whatever structural reason does not adequately reflect the risk should further steps be envisaged. (Insurance Europe)	Noted. However EIOPA agrees with the comment that reinsurance doesn't automatically mean a large counterparty or concentration risk, in the case of 'run-off' it is often observed that the portfolio is reinsured to just one counterparty. In that case it is good practice to assess these risks and if needed address the issue in the ORSA.
156	Par. 6.25. Simply reinsuring a large proportion of risk by itself does not result in an underestimation of the counterparty default (and, where applicable, concentration) risks. If it did then the formula for the counterparty SCR is called into question. We further note that remoteness in the attachment point does not by itself basis risk. Only in exceptional cases where the counterparty SCR for whatever structural reason does not adequately reflect the risk should further steps be envisaged. (German Insurance Association)	Please see the above comment.
157	Par. 6.25 The risk from reinsurance depends on the financial stability of the reinsurer. Reinsurance contracts with reinsurers that have a good rating and a good equity base do not expose the primary insurer to a high counterparty default risk. This is especially true for reinsurers that are subject to supervision under SII or an equivalent supervisory regime. (Actuarial Association of Europe)	Agree. EIOPA has amended the text accordingly adding the possible rating of the counterparty.
158	Par. 6.26. The industry agrees, but an ad-hoc ORSA should only be requested if the risk profile of the undertaking changes significantly by the decision to go into a run-off (which might not be the case in a partial/full run-off). (Insurance Europe)	Agree, EIOPA has amended the text accordingly, however this aspect is now mentioned in par. 4.2. of the statement.
159	Par. 6.26. We agree, but an ad-hoc ORSA should only be requested if the risk profile of the undertaking changes significantly by the decision to go into a run-off (which might be not the case in a partial/full run-off). (German Insurance Association)	Please see the above comment.
160	Par. 6.26. We agree. (Actuarial Association of Europe)	Noted.
161	Par. 6.27. Where capital relief in a reins cession is not commensurate with the risk transferred, ORSA is the way for assessing such a risk. Even in such a situation it is not clear how setting an upper bound on the cession rate would reduce rather than increase the risk. It is not clear how an ex-post demand for collateral would work in practice, as there is a risk that the reinsurer may not want to provide the collateral or provide it only at a higher price.(See 6.23) It is unclear if guarantees discussed would come from the reinsurer if so, it would be an	Partially agree. Please see the amended text of par. 27.

No.	Response to the public consultation question	EIOPA's comments
	unusual situation only possible in IGT, else it seems unlikely that an alignment of interest could be reached. The point is not reinsurance specific and should go elsewhere if maintained (presumably the parent would inject capital under a range of circumstances, not just related to reins specifics). No additional cap requirements for undertakings meeting their SCR ratio should be introduced, any request by NSAs to incorporate financial guarantees should be limited to undertakings breaching SCR. This para does not recognise the existing SII risk management requirements.The wording does not recognise the SII principles (eg the NSA needs to make sure the solvency position of the cedent remains "guaranteed") or the SII supervisory intervention ladder. On the subbullets,first point implies that NSAs can have the power to intervene directly in an existing reins contract in the circumstance described, thereby overruling the law on which that contract is based. It is questionable whether supervisors would have a legal basis to use such a power even if they were prepared to do so (see 6.15). This paragraph needs to be deleted or amended to be consistent with SII. The risk-based haircuts in 6.23 is the right approach. (Insurance Europe)	
162	Par. 6.27. We agree that in a situation where the capital relief in a reinsurance cession is not commensurate with the risk transferred, the ORSA would be the appropriate place to assess such a risk. However, even in such a situation we struggle to see how setting an upper bound on the cession rate would reduce rather than increase the risk. We are also not sure how an ex-post demand for collateral would work in practice. It is further not clear whether the guarantees discussed would come from the reinsurer – if this is the case this would be an unusual situation indeed and only envisageable in intra-group transactions, as otherwise it seems unlikely that an alignment of interest could be reached. Moreover, no additional capital requirements for undertakings meeting their SCR ratio should be introduced, so any request by supervisory authorities to incorporate financial guarantees should be limited to undertakings in breach of the SCR. (German Insurance Association)	Please see above comment.
163	Par. 6.27. As already mentioned in the comments on par. 6.25, greater differentiation should be made here. In particular, for well-rated reinsurers which are subject to SII, default risks should be low and appropriately assessed. First, a rebuttable presumption should be made that supervisory action is not required. A minimal deductible may be appropriate to minimize subjective risks. Since this is also in the interest of reinsurers, regulation can be dispensed with at this point. (Actuarial Association of Europe)	Please see above comment.
164	Par. 6. 27. The points in this paragraph again do not recognise the existing risk management requirements under Solvency 2. The wording is very strange and does not recognise the principles of Solvency 2 (e.g. the supervisor needs to make sure the solvency position of the cedent remains "guaranteed") or the ladder of supervisory intervention under Solvency 2. Regarding the sub-bullets	Partially agree. Please see the revised text of the paragraph. The wording used is lighter and not referring to any 'requirement' any more.

No.	Response to the public consultation question	EIOPA's comments
	• This implies that a supervisor can have the power to intervene directly in an existing reinsurance contract in the circumstance described, thereby over-ruling the law on which that contract is based. It is questionable whether supervisors would have a legal basis to use such a power even if they were prepared to do so (see comments under 6.15 regarding supervisory inference in new reinsurance contracts). • See comments on collateral under 6.23 comments above. • The final point is very unclear, is not specific to the reinsurance section and should be placed elsewhere in the paper if maintained (presumably the parent would inject capital under a range of circumstances, not just related to reinsurance specifics). This paragraph needs to be either completely deleted or amended to be consistent with and include appropriate references to Solvency 2 regulations. (IRSG)	
165	Par. 6.28. The focus should not be the assessment of if the policy is adequate to the portfolio of technical provisions of the run off portfolio, but that the capital base is satisfactory. (Insurance Europe)	Noted.
166	Par. 6.28. The focus should not be the assessment if the policy is adequate to the portfolio of technical provisions of the run off portfolio, but that the capital base is satisfactory. (German Insurance Association	Noted.

7. Conduct of business supervision

No.	Response to the public consultation question	EIOPA's comments
167	Par. 7.1. EIOPA should clearly define what specific risks could arise. All matters covered in points 7.2 to 7.7 are applicable to every undertaking operating in the market in any type of business. (Insurance Europe)	Noted. As pointed these are risks which could arise in the case of normal business and not just for portfolio transfers. However, there are enhanced risks. In fact, it is important to ensure that the level of consumer protection offered by the ceding undertaking is not diminished when the portfolio is transferred. Examples of risks which could be enhanced include: - Less monitoring carried out under product oversight and governance; - Differing, most lengthy claims handling and complaints handling process. Moreover, in instances of cross-border portfolio transfers there can be risks associated with the fact that the protection offered is diminished (E.g., non-

No.	Response to the public consultation question	EIOPA's comments
		existence of insurance guarantee scheme in the new Member State).
168	Par. 7.4. The clear focus of run-off undertakings on existing policyholders could also be beneficial. (Insurance Europe)	Noted. EIOPA agrees that there could be significant benefits for policyholders but it is important this assessment is carried out.
169	Par. 7.4. The clear focus of run-off undertakings on existing policyholders could also be beneficial. (German Insurance Association)	Noted. See answer to comment 185.
170	Par. 7.6. This applies generally to life in-force business being transferred. (German Insurance Association)	Noted. Yes it applies to any portfolio transfer but EIOPA sees the importance of including this in this Supervisory Statement to ensure this is carefully looked at.
171	Par. 7.7. No additional information on the level of service should be required when the supervisor already has the information it regularly receives from institutions. (Insurance Europe)	Agreed.