

SOLVENCY II

# OPINION ON THE 2020 REVIEW OF SOLVENCY II

EIOPA-BoS-20/749  
17 December 2020



**eiopa**

European Insurance and  
Occupational Pensions Authority

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# 1. Introduction

## Legal basis

- 1.1 On 1 January 2016, Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II Directive) entered into application.
- 1.2 The Solvency II Directive provides that certain areas of the Directive should be reviewed by the European Commission (Commission) at the latest by 1 January 2021, namely:
  - long-term guarantees measures and measures on equity risk,
  - methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement standard formula,
  - Member States' rules and supervisory authorities' practices regarding the calculation of the Minimum Capital Requirement,
  - group supervision and capital management within a group of insurance or reinsurance undertakings.
- 1.3 Article 77f(2) of the Solvency II Directive requires EIOPA to provide technical advice to the Commission in the form of an opinion on the assessment of the application of the long-term guarantees measures and measures on equity risk. At the request of the Commission, the scope of EIOPA's Opinion is wider than that provided for in the Solvency II Directive.
- 1.4 EIOPA provides this Opinion to the Commission in accordance with Article 16a of Regulation (EU) No 1094/2010.

## Prudential context

- 1.5 From a prudential perspective, the view of EIOPA is that overall the Solvency II framework is working well. A risk-based approach to assess and mitigate risks is applied, the insurance industry has better aligned capital to the risks it runs, governance models and their risk management capacity have been significantly strengthened, and insurers throughout Europe use harmonised templates for supervisory reporting, instead of a patchwork of national templates.
- 1.6 EIOPA's approach to the review overall has therefore been one of evolution rather than revolution. Thus, EIOPA's approach focuses on improving the existing regulation based on the prudential experience during the first years of application and taking into account the changes in the economic context. In addition, the Commission in its request for advice from EIOPA sought that "the fundamental principles of the Solvency II Directive should not be questioned in the review".<sup>1</sup>

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<sup>1</sup> See [https://ec.europa.eu/info/files/190211-request-eiopa-technical-advice-review-solvency-2\\_en](https://ec.europa.eu/info/files/190211-request-eiopa-technical-advice-review-solvency-2_en).

## **Economic context**

- 1.7 Nonetheless, from the perspective of the economic situation, there are areas of significant concern, which the review should address.
- 1.8 Subdued economic growth has led to extensive monetary easing and a general flight to safety. This situation was further intensified by the Covid-19 pandemic that has severely affected macroeconomic and market conditions worldwide. In October 2020, almost the entire euro swap curve moved to negative territory.
- 1.9 EIOPA's advice is that it is essential to recognise this economic picture in Solvency II. Since its 2018 review of the Solvency Capital Requirement EIOPA has proposed changes to the treatment of interest rate risk in order to ensure that undertakings hold enough capital for that risk. In addition, EIOPA recommends changes to the interest rate curves used by insurers to value liabilities, specifically in respect of the extrapolation of those curves. The changes increase the influence of market interest rates on the extrapolation of the curves, making the liabilities more realistic and improving incentives for risk-management.
- 1.10 The recognition of the economic picture should reflect two aspects. Firstly, EIOPA's advice potentially sets the regulatory framework for a decade and moreover any implementation of changes resulting from EIOPA's advice is likely to be closer to 2025 than to 2020. Therefore, EIOPA considers it important that its advice, and its impact, not be unduly influenced by the point in time at which it is written particularly when that point may be atypical. In light of this EIOPA recommends that the impact of the 2020 review should reflect the economic conditions as at end-2019.
- 1.11 Secondly, however, the impact of interest rates on insurers is expected to diminish over time reflecting a reduction in liabilities arising from products whose guarantees reflected the era of higher interest rates. Low interest rates are mainly an issue with regard to the legacy book of insurance contracts. Those insurance contracts are running off and their relevance for the overall portfolio will reduce over time. EIOPA therefore recommends that its proposal in relation to very low interest rates should likewise reduce over time.
- 1.12 EIOPA proposes a mechanism intended to reflect these circumstances. Specifically, the proposed new method of extrapolating the risk-free interest rates would have an "emergency brake" which would be applied when interest rate levels were below those of 2019. The impact of the emergency brake should be temporary and phase out, reflecting the diminishing impact of the legacy book. The mechanism is calibrated based on EIOPA's advice in all areas which have a material impact on the solvency position of insurers. The advice on the mechanism should therefore be considered in conjunction with those other areas.
- 1.13 Regarding investments by insurers, since the introduction of the Solvency II framework the portfolio composition of European insurers has remained broadly stable. In particular, fixed-income assets dominate the investment portfolios (almost two thirds of the investment portfolio), followed by equities

(about 15% of the investment portfolio, including listed and unlisted). Despite the negative yields experienced, insurers have continued to invest in negative or low yielding bonds. Moreover, this pattern was further strengthened due to flight-to-quality investment behaviour observed during the Covid-19 situation.

- 1.14 This behaviour is of wider concern in respect of the role of insurers as institutional investors. Due to their long-term liabilities, life insurance companies in particular are well-suited to long-term investments. EIOPA's advice is that there can be a more favourable but prudent treatment of insurers' long-term and illiquid liabilities, compared with those of shorter duration, recognising the extent to which such liabilities are predictable and stable. This is reflected in EIOPA's advice regarding the volatility adjustment.
- 1.15 More favourable but prudent treatment is recommended for the equities which back long-term and illiquid liabilities. Equity investments offer higher expected returns than fixed-income markets, but they also carry higher risk reflected in the higher volatility of their returns. Though some empirical studies suggest that equities are less volatile in the longer-term, the EIOPA analysis did not support the current risk charge.
- 1.16 Under the Solvency II regulatory framework, the risk of insurers' equity investments is based on one year Value-at-Risk of the portfolio. This approach reflects that a decrease in the market value of assets leads to a loss of own funds as an insurer could have to sell its assets at any time. From a prudential perspective, it is important whether during periods of adverse market volatility an insurer is forced to sell its equities or whether it can hold on to them. Equities which back long-term illiquid liabilities are more capable of being held on to, and therefore a more favourable prudential treatment is justified. EIOPA's advice focuses on the criteria for the identification of long-term equities which back long-term illiquid liabilities.

### **Main themes of the review**

- 1.17 Overall, three broad themes emerge from the prudential and economic context. Firstly, the need for proper recognition of the economic situation, notably with respect to the capital requirement for interest rate risk. The current interest rate requirement does not reflect the steep fall of interest rates experienced during the last years and ignores the existence of negative interest rates. This mistake should be corrected. Secondly, that apart from the correction of the capital requirement for interest rate risk the updating of the current regulatory framework should be overall balanced in its European impact consistent with the belief that the Solvency II framework has so far been effective. A balanced impact could lead to phased introduction of key components depending on the impact of the prevailing economic situation on insurers. Thirdly, the need to supplement the current microprudential framework with the macroprudential perspective (including the introduction of specific tools and measures), as well as the need to develop a minimum harmonised recovery and resolution framework and achieve a minimum harmonisation in the field of insurance guarantee schemes. Such harmonisation of the recovery and resolution framework and

of insurance guarantee schemes is essential to complement the supervisory framework in order to contribute to ensuring similar level of protection to policyholders across the European Union.

### **Scope of the Opinion**

1.18 The Commission issued a request to EIOPA for technical advice (call for advice, CfA) on the review of the Solvency II Directive in February 2019. The CfA covers 19 topics:

1. Extrapolation of interest rates
2. Matching adjustment and volatility adjustment
3. Transitional measures
4. Risk margin
5. Capital Markets Union aspects
6. Dynamic volatility adjustment
7. Solvency Capital Requirement standard formula
8. Risk-mitigation techniques
9. Minimum Capital Requirement
10. Macro-prudential issues
11. Recovery and resolution
12. Insurance guarantee schemes
13. Freedom of Services and Freedom of Establishment
14. Group supervision
15. Reporting and disclosure
16. Proportionality and thresholds
17. Best estimate
18. Own funds
19. Reducing reliance on external ratings

1.19 EIOPA's Opinion considers all of these topics.

### **Basis for the Opinion**

1.20 EIOPA's Opinion reflects intensive work particularly since the receipt of the CfA in February 2019. Of particular relevance are:

- Consultation papers on insurance guarantee schemes and on reporting and disclosure under Solvency II, July 2019;
- Consultation paper on the Opinion on the 2020 Review of Solvency II, October 2019;
- Information request to insurance and reinsurance undertakings on the holistic impact assessment, March 2020;
- Complementary information request on the holistic impact assessment of the Solvency II review, July 2020.

1.21 EIOPA's Opinion is also based on its previous work notably:

- Annual reports on the long-term guarantees measures and measures on equity risk;
- Technical advice on the review of specific items in the Solvency II Delegated Regulation (SCR review) in 2017 and 2018;
- Three papers on macroprudential policy in insurance in 2017 and in 2018;
- Opinion on recovery and resolution in 2017;
- Discussion paper on guarantee schemes in 2018;
- Report on group supervision and capital management in 2018;
- Discussion paper on systemic risks and macroprudential policy in insurance in 2019.

### **Structure of the Opinion**

- 1.22 EIOPA's Opinion is denoted by text with a border and blue background. The Opinion, representing conclusions to chapters on diverse topics, does not in itself form a continuous narrative. The chapters of the advice vary in length. This depends on factors such as whether the chapter in question is setting out principles at a relatively high level or providing detailed advice on numerous technical issues.
- 1.23 Background material to the Opinion is contained in a background document. The chapters of the background document have a common structure:
- Extract from the call for advice
  - Relevant legal provisions
  - Identification of the issue
  - Analysis
- 1.24 The Opinion is sufficient for the reader who needs only to know what EIOPA's final position is. The background document, which is necessarily of much greater length, will appeal to the reader who needs greater depth.
- 1.25 The background document also sets out technical information that the Commission requested, in particular on the depth, liquidity and transparency of financial markets and on contractual limits in catastrophe insurance.

### **Main content of the advice**

#### Long-term guarantees measures and measures on equity risk

- 1.26 EIOPA proposes to change the method to extrapolate risk-free interest rates in order to take into account market rates beyond the starting point of the extrapolation. This will help to avoid underestimation of technical provisions for insurance liabilities and setting wrong risk management incentives. At the same time, the proposal takes into account the need for the stability of technical provisions over time.
- 1.27 During periods of very low interest rates, the parametrisation of the extrapolation method should be modified in order to limit the impact of introducing the method. The modification should phase out until 2032 when

also the transitionals on risk-free interest rates and on technical provisions will end.

- 1.28 Regarding the matching adjustment to risk-free interest rates, the proposal is made to recognise in the Solvency Capital Requirement standard formula diversification effects with regard to matching adjustment portfolios.
- 1.29 Several changes to the design of the volatility adjustment are advised to better align it with the objectives of the adjustment. For this purpose the adjustment should be split into a permanent and a macroeconomic part. The macroeconomic adjustment should be based on an improvement of the current country-specific increase to mitigate cliff-edge effects in its activation. Application ratios should be applied to the adjustment in order to mitigate overshooting effects and to recognise the illiquidity characteristics of the liabilities of the undertaking. The determination of the risk correction to the volatility adjustment should be modified in order to capture all risk inherent in bond spreads.
- 1.30 EIOPA advises not to allow a dynamic volatility adjustment in the standard formula for the Solvency Capital Requirement. Where a dynamic volatility adjustment is taken into account in internal models to calculate the Solvency Capital Requirement, an enhanced prudency principle should apply.
- 1.31 The advice includes proposals to change the public disclosure on certain long-term guarantees measures and the risk management provisions for those measures.
- 1.32 A widening of the corridor to the symmetric adjustment to equity risk capital charge is proposed in order to increase the effectiveness of this countercyclical measure.
- 1.33 The advice includes a review of the capital requirements for equity risk and proposals on the criteria for strategic equity investments and long-term equity investments. The criteria for long-term equity investments are made prudentially sound by linked to the illiquidity of long-term liabilities. Because of the introduction of the capital requirement on long-term equity investments EIOPA advises that the duration-based equity risk sub-module is phased out.

#### Technical provisions

- 1.34 EIOPA identified a larger number of aspects in the calculation of the best estimate of technical provisions where divergent practices among insurers or supervisors exist. For some of these issues, where EIOPA's convergence tools cannot ensure consistent practices, the advice sets out proposals to clarify the legal framework, mainly on contract boundaries, the definition of expected profits in future premiums and the expense assumptions for insurers that have discontinued one product type or even their whole business.
- 1.35 A change to the calculation of the risk margin of technical provisions is proposed in order to account for the time dependency of risks and thereby reducing the sensitivity of the margin to interest rate changes. The change will reduce the amount of the risk margin in particular for long-term liabilities.



## Own funds

1.36 EIOPA has reviewed the differences in tiering and limits approaches within the insurance and banking framework, utilising quantitative and qualitative assessment. EIOPA has found that they are justifiable in view of the differences in the business of both sectors.

## Solvency Capital Requirement standard formula

1.37 EIOPA confirms its advice provided in 2018 to increase the calibration of the interest rate risk sub-module. The current calibration underestimates the risk and does not take into account the possibility of a steep fall of interest rate as experienced during the past years and the existence of negative interest rates.

1.38 The correlation parameter between the risk of falling interest rates and spread risk is reduced in line with evidence from financial markets.

1.39 Refinements are proposed to the calculation of capital requirements for counterparty default risk and the recognition of risk-mitigation techniques. The review of the spread risk sub-module and the use of external ratings did not result in proposals for change.

## Minimum Capital Requirement

1.40 Regarding the calculation of the Minimum Capital Requirement, it is suggested to update the risk factors for non-life insurance risks in line with recent changes made to the risk factors for the Solvency Capital Requirement standard formula. Furthermore, proposals are made to clarify the legal provisions on non-compliance with the Minimum Capital Requirement.

## Reporting and disclosure

1.41 The advice proposes the streamline and clarification of the expected content of the Regular Supervisory Report and of the Solvency and Financial Condition Report (SFCR) with the aim to support insurance undertakings in fulfilling their tasks reducing the burden of such reports, making them more fit-for-purpose, avoiding overlaps between different reporting requirements and to ensuring a level playing field. Changes to the frequency of the submission of the Regular Supervisory Report to supervisors in order to ensure that the reporting is proportionate and supports risk-based supervision are also proposed.

1.42 EIOPA introduces two different parts of the SFCR – one part addressed to policyholders and other addressed to other users (e.g. professional public). Further amendments on the structure and content of the SFCR are introduced, proposing a structure and content for the new section addressed to policyholders and beneficiaries and proposing a material streamline of the part addressed to other stakeholders.

1.43 EIOPA proposes to allow groups disclosing a single SFCR to report to supervisors a single Regular Supervisory Report subject to a number of conditions.

- 1.44 EIOPA proposes an auditing or similar requirement in the Solvency II Directive for the SFCR. This should ensure that as a minimum the Solvency II Balance-Sheet is subject in all Member States to similar level of assurance. This engagement should enhance the degree of confidence regarding the compliance of the financial information in the balance sheet with the respective rules and regulations. The requirement is applicable both at solo and at group level and aims to improve the reliability and comparability of the disclosed information. It is also suggested to delete the requirement to translate the summary of that report.
- 1.45 EIOPA proposes an extension of the deadlines of reporting and disclosure.
- 1.46 Together with the Opinion EIOPA publishes the amendments expected to be implemented in a future amendment of the implementing technical standards (ITS) on reporting and disclosure. This include elimination of some templates, revision of the existing risk-based thresholds to promote risk-based and proportionate reporting requirements and inclusion of new information assessed as crucial for supervisory issues.

### Proportionality

- 1.47 EIOPA proposes to amend the Solvency II framework in order to introduce a new process for applying and supervising the principle of proportionality with the aim of making the application of the proportionality principle more automatic, providing more predictability and certainty to the insurance industry, while at the same time keeping the application risk-based.
- 1.48 In particular, it is proposed to introduce in the legal framework clear quantitative criteria which identify low risk profile undertakings eligible for applying proportionality measures. Such criteria will operationalise the application of the current pre-condition on the nature, scale and complexity of the undertaking's risks. Supervisors will retain the responsibility to challenge the application of proportionality.
- 1.49 Furthermore, a new process is proposed with regard to low risk profile undertakings, based on a two-step approach, namely an ex-ante notification from undertakings who believe to comply with the criteria for low-risk undertaking and, where such a classification has not been challenged by the supervisor, an ex-post reporting of the proportionality measures used by undertakings.
- 1.50 A different process will apply to undertakings not complying with the criteria for low risk profile undertakings which are still entitled, after a dialogue with their supervisory authorities, to apply proportionality measures.
- 1.51 EIOPA proposes to clarify in the legal framework the role of supervisory authorities with regard to the use of proportionality measures not specifically identified in the Solvency II framework.
- 1.52 Finally, EIOPA proposes to publish an annual report on the application of the proportionality principle per Member State, which will be fed by the above-mentioned new regular reporting on the use of proportionality measures by undertakings. The report will increase the awareness of supervisory

community as well as undertakings and other interested parties on the overall use of the principle of proportionality in Solvency II.

#### Group supervision

- 1.53 EIOPA proposes a number of regulatory changes to address the current legal uncertainties regarding supervision of insurance groups under the Solvency II Directive. This is a welcomed opportunity as the regulatory framework for groups was not very specific in many cases while in others it relies on the mutatis mutandis application of solo rules without much clarification.
- 1.54 In particular, there are policy proposals concerning the definitions applicable to groups, scope of application of group supervision and supervision of intra-group transactions, including issues with third countries. Other proposals focus on the rules governing the calculation of group solvency, including own funds requirements as well as any interaction with the Financial Conglomerates Directive. The last section of the advice focuses on the uncertainties related to the application of governance requirements at group level.

#### Freedom to provide services and freedom of establishment

- 1.55 EIOPA further provides suggestions in relation to cross-border business, in particular to support efficient exchange of information among supervisors during the process of authorising insurers and in case of material changes in cross-border activities. It is further recommended to enhance EIOPA's role in the cooperation platforms that support the supervision of cross-border business where supervisors fail to reach a common view. Furthermore, the importance of timely information exchange is underlined.

#### Macro-prudential policy

- 1.56 EIOPA proposes to include the macroprudential perspective in the Solvency II Directive. Based on previous work, the advice develops a conceptual approach to systemic risk in insurance and then analyses the current existing tools in the Solvency II framework against the sources of systemic risk identified, concluding that there is the need for further improvements in the current framework.
- 1.57 EIOPA proposes a comprehensive framework, covering all tools considered necessary to equip supervisors with sufficient powers to address all sources of systemic risk identified. In particular, EIOPA proposes to grant supervisory authorities with the power to require a capital surcharge for systemic risk, to impose additional measures to reinforce the insurer's financial position (such as restricting or suspending dividend or other payments to shareholders), to define soft concentration thresholds, to expand the Own Risk and Solvency Assessment and the prudent person principle to take into account macroprudential concerns, to draft pre-emptive plans (recovery and resolution plans, as well as systemic risk and liquidity risk management plans), to grant NSAs with additional mitigating measures for liquidity risk in case vulnerabilities have been identified and to impose a temporarily freeze on redemption rights in exceptional circumstances.

## Recovery and resolution

- 1.58 EIOPA calls for a minimum harmonised and comprehensive recovery and resolution framework for (re)insurers to deliver increased policyholder protection and financial stability in the European Union. Harmonisation of the existing frameworks and the definition of a common approach to the fundamental elements of recovery and resolution will avoid the current fragmented landscape and facilitate cross-border cooperation.
- 1.59 In the advice, EIOPA focuses on the recovery measures including the request for pre-emptive recovery planning and the introduction of preventive measures. Subsequently, the advice covers all relevant aspects around the resolution process, such as the designation of a resolution authority, the resolution objectives, the need for resolution planning and for a wide range of resolution powers, subject to specific safeguards, to be exercised in a proportionate way. The last part of the advice is devoted to the triggers for the use of preventive measures, entry into recovery and into resolution.

## Insurance guarantee schemes

- 1.60 EIOPA proposes to introduce a European network of national insurance guarantee schemes (IGSs) or alternative mechanisms that should meet a minimum set of harmonised features for the benefit of policyholders and financial stability as a whole. In particular, EIOPA is of the view that IGSs or alternative mechanisms should act with the primary aim to protect policyholders, paying compensation and/or ensure the continuation of insurance policies. Their geographical coverage should be based on the home-country principle, and should concern specific life policies and non-life policies agreed at EU level with a harmonised minimum coverage. The IGSs or the alternative mechanisms should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.
- 1.61 To ensure a certain degree of flexibility to the Member States, EIOPA advises that the complete implementation of the minimum set of harmonised features proposed in the Opinion should be preceded by a transitional phase. During this phase, while the Member State transitions to a fully-fledged IGS or alternative mechanism that fulfils all the minimum set of harmonised features stated in EIOPA's Opinion, it is be allowed to utilise other mechanisms. These mechanisms established within the Member State provide for an additional layer of policyholder protection despite not meeting all the harmonised features stated in EIOPA's Opinion.

## Other topics of the review

- 1.62 The review of the ongoing appropriateness of the transitional provisions included in the Solvency II Directive did not result in a proposal for changes.
- 1.63 With regard to the fit and proper requirements of the Solvency II Directive EIOPA proposes to clarify the role of supervisory authorities in the ongoing supervision of propriety of board members and that they should have

effective powers in case qualifying shareholders are not proper. Further advice is provided in order to increase the efficiency and intensity of propriety assessments in complex cross-border cases by providing the possibility of joint assessment and use of EIOPA's powers to assist where supervisors cannot reach a common view.

### **Impact assessment**

1.64 The Opinion is accompanied by another background document which sets out the following assessments of impact:

- Analysis of the costs and benefits of the main options considered in finalising the Opinion.
- Holistic impact assessment providing a comprehensive overview of the combined impact of the proposed legislative changes, based on data at the end of 2019.
- Complementary impact assessment of the combined impact of the proposed legislative changes, based on data at end-June 2020, with the intention of capturing at least the first round impacts of the Covid-19 situation.

### **Timing of the Opinion**

1.65 The CfA of 2019 set a deadline for EIOPA's Opinion of end-June 2020. The Covid-19 situation led however firstly to an extension of the deadline for responses to the information request for the holistic impact assessment from end-March to 1 June 2020. Secondly, in close coordination with the Commission, there was an extension of the deadline for receipt of the Opinion until end-December 2020. This was in order to take into account the importance of assessing the impact of the Covid-19 situation on the Solvency II Review.

### **Engagement with stakeholders**

1.66 EIOPA carried out two public consultations on the 2020 review, in respect of reporting and disclosure in July 2019, and on the remainder of the Opinion in October 2019. A feedback statement on the comments received during consultation is published alongside the Opinion.

1.67 EIOPA held two events for stakeholders. Firstly, in December 2019, on the review as a whole. Secondly, in October 2020, on the impact of the Covid-19 situation on EIOPA's advice.

1.68 In addition, EIOPA has held numerous meetings on the Opinion with its Insurance and Reinsurance Stakeholder Group and other bodies.

1.69 EIOPA would like to express its appreciation for the comments and engagement of its stakeholders during the preparation of the Opinion.

## 2. LTG measures and measures on equity risk

### 2.1. Extrapolation of risk-free interest rates

#### Extrapolation method

- 2.1 EIOPA advises to extrapolate the interest rate term structure for maturities where the market for the relevant financial instruments is no longer deep, liquid and transparent or where the availability of bonds is limited (“first smoothing point”).
- 2.2 The determination of the first smoothing point shall be consistently applied for all currencies. The availability of bonds should be assessed based on the residual volume criterion, set out in recital 21 of Commission Delegated Regulation (EU) 2015/35 (Delegated Regulation), with a threshold of 6%. Applying that criterion, the first smoothing point would be 20 years for the euro at the end of 2019.
- 2.3 To ensure stability of the interest rate term structure, the first smoothing point should be stabilised and should not vary on a yearly basis. Therefore, changes should only be made in case the residual bond criterion delivers a different result for two consecutive years.
- 2.4 Where for a currency the interest rate term structure is determined based on swap rates and liquid swap rates for maturities after the first smoothing point exist, EIOPA advises to take into account such market information acknowledging the level of liquidity of those swap rates. In particular, for the euro, further swap information beyond the current last liquid point of 20 should be taken into account.
- 2.5 EIOPA advises to apply an extrapolation method where interest rates are smoothly extrapolated from the first smoothing point to the ultimate forward rate by means of a last liquid forward rate (LLFR), which is determined as a weighted average of forward rates before and after the first smoothing point where the weights depend on the liquidity of the respective rates according to the notional amount traded at a particular maturity as determined in EIOPA’s annual DLT assessment. Forward rates beyond the first smoothing point (FSP) should then determined on the basis of the last liquid forward rate and the ultimate forward rate as follows:

$$f_{FSP, FSP+h} = \ln(1 + UFR) + (LLFR - \ln(1 + UFR)) * B(a, h)$$

$$B(a, h) = \frac{1 - e^{-ah}}{ah}$$

The parameter  $h$  denotes the maturity for which the forward rate is determined and the parameter  $a$  denotes the convergence parameter. EIOPA advises to set this parameter to 10%.<sup>2</sup>

- 2.6 Where a volatility adjustment (VA) is applied in the calculation of the best estimate, the adjustment should be applied for the maturities up to the FSP and for the determination of the LLFR for the last forward rate before the FSP, but the VA should not be applied to the forward rates after the FSP.
- 2.7 For the maturities up to the FSP the VA is added to the forward rates:

$$f_{x,x+y}^{VA} = f_{x,x+y} + VA$$

2.8 The VA is also added to the last liquid forward rate, LLFR, the rate from which the extrapolation starts at the FSP, but thus only to the last forward rate before this FSP. For the euro this implies the following:

$$LLFR^{VA} = w_{20} \times f_{15,20}^{VA} + w_{25} \times f_{20,25} + w_{30} \times f_{20,30} + w_{40} \times f_{20,40} + w_{50} \times f_{20,50}$$

2.9 Further details on the alternative extrapolation method can be found in annex 2.6 of the analysis background document.

2.10 EIOPA recommends that insurance and reinsurance undertakings with long-term liabilities should report to the supervisory authorities the outcome of a sensitivity analysis regarding a change of the convergence parameter of the extrapolation method to 5%. Undertakings should report the impact on their financial position, including on the amount of technical provisions, the Solvency Capital Requirement (SCR), the Minimum Capital Requirement (MCR), the basic own funds and the amounts of own funds eligible to cover the SCR and the MCR.

2.11 The disclosure should only be mandatory for those undertakings exceeding the following threshold: sum of cash-flows beyond the FSP is higher than 10% of the total sum of cash-flows.

#### Mechanism for the introduction of the extrapolation method

2.12 During periods of very low interest rates for a currency the convergence parameter  $a$  of the extrapolation method should be modified in order to limit the impact of introducing the method.<sup>3</sup> The modification should phase out until 2032 when also the transitionals on risk-free interest rates and on technical provisions will end. To achieve this the parameter  $a$  should be equal to:

- 10% when the risk-free interest rate at the FSP is 0.5% or higher
- $X$  when the risk free interest rate at the FSP is -0.5% or lower
- Linearly interpolated for an interest rate at the FSP is between -0.5% and 0.5%

$X$  should be equal to 20% during the first year of application of the alternative extrapolation method and decrease linearly to 10% in 2032. For currencies with a FSP of less than 15 years, the starting value for  $X$  should be 14%.

2.13 The mechanism should be applied before applying the volatility adjustment and before applying the transitional on risk-free interest rates, in case these measures are in use. The mechanism should be taken into account in recalculations of the transitional deduction of the transitional on technical provisions.

2.14 The mechanism should not modify the interest rate risk shocks as provided for the determination of interest rate risk in the standard formula. Changes to the parameter  $a$  should not be anticipated in internal models for the determination

<sup>2</sup> For the Swedish krona a special treatment should apply – comparable to the status quo. The convergence parameter should be 40% for the Swedish krona.

<sup>3</sup> The mechanism should not be applied with regard to the Swedish krona.

of the SCR, i.e. the parameter  $a$  should be kept constant. The same should hold for the valuation of technical provisions.

2.15 During periods where the parameter  $a$  is higher than 10% the following safeguards should apply:

- Insurance and reinsurance undertakings should report to supervisory authorities and publically disclose the impact of lowering the parameter to 10% on their financial position.<sup>4</sup>
- Where undertakings would not comply with the SCR with a parameter of 10%, supervision should be intensified. The own funds created by increasing the parameter above 10% should not be available for voluntary capital distributions.

The reporting and disclosure should only be mandatory for those undertakings exceeding the following threshold: sum of cash-flows beyond the first smoothing point is higher than 10% of the total sum of cash-flows.

## **2.2. Matching adjustment**

2.16 EIOPA advises to remove the limitations to the diversification benefits between matching adjustment portfolios and other portfolios in the calculation of the Solvency Capital Requirement (SCR).

2.17 EIOPA advises that an additional requirement is introduced in the Delegated Regulation to clarify the eligibility of restructured assets for matching adjustment portfolios:

*For assets whose cash flows depend on the performance of other underlying financial assets, undertakings shall be able to demonstrate that, in addition to meeting the other matching adjustment eligibility criteria,*

- 1. the underlying assets provide a sufficiently fixed level of income;*
- 2. the restructured asset cash flows are supported by loss absorbency features such that those cash flows are sufficiently fixed in term and will remain so even as operating conditions change;*
- 3. where the underlying assets include financial guarantees, those guarantees do not increase the matching adjustment;*
- 4. the undertaking is able to properly identify, measure, monitor, manage, control and report the underlying risks.*

## **2.3. Volatility adjustment**

2.18 EIOPA advises to enhance the design of the VA to better align the VA with its objectives. For this purpose the VA should be split into a permanent VA and a macro-economic VA.

2.19 Furthermore, EIOPA advises to reflect undertakings' specificities in the VA in order to mitigate overshooting effects and to recognise the illiquidity characteristics of the liabilities of the undertakings.

2.20 With regard to overshooting, an application ratio should be introduced into the calculation of the VA which measures the duration and volume mismatch

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<sup>4</sup> This requirement is not meant to replace the requirement of reporting of the impact of reducing the parameter to 5%.



between fixed income investments and insurance liabilities of the undertaking. The explicit reflection of duration and volume mismatch allows the determination of the VA to be based on the full spread observed in the representative portfolio of fixed-income assets and disregard the share of other than fixed income investments in the reference portfolio.

- 2.21 To take into account the illiquidity characteristics of the liabilities, another application ratio should be introduced. This ratio should be based on a categorisation of liabilities which captures the stability and predictability of cash-flows.
- 2.22 EIOPA recommends that the estimation of the risk correction needs to be modified in order to better capture all the risks inherent in the spread and ensure risk-sensitivity. For this purpose the risk correction for the VA should be based on a percentage of the spread. This percentage should be differentiated with respect to issuers, namely between sovereign exposure of EEA countries ('government bonds', 30%) and other bonds ('corporate bonds', 50%). In order to ensure the effectiveness of the VA in times of a sharp widening of spreads, a lower percentage factor should be applied where spreads exceed their long-term average value.
- 2.23 EIOPA proposes that the macro-economic VA should be based on an improvement of the current country-specific increase of the VA to mitigate cliff-edge effects and improve the activation mechanism.
- 2.24 All these components of the proposal should not be considered in isolation but jointly form an enhanced and more targeted design of the VA.
- 2.25 In view of the above, EIOPA advises to calculate the VA as

$$VA = VA_{perm} + VA_{macro,j}$$

Where  $VA_{perm}$  denotes the permanent VA and  $VA_{macro,j}$  denotes the macro VA applicable to the insurance obligations of the undertaking for products sold in the insurance market in country  $j$  and denominated in the currency of that country. The VA needs to be determined for each currency of the liabilities it is applied to.

- 2.26 The permanent VA should be determined according to the following formula:

$$VA_{perm} = GAR \cdot AR_4^i \cdot AR_5^i \cdot Scale \cdot RC_S$$

where:

- $GAR$  denotes the general application ratio;
- $AR_4^i$  is the application ratio on overshooting. It is calculated as the ratio of the 'sensitivity of the undertakings fixed income investments against changes in credit spreads' over the 'sensitivity of the best estimate liabilities against a change in the amount of the volatility adjustment'. This is to target duration and volume mismatches between fixed income assets and liabilities of undertaking  $i$ ;
- $AR_5^i$  is the application ratio that measures the degree of illiquidity of the liabilities of undertaking  $i$ . It is determined on the basis of a bucketing of the liabilities in three categories according to their illiquidity features;
- $Scale$  is the scaling factor of the representative portfolio aimed at bringing the weight of fixed income instruments to 1. It is calculated as the

reciprocal of the sum of the weights of government and corporate bonds in the representative portfolio;

- $RC\_S$  is the risk-corrected spread of the representative portfolio.

2.27 The macroeconomic VA should be determined according to the following formula:

$$VA_{macro,j} = GAR * AR_4^i * AR_5^i * \omega_j * \max(RC\_S_j * Scale_j - 1.3 * RC\_S * Scale; 0)$$

where:

- $\omega_j$  is a factor designed to ensure a gradual and smooth activation of the country component and mitigating the cliff effect. It is calculated with reference to each country portfolio;
- $Scale_j$  is the scaling factor of the representative portfolio for country  $j$ ;
- $RC\_S_j$  is the risk-corrected spread of the representative portfolio for country  $j$ . The risk correction is calculated in the same way as for the permanent VA;
- $GAR, AR_4^i, AR_5^i, RC\_S$  and  $Scale$  are defined as above.

2.28 For a full technical description of the envisaged design of the VA, EIOPA refers to annex 2.29 of the analysis background document.

2.29 In addition to the design changes of the VA, EIOPA considers that the objectives of the VA should be further clarified to ensure a common understanding that allows a consistent application of the measure as well as effective supervision thereof.

2.30 The proposed design of the VA should be accompanied with the following disclosure and reporting requirements:

- Undertakings should disclose, per currency, the size of their undertaking-specific VAs and best estimate amounts they are applied to.
- Undertakings should report to their supervisory authorities the size of the applied application ratios on overshooting and on illiquidity and separately information on the numerator and denominator of the ratios.

2.31 EIOPA considers that to some extent the risks and uncertainties inherent in the current design of the VA would be effectively mitigated in the proposed new design of the VA. Consequently, the general application ratio could be increased. However, some risks and uncertainties will remain even in the improved design, so the general application ratio still needs to be significantly below 100%. Therefore, EIOPA advises to increase the general application ratio to 85%. EIOPA underlines that any further increase would reintroduce unintended consequences and lead to overshooting effects.

2.32 EIOPA advises that the SCR standard formula should not be changed to allow for the dynamic VA (DVA).

2.33 Regarding the approval of the VA, EIOPA advises that the use of the VA is subject to supervisory approval in all Member States for new VA users. The VA approval should not be mandatory for undertakings already using the VA at a prior fixed date (e.g. one year before the entering into force of the new methodology).

2.34 In addition, EIOPA advises that undertakings applying the VA should be able to demonstrate that the processes or data for calculating the VA are appropriate and that the underlying assumptions of the VA are met. Where that demonstration cannot be provided, the supervisory authority should have the power to request undertakings to stop using the VA.

2.35 EIOPA also advises to provide explicitly that the VA should be applied with respect to all best estimate liabilities in the same currency.

2.36 To allow for a more risk adequate determination of aggregated spreads, EIOPA advises to amend the first sentence of Article 50 of the Delegated Regulation as follows:

*"For each currency and each country the spread referred to in Article 77d(2) and (4) of Directive 2009/138/EC shall be equal to the following*

$$S = W_{gov} \cdot S_{gov} + W_{corp} \cdot S_{corp}$$

*where [...]"*

#### **2.4. Dynamic volatility adjustment in internal models**

2.37 Regarding whether the dynamic volatility adjustment (DVA) in internal models should be maintained, EIOPA advises to maintain the DVA, but under the condition that the 'DVA prudency principle' is introduced into the regulation in the following enhanced version:

If an undertakings applies the DVA in its internal model, it should demonstrate that the SCR according to the DVA approach chosen is at least as high as the maximum of:

- The SCR if replicating the VA methodology implemented by EIOPA according to Article 77e(1)(c) of the Solvency II Directive based on the relevant VA currency reference portfolios ('direct DVA(RefPF)').
- The SCR if replicating the VA methodology implemented by EIOPA according to Article 77e(1)(c) of the Solvency II Directive, but calculating the risk corrected spread on basis of the undertaking's own asset portfolio (direct DVA(own PF)') in appropriate granularity reflecting the characteristics of the undertaking's own portfolio.

This 'DVA prudency principle' should apply to any DVA approach, including direct DVA approaches.

2.38 This serves to counteract potential overshooting *inter alia* caused by credit spreads and credit spread risk in the undertaking specific portfolio lower than in the relevant VA reference portfolio ('quality overshooting'). However, its proper functioning is also depending on the introduction of all components of the proposed new VA regime. Next to the risk correction this especially also concerns the application ratio on overshooting, which addresses volume and duration mismatches. Furthermore, for the overall balance the introduction of the application ratio on illiquidity and a general application ratio significantly below 100% are necessary. If any of these components would not be implemented, additional measures would be needed or the DVA could not be maintained.

2.39 EIOPA would advise to introduce this in the Solvency II Directive in the section on the VA. Reference should be made to the regulatory requirements on internal models.

2.40 Regarding recommendations on criteria for further harmonisation, EIOPA expects that the enhanced 'DVA prudency principle' will lead to a certain convergence of approaches, but would not see the need to further impose only 'replication of the EIOPA VA methodology' ('direct approach'). To level consistency and risk orientation as required by the use test for internal models, holistic approaches might be accepted if a substantial need for them to avoid undesirable risk and investment management incentives is evidenced.

2.41 The dynamic VA in internal models should only be based on the permanent VA, but not anticipate the macro-economic VA in order to avoid disincentives in risk and investment management. Anticipating crisis measures would counteract building resilience towards crisis situations.

## **2.5. Transitional measures on the risk-free interest rates and on technical provisions**

2.42 EIOPA advises that the disclosure on the use of the transitionals on the risk-free interest rates and on technical provisions is strengthened as follows:

- The Solvency and Financial Condition report (SFCR) addressing other users than policyholders should set out the reasons for the use of the transitional. In case the undertaking does not comply with the SCR without the transitional, this fact would be sufficient reason. Where undertakings comply with the SCR without the transitional other reasons should be provided.
- The SFCR addressing other users than policyholders should include an assessment of the dependency of the undertaking on the transitional. In case of a dependency, the undertaking should describe the measures it has taken and is planning to take providing a prospect to remove the dependency by the end of the transitional period.

2.43 Undertakings should only be allowed to start applying the transitionals on the risk-free interest rates and on technical provisions in the following cases:

- An undertaking newly falls under Solvency II because it has passed the thresholds of Article 4 of the Solvency II Directive.
- An undertaking transfers a portfolio that is subject to the transitional(s) to another undertaking.

2.44 In order to ensure consistent application of capital add-ons, EIOPA suggests to add a clarification at the end of Article 37(1)(d) of the Solvency II Directive as follows:

*"With regard to the transitional measures referred to in Articles 308c and 308d this would include the situation where the supervisory authority has not yet received a realistic phasing-in plan required in Article 308(e), or a realistic update thereof."*

## **2.6. Risk-management provisions on LTG measures**

2.45 Regarding Article 44(2) of the Solvency II Directive (requirement on setting up a liquidity plan where the VA is applied) EIOPA advises to clarify and strengthen the requirement by adding the following wording:

*"Where the volatility adjustment is applied undertakings shall in their liquidity plan take into account the use of the volatility adjustment and analyse whether the liquidity planning indicates any liquidity constraints which are not consistent with the use of the volatility adjustment."*

2.46 Regarding the requirement on performing sensitivity analysis where the VA is applied included in Article 44(2a) of the Solvency II Directive, EIOPA advises to change the requirement to refer to sensitivities with respect to different economic (spread) situations instead of referring to the assumptions underlying the VA. The outcome of the sensitivity assessment should be reported in the regular supervisory reporting.

2.47 EIOPA advises to delete the requirement to assess the possible effect of a forced sale where the VA or the MA are applied included in Article 44(2a) of the Solvency II Directive.

2.48 Regarding the requirement for a policy for the application of the VA included in Article 44(2a) of the Solvency II Directive, EIOPA advises to replace it by the requirement that the written policy on risk management should reflect on the use of the VA.

2.49 EIOPA proposes to delete the requirement contained in Article 44(2a)(c)(i) of the Solvency II Directive to analyse the measures for restoring compliance in case the MA or VA are reduced to zero.

2.50 EIOPA considers that, if the relevant risk free interest rate term structure, including the application of transitional measures, differs from market risk-free interest rates this may lead to a deterioration of own funds over time. Therefore, EIOPA advises that the assessment of compliance with the capital requirements referred to in Article 45(1)(b) of the Solvency II Directive should include an assessment as to whether with the application of the extrapolation of the relevant risk-free interest rate term structure, or, where applicable, the MA or VA or the transitional measures there will be a progressive and structural (i.e. non-cyclical or temporary) deterioration of the financial condition of the undertaking which bears a significant risk to result in non-compliance with capital requirements in the future.

2.51 The supervisory authority should have the power to limit planned voluntary capital distributions of the undertaking in the case where:

- this assessment shows that there is a significant risk that an undertaking cannot comply on a continuous basis with the SCR or MCR; and
- the supervisor has requested the undertaking to demonstrate that any planned voluntary capital distribution does not further increase the risk of future breaches of capital requirements; and

- the undertaking has not provided this demonstration, or the supervisor considers that the demonstration is insufficient.

2.52 EIOPA considers that the supervisor should only use the power to limit capital distributions in exceptional circumstances and in the case where it is necessary to ensure continuous compliance with the SCR.

2.53 EIOPA proposes that this measure should be regularly reviewed and it should be removed as soon as the underlying conditions that motivated the measure are no longer fulfilled.

## **2.7. Disclosure on LTG measures**

2.54 Regarding the disclosure of information on the use and impact of LTG-measures, EIOPA advises to include such information in the section of the SFCR addressed to other stakeholders. In the section of the SFCR addressed to policyholders only the figures with measures should be disclosed.

2.55 EIOPA holds the view that the SFCR template on the impact of the LTG measures should also show the impact on the SCR and MCR ratios (as illustrated in annex 2.15 of the analysis background document). No additional derived ratios need to be included.

2.56 In view of the proposed extrapolation method, EIOPA recommends that insurance and reinsurance undertakings with long-term liabilities should disclose in their SFCR the outcome of a sensitivity analysis regarding a change of the convergence parameter of the extrapolation method to 5%. Undertakings should disclose the impact on their financial position, including on the amount of technical provisions, the SCR, the MCR, the basic own funds and the amounts of own funds eligible to cover the SCR and the MCR.

2.57 The disclosure should only be mandatory for those undertakings exceeding the following threshold: sum of cash-flows beyond the first smoothing point is higher than 10% of the total sum of cash-flows.

## **2.8. Long-term and strategic equity investments**

### “Standard” equity type 1 and type 2

2.58 In January 2010, EIOPA’s predecessor, CEIOPS, advised on the “Standard” type 1 and type 2 equities. EIOPA continues to endorse CEIOPS’ advice.

### Duration-based equity risk sub-module

2.59 In January 2010, CEIOPS advised a risk charge of 22 percent for the duration-based equity risk (DBER). To date, the standard formula’s stress is set at 22 percent.

2.60 In March 2019, the Commission adopted an amendment to the Delegated Regulation which includes Article 171a in respect of the treatment of long-term equity investment (LTE). Similarly to the DBER, the LTE aims to address the risks of equity held over a longer time horizon.

2.61 Keeping two separate treatments is considered unnecessary, in view of the complexity induced. Therefore, the approved use of the DBER should be phased out. New approvals to use the DBER should not be granted anymore, but current users would still be allowed to use it.

### Strategic equity investments

2.62 In February 2019, EIOPA provided technical information on the application of the criteria of the Delegated Regulation to the European Commission.

#### Lower volatility

2.63 EIOPA considers that the lower capital requirement for strategic participation is justified if the risk is lower.

2.64 With respect to the criterion on lower volatility (Article 171(a) of the Delegated Regulation), EIOPA advises to keep that requirement and suggests to provide further clarification on how to perform that assessment. The beta method should be introduced as an optional method that can be used for the purpose via additional guidance issued by EIOPA.

#### Control threshold of 20 percent

2.65 With respect to the criterion on the minimum control threshold of 20 percent (Article 171 (a) of the Delegated Regulation), EIOPA advises to keep that requirement. Reasons to keep the threshold are:

- The influence of the participating undertaking on a related undertaking can materially influence the volatility of the related undertakings' own funds;
- The underlying idea of strategic equity investment as being investments of strategic nature.

2.66 In addition, it would be beneficial to make more explicit that the requirement applies to investments in related undertakings. Therefore, the title and first sentence of Article 171 of the Delegated Regulation should be changed in order to refer to participations rather than to equity investments.

### Infrastructure investments

2.67 In September 2015 and June 2016, EIOPA advised on the identification and calibration of infrastructure investments and other infrastructure investments -i.e. infrastructure corporates. EIOPA's advice remains unchanged.

### Unlisted equity

2.68 In February 2018, EIOPA advised on unlisted equities. In particular, EIOPA provided criteria applicable to portfolios of equity from the EEA which are not listed, in order to identify those which could benefit from the same risk factor as listed equity. EIOPA's advice remains unchanged.

### Long-term equity investments

2.69 Articles 101(3) and 104(4) of the Solvency II Directive require a calibration based on a 1-year time horizon. On the one hand, the choice of a longer time horizon may technically be justified under certain conditions. On the other hand, undertakings trade equity and using other measure of risks could mean that the changes in the level of own funds are not fully captured.

2.70 In March 2019, Article 171a of the Delegated Regulation set out a reduced risk charge of 22 percent for the equity investments that meet specific conditions. The lower capital charge is based on several justifications, one being the CEIOPS' advice of 2010 on the duration-based equity risk sub-module.

- 2.71 In complement to CEIOPS' advice of 2010, EIOPA has done an analysis of long-term equity risk based on historical data series. Several changes in the methodology to estimate the risk were required to adequately calibrate a long-term risk charge. Namely, the excess return was calculated net of the 10 years risk free rate to ensure that the equity analysis included not only the loss on the equity investment, but also the unwinding of the discount rate over that duration, which is reflected in the technical provisions. In addition, the excess return was calculated based on minimum value to account for the risk that undertaking may have to dispose their investments within a given year, at the lowest index value.
- 2.72 Based on the MSCI World Total Return index, the experienced stress for a 10 years time horizon resulted in a loss equal to 74 % of the market value of equity. The scope of the LTE is restricted to EEA equities. When considering the MSCI Europe Total Return Index, the experienced stress for a 10 years time horizon results in a loss of 62%. In addition, there is no clear decreasing trend in the risk with regard to extending the time horizon. Therefore, the empirical analysis performed by EIOPA does not corroborate the 22 percent capital charge.

#### Diversification between LTE and other risks

- 2.73 To date, long-term equity investments are included within other type 1 and type 2 short-term equity risks. As such, it benefits from the same diversification. However, the correlation matrices were defined based on 1-year time horizon.
- 2.74 The empirical analysis is not conclusive on the correlation coefficient between short-term and long-term risk. However, it can be justified not to treat in the same manner the short term and long term equity risks. For instance, CEIOPS advice in Level 2 Advice recommended adding up the equity capital requirements calculated according to Article 304 and Article 105 of the Solvency II Directive.

#### LTE criteria (Article 171a of the Delegated Regulation)

- 2.75 EIOPA identified issues concerning the possible restrictive interpretation of requirements related to the identification, management and organization of the LTE portfolios of assets and liabilities, which could be read to imply the need to establish ring-fenced funds in order to be compliant with the LTE requirements.
- 2.76 Therefore, EIOPA advises that modifications are introduced to the requirements in paragraph 1(b), 1(c) and 19e) of Article 171a of the Delegated Regulation.
- 2.77 The criteria concerning the holding period of LTE was also identified as a practical impediment for the application of the framework, due to its link to individual equity holdings.
- 2.78 Therefore, EIOPA advises that modifications are introduced to requirements in paragraph 1 (a), 1(d) and 1(g) of Article 171a of the Delegated Regulation.
- 2.79 The analysis on equity risk over longer time horizons are based on diversified portfolios or indices of equity. The requirement that only EEA equities are



eligible for inclusion in LTE portfolios does not prevent a portfolio to be well-diversified as within the EEA sufficient possibilities for diversification exist. The appropriateness of a lower capital charge for a single equity or not well-diversified portfolio of equities cannot be derived from those analyses.

2.80 Therefore, EIOPA advises that LTE applies only to a diversified LTE portfolio. A new requirement as paragraph 1(i) should be added to Article 171a of the Delegated Regulation.

2.81 EIOPA identified a potential overlap between the long-term equity investments and the strategic equity investments. In particular, if controlled intra-group investments were classified as LTE, it is likely that the rest of the equity portfolio could be traded every day while the portfolio still meet the average holding period.

2.82 Therefore, EIOPA advises to exclude controlled intra-group investments from the scope of the LTE. A new requirement (5) should be added to Article 171a of the Delegated Regulation.

2.83 The following list outlines the proposed criteria to be adopted for the classification of equity as LTE, by reference to the current requirements established by Article 171a:

*1. For the purpose of this Regulation, a sub-set of equity investments may be treated as long-term equity investments if the insurance or reinsurance undertaking demonstrates, to the satisfaction of the supervisory authority, that all of the following conditions are met:*

*a) the sub-set of equity investments is clearly identified;*

*b) the sub-set of equity investment is included within a portfolio of assets which is assigned to cover the best estimate of a portfolio of insurance or reinsurance obligations corresponding to one or several clearly identified businesses, and the undertaking maintains that assignment.*

*c) the assigned portfolio of assets referred to in point (b) are identified and managed separately from the other activities of the undertaking.*

*d) [Replaced by new number (2)]*

*e) a policy for long-term investment management is set up for each long-term equity portfolio and reflects undertaking's commitment to hold the global exposure to equity in the sub-set of equity investment for a period that exceeds 5 years on average. The AMSB of the undertaking has signed off these investment management policies and these policies are frequently reviewed against the actual management of the portfolios.*

*f) the sub-set of equity investments consists only of equities that are listed in the EEA or of unlisted equities of companies that have their head offices in countries that are members of the EEA;*

*g) where undertakings can demonstrate that either*

*i. particular homogeneous risk groups of the life insurance and reinsurance liabilities belongs to categories I or II as defined for the purpose of the calculation of the VA and the Macaulay duration of the liabilities in this HRG exceeds 10 years or*

*ii. a sufficient liquidity buffer is in place for the portfolio of non-life insurance and reinsurance liabilities and the assigned portfolio of assets;*

*h) the risk management, asset-liability management and investment policies of the insurance or reinsurance undertaking reflects the undertaking's intention to hold the sub-set of equity investments for a period that is compatible with the requirement of point (e) and its ability to meet the requirement of point (g).*

*Those elements are reported in the ORSA of the undertakings.*

*i) the sub-set of equity investments shall be properly diversified in such a way as to avoid excessive reliance on any particular issuer or group of undertakings and excessive accumulation of risk in the portfolio as a whole.*

*2. The proportion of equity backing life technical provisions that is assigned to the long term equity investment category does not exceed the proportion of life technical provisions compliant with the criteria specified in paragraph 1 on the total life technical provisions of the insurance or reinsurance undertaking;*

*3. Where equities are held within collective investment undertakings or within alternative investment funds referred to in points (a) to (d) of Article 168(6), the conditions set out in paragraph 1 of this Article may be assessed at the level of the funds and not of the underlying assets held within those funds.*

*4. Insurance or reinsurance undertakings that treat a sub-set of equity investments as long-term equity investments in accordance with paragraph 1 shall not revert to an approach that does not include long-term equity investments. Where an insurance or reinsurance undertaking that treats a sub-set of equity investments as long-term equity investments is no longer able to comply with the conditions set out in paragraph 1, it shall immediately inform the supervisory authority and shall cease to apply Article 169(1)(b), (2)(b), (3)(b) and (4)(b) to any of its equity investments for a period of 36 months.;*

*5. Participations shall be excluded from the sub-set of equity investments.*

In addition to the proposed criteria EIOPA advises that, in cases where the allocation of equity to LTE has a material impact on the overall SCR of the undertaking, enhanced reporting requirements should apply (e.g. through the RSR) in addition to the regular reporting through ORSA established under criterion 1(h).

2.84 Such requirements should focus on the assessment of the undertaking's ability to effectively hold equity in the long term from a risk management perspective, as well as a sensitivity analysis of the impact of LTE on its solvency position.

2.85 The liquidity buffer used for the purpose of criteria g) ii should be tested on the level of the whole non-life insurance and reinsurance liabilities. The liquidity buffer should be calculated on the basis of the assets backing the undertaking's non-life insurance and reinsurance obligations. Where the liquidity buffer as outlined in the following paragraph is bigger or equal than 1, all equity backing the non-life insurance and reinsurance obligations fall under the scope of the provisions of Article 171a can apply a risk charge of 22% (provided that the other criteria set out above are met). Where the

liquidity buffer is smaller than 1, no equity falls under the scope of Article 171a.

2.86 The liquidity buffer for the purpose of criteria g) is to be calculated as follows:

$$\frac{HQLA}{BE\_portfolio}$$

- where the numerator are high-quality liquid assets (HQLA) backing the non-life liabilities, applying a liquidity haircut as defined below;
- the denominator is the non-life best estimate liabilities net of reinsurance.

2.87 HQLA is comprised of two categories of assets: "Level 1" and "Level 2" assets. Level 1 assets can be included without limit, while a haircut is applied to Level 2 assets which can comprise up to 40% of the stock of HQLA. Level 2 assets are further split into Level 2A and Level 2B. Level 2B assets cannot represent more than 15% of the stock of HQLA. The determination of the HQLA follows a two-step process: Firstly, the haircut outlined in the following paragraph is applied. Secondly, the before mentioned limitations apply.

2.88 The list of HQLA is as follows.

Item		Haircut
<b>Level 1 assets</b>	Cash and cash equivalent	<b>0%</b>
	Bonds and loans from: <ul style="list-style-type: none"> <li>• The European Central Bank</li> <li>• EU Member States' central government and central banks denominated and funded in the domestic currency of that central government and the central bank</li> <li>• Multilateral development banks referred to in paragraph 2 of Article 117 of Regulation (EU) No 275/2013</li> <li>• International organisations referred to in Article 118 of Regulation (EU) No 275/2013</li> </ul>	<b>0%</b>
<b>Level 2A assets</b>	Bonds and loans rated CQS 0 or 1, excluding those from financial institutions	<b>15%</b>

<b>Level 2B assets</b>	Covered bonds rated CQS 0 or 1, excluding those emitted by a bank which is part of the same group	<b>25%</b>
	Qualifying RMBS	<b>50%</b>
	Bonds and loans rated CQS 2 or 3, excluding those from financial institutions	<b>50%</b>

## 2.9. Symmetric adjustment to the equity risk charge

2.89 EIOPA advises to widen the corridor to the symmetric adjustment from currently +/- 10% to +/- 17% and to introduce a floor of 22% to the capital charge.

## 2.10. Transitional measure on equity risk

2.90 In EIOPA's view no change to the equity transitional of Article 308b(13) of the Solvency II Directive needs to be made.

## 2.11. Extension of the recovery period

2.91 EIOPA advises to amend the first two paragraphs of Article 138(4) of the Directive as follows:

*"In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, ~~and where appropriate after consulting the ESRB~~ the supervisory authority may extend, for affected undertakings, the period set out in the second subparagraph of paragraph 3 by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.*

*Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) N° 1094/2010, for the purposes of this paragraph EIOPA shall, following a request by the supervisory authority concerned, and where appropriate after consulting the ESRB, declare the existence of exceptional adverse situations. The supervisory authority concerned may make a request if insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph 3."*

Reference table chapter 2		
Opinion	Analysis	Impact analysis
2.1	2.2	2.1
2.2	2.3	2.2
2.3	2.4	2.3

2.4	2.5	2.4
2.5	2.6	2.5
2.6	2.7	2.6
2.7	2.8	2.7
2.8	2.9	2.8
2.9	2.10	2.9
2.10	2.11	2.10
2.11	2.12	2.11

### 3. Technical provisions

#### 3.1. Best estimate

##### Contract boundaries

- 3.1 EIOPA advises to amend the third paragraph of Article 18(3) of the Delegated Regulation as follows:

*“However, in the case of life insurance obligations where an individual risk assessment of the obligations relating to the insured person of the contract is carried out at the inception of the contract and the undertaking does not have the right to repeat the assessment before amending the premiums or benefits, insurance and reinsurance undertakings shall only consider the right to assess at the level of the contract whether the premiums fully reflect the risk for the purposes of point (c).”*

- 3.2 EIOPA advises to replace Article 260(4) of the Delegated Regulation as follows:

*“Loss-making policies should be offset against profit-making policies within a homogeneous risk group. Loss-making homogeneous risk groups should also be offset against profit-making homogeneous risk groups.”*

- 3.3 EIOPA advises to add the following definition to Article 1 of the Delegated Regulation:

*“the expected profit in future fees for servicing and management of funds’ means for index-linked and unit-linked insurance the difference between technical provisions without a risk margin calculated in accordance with Article 77 of Directive 2009/138/EC and technical provisions without a risk margin under the assumption that the future fees for servicing and management of funds that are expected to be received in the future are not received for any reason other than the insured event having occurred, regardless of the contractual rights of the policyholder to discontinue the policy.”*

##### Future management actions

- 3.4 EIOPA advises to include the following definition in Article 1 of the Delegated Regulation as follows:

“future management action’ means any action that the administrative, management or supervisory body of an insurance or reinsurance undertaking may expect to carry out under specific future circumstances;”

## Expenses

3.5 EIOPA advises to amend Article 31(4) of the Delegated Regulation as follows:

“4. Expenses shall be projected taking into account the decisions of the administrative, management or supervisory body of the undertaking with regard to writing new business.”

3.6 EIOPA advises to amend the second paragraph of Article 31(1) of the Delegated Regulation as follows:

“The expenses referred to in points (a) to (d) shall take into account overhead expenses to be incurred in servicing insurance and reinsurance obligations.”

## 3.2. Risk margin

3.7 EIOPA proposes that the calculation of future SCRs necessary to support the insurance and reinsurance obligations over the lifetime thereof should be adjusted to account for the time dependency of risks.

3.8 To implement such an adjustment, EIOPA proposes to change the risk margin calculation formula in order to introduce a floored, exponential and time dependent element  $\lambda$  :

$$RM = CoC (6\%) * \sum_{t \geq 0} \frac{\max(\lambda^t, floor) * SCR_t}{(1+r_{t+1})^{t+1}} \text{ with } \lambda = 0,975 \text{ and } floor = 50\%$$

Reference table chapter 3		
Opinion	Analysis	Impact analysis
3.1	3.1	3.1
3.2	3.2	3.2

## 4. Own funds

4.1 EIOPA assessed the differences in the capital tiering approaches between the insurance and the banking framework and deems them justifiable with regard to the different business models between undertakings authorised under Directive 2013/36/EU (CRD IV) or Solvency II. In addition, the requirements to hold capital and the way losses are absorbed differ significantly.

4.2 Therefore, EIOPA advises not to change the Solvency II tiering structure.

4.3 Regarding the calculation basis of the limit for rT1, EIOPA advises not to change it.

4.4 Regarding the possible change of the limit T2+T3, EIOPA advises not to delete the 50% limit for lower tiers.

4.5 EIOPA advises not to change the attribution of EPIFPs to tier 1. EIOPA will continue the work on the treatment of EPIFPs at level 3, in particular on guidelines addressing some of the main assumptions for deriving EPIFPs such as contract boundaries or expenses.

## 5. Solvency Capital Requirement standard formula

### 5.1. Interest rate risk

5.1 EIOPA continues to believe that the current shocks provided in the Delegated Regulation for interest rate risk do not meet the requirements of Article 101(3) of the Solvency II Directive.<sup>5</sup> Therefore, EIOPA strongly advises to change the way capital requirements for interest rate risk are calculated in the Delegated Regulation.

5.2 EIOPA advises to model interest rate risk in the standard formula with a relative shift approach, parameters of which vary in function of the maturity.

5.3 The increased term structure for a given currency shall be equal to:

$$r_t^{up}(m) = r_t(m) \cdot (1 + s_m^{up}(\theta_m)) + b_m^{up}$$

where  $r_t(m)$  denotes the risk-free interest rate in the corresponding currency,  $m$  denotes the maturity and  $b_m^{up}$  and  $s_m^{up}$  are the calibrated maturity dependent up-shock components. On the shift vector  $\theta$  see section 5.1 of the analysis background document.

5.4 The decreased term structure for a given currency shall be equal to:

$$r_t^{down}(m) = r_t(m) \cdot (1 - s_m^{down}(\theta_m)) - b_m^{down}$$

where  $r_t(m)$  denotes the risk-free interest rate in the corresponding currency,  $m$  denotes the maturity and  $b_m^{down}$  and  $s_m^{down}$  are the calibrated maturity dependent down-shock components.

5.5 EIOPA advises that the parameters for the increased and decreased term structures should take into account the starting point of the extrapolation of the euro term structure.

5.6 For maturities between 1 and 20 years the shock components should be as follows:

<b>Maturity <math>m</math> [years]</b>	$s_m^{down}$	$b_m^{down}$	$s_m^{up}$	$b_m^{up}$
1	58%	1.16%	61%	2.14%
2	51%	0.99%	53%	1.86%
3	44%	0.83%	49%	1.72%
4	40%	0.74%	46%	1.61%
5	40%	0.71%	45%	1.58%

<sup>5</sup> EIOPA advised such a change already in 2018 when the Delegated Regulation was reviewed.

6	38%	0.67%	41%	1.44%
7	37%	0.63%	37%	1.30%
8	38%	0.62%	34%	1.19%
9	39%	0.61%	32%	1.12%
10	40%	0.61%	30%	1.05%
11	41%	0.60%	30%	1.05%
12	42%	0.60%	30%	1.05%
13	43%	0.59%	30%	1.05%
14	44%	0.58%	29%	1.02%
15	45%	0.57%	28%	0.98%
16	47%	0.56%	28%	0.98%
17	48%	0.55%	27%	0.95%
18	49%	0.54%	26%	0.91%
19	49%	0.52%	26%	0.91%
20	50%	0.50%	25%	0.88%

- 5.7 For maturities shorter than one year the value of  $s_m^{up}$  and  $b_m^{up}$  shall be equal to 61% and 2.14% respectively. For maturities shorter than one year the value of  $s_m^{down}$  and  $b_m^{down}$  shall be equal to 58% and 1.16% respectively.
- 5.8 For maturities between 20 and 90 years, the value of  $s_m^{up}$  shall be linearly interpolated. For maturities of 90 years and up the value of  $s_m^{up}$  shall be 20%. For maturities between 20 and 60 years the value of  $b_m^{up}$  shall be linearly interpolated. For maturities of 60 years and up the value of  $b_m^{up}$  shall be 0%.
- 5.9 For maturities between 20 and 90 years, the value of  $s_m^{down}$  shall be linearly interpolated. For maturities of 90 years and up the value of  $s_m^{down}$  shall be 20%. For maturities between 20 and 60 years the value of  $b_m^{down}$  shall be linearly interpolated. For maturities of 60 years and up the value of  $b_m^{down}$  shall be 0%.
- 5.10 The shocked interest rates in the downward scenario should not be lower than -1.25%.
- 5.11 The change to the interest rate risk calibration should be phased in over a period of five years.

## 5.2. Spread risk

- 5.12 EIOPA advises not to modify the existing SCR spread risk sub-module. In EIOPA's view it is unnecessary and even unwarranted to introduce a separate, long-term treatment of insurance and reinsurance undertakings' investments in fixed income assets, beyond the current, long-term calculation of the spread risk charge of assets contained in matching adjustment portfolios.

## 5.3. Property risk

- 5.13 EIOPA advises not to change the current calibration of the property risk sub-module of the SCR standard formula.



## 5.4. Correlation matrices

- 5.14 EIOPA advises to keep the current two-stage correlation structure in the standard formula, with correlation matrices within a submodule and a correlation matrix for the main risk modules. In particular, this implies that a direct correlation between market risk and life lapse risk should not be introduced in the standard formula.
- 5.15 EIOPA advises to keep all correlations for the underwriting risks and the correlations between the main risks unchanged.
- 5.16 EIOPA advises to keep the two-sided correlation structure within the market risk module. EIOPA further advises to reduce the correlation parameter for spread risk and interest rate risk (downward scenario) to 0.25.
- 5.17 EIOPA advises to keep the two-sided correlation structure within the market risk module.

## 5.5. Counterparty default risk

### Simplified calculation of the risk-mitigating effect of derivatives, reinsurance arrangement, special purpose vehicles and insurance securitisations

- 5.18 EIOPA proposes an additional optional simplification for the computation of the risk-mitigating effect of derivatives, reinsurance arrangements, special purpose vehicles and insurance securitisations. In this case the risk-mitigating effect for reinsurance arrangements and simple derivative structures can be computed as in the equations below.
- 5.19 In the first step the total risk-mitigating effect is calculated as

$$RM_{Total} = BSCR^{*,without} - BSCR^*$$

where

$BSCR^{*,without}$  is the Basic Solvency Capital Requirement without counterparty default risk module that would result if no derivatives<sup>6</sup>, reinsurance arrangements, special purpose vehicles and insurance securitisations were in force.

$BSCR^*$  is the (current) Basic Solvency Capital Requirement if the counterparty default risk module is excluded.

- 5.20 Then the risk mitigating-effect of the derivative or reinsurance arrangement, special purpose vehicles and insurance securitisations is calculated by

$$RM_i = \frac{\max|EAD_i|}{\sum_{i=1}^n \max|EAD_i|} * RM_{Total}$$

where

$|EAD_i|$  denotes the absolute value of the exposure at default of the derivative, reinsurance arrangement, special purpose vehicles and insurance securitisations towards counterparty  $i$ . If the risk-mitigating instrument is a derivative,  $|EAD_i|$  should be the absolute value of the derivative according to Article 75 of the Solvency II Directive. If the risk-mitigating instrument is a reinsurance arrangement, special purpose vehicle or insurance securitisation

$|EAD_i|$  should be the absolute value of the best estimate of amounts recoverable from the reinsurance arrangement, special purpose vehicle or insurance securitisation towards counterparty  $i$ .

#### Calculation of the hypothetical SCR for the risk-mitigating effect of reinsurance arrangements

5.21 The hypothetical SCR for the fire, marine and aviation risk for the purpose of determining the risk mitigation effect in the counterparty default risk module should be calculated on the basis of the largest net risk concentration for the fire, marine and aviation risk.

#### Capital requirements for forborne and default loans

5.22 It is proposed to amend Article 189(3) of the Delegated Regulation to include in the type 2 exposures the default and forborne loans, as defined respectively in Article 178 of Regulation (EU) No 575/2013 (CRR) and par. 163 of Annex V, Part II of Commission Implementing Regulation (EU) 2015/227.

5.23 The Loss Given Default of these loans should be calculated as follows:

$$LGD = 6.67 * \max(\text{Loan} - \text{Recoverables}; 36\%^7 * \text{Loan});$$

where

*Loan* denotes the value of the mortgage in accordance with Article 75 of the Solvency II Directive; and

*Recoverables* denotes the actualised value of the debt recoveries calculated according to the chapter 6 of the EBA/GL/2017/16.

#### Effective recognition of partial guarantees on mortgage loans

5.24 EIOPA advises to adjust the requirements for the recognition of partial guarantees on mortgage loans, by adding the following text at the bottom of Article 192(4) of the Delegated Regulation:

*"In case of guarantees provided by a counterparty which is fully guaranteed by one of the counterparties mentioned in points (a) to (d) of the first subparagraph of Article 180(2), the requirements in Article 215 point (d) shall be considered to be satisfied where the insurance or reinsurance undertaking has the right to obtain in a timely manner a provisional payment by the first guarantor that meets the following conditions:*

*a) it represents a robust estimate of the amount of the loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, that the insurance or reinsurance undertaking is likely to incur;*

*b) it is proportional to the coverage of the guarantee."*

5.25 Accordingly, a requirement for partial guarantees could be that the guarantor requires the insurance or reinsurance undertaking to first pursue the obligor itself. It would also improve the level playing field with banking regulation on the recognition of partial guarantees on mortgage loans.

<sup>6</sup> Derivatives not covered by the simplification should still be included in the *BSCR<sup>\*,without</sup>*

<sup>7</sup> It is hypothesised a level of loss at least equal to a 21 years duration of unrated loan pursuant to Article 176(4) of the DR.

## 5.6. Calibration of underwriting risk

5.26 Based on the data received for the review on lapse risk, premium risk for credit and suretyship insurance and health pandemic risk, EIOPA advises not to change the current underwriting risks stress factors.

## 5.7. Risk mitigation techniques

5.27 As regards further recognition of non-proportional reinsurance covers EIOPA does not advise to change the current legislation on the adjustment factors for the recognition of non-proportional reinsurance in the premium risk calculation (Article 117(3) of the Delegated Regulation).

5.28 EIOPA advises not to change the current recognition of finite reinsurance in the SCR standard formula.

5.29 EIOPA advises to recognise adverse development covers with the following limitations.

- Each adverse developments cover can only be applied on one specific group of policies (with the same risk characteristics within the same segment), with a separate attachment and detachment point.
- The attachment point shall not exceed  $(1 + \sigma)$  times Best Estimate reserves;
- The additional reinsurance premium ( C ) shall not be negative

5.30 Therefore EIOPA advises to add to Article 117 of the Delegated Regulation the following:

*For all segments set out in Annex II, the standard deviation for non-life reserve risk of a particular segment shall be equal to the product of the standard deviation for non-life gross reserve risk of the segment set out in Annex II and the adjustment factor for non-proportional reinsurance.*

*This adjustment factor shall be calculated as follows:*

$$\text{adjustment factor} = \frac{(A-(B-C)*D*E)}{A} \quad \text{where}$$

*A= Impact on basic own funds of reserve risk scenario as defined under the Standard Formula = Nominal best estimate net reserves x Standard deviation for non-life reserve risk of the segment x 3*

*B= Adverse development cover recovery under reserve risk scenario = The lower of the following:*

- *Nominal best estimate net reserves covered by the reinsurance structure x  $(1 + 3 \sigma(\text{res},s))$  - reinsurance structure attachment point.*
- *Reinsurance structure cover size*

*C= Additional reinsurance premium or the equivalent thereof, this premium shall not be negative.*

*D= Cession to the reinsurer in %*

*E= Prudency factor is 100%. Bi-annually EIOPA shall evaluate this factor based on experiences in reported data.*

Furthermore, EIOPA intends to develop further level 3 guidance on the application of adverse developments cover in the standard formula.

To avoid double counting, the 'nominal best estimate' is the volume measure given in Article 116(6) and Article 147(6) without taking the recoverable of the adverse development cover into account.

- 5.31 EIOPA advises to further clarify in the regulation that financial risk-mitigation techniques and other financial instruments that may be used to reduce the SCR, both in the standard formula and in internal models, shall not include contingent capital instruments that trigger a purchase of insurer's new shares or convertible bonds that convert into insurer's new shares held then by the counterparty at a specific price set mechanism upon the occurrence of a specific event, both elements being pre-defined in the contract.

#### Reflection of Risk Mitigation Techniques in the Standard Formula

- 5.32 EIOPA proposes that the following is added to Article 210 of the Delegated Regulation:

*"The undertaking shall prove the extent of an effective transfer of risk in order to ensure that any reduction in the Solvency Capital Requirement or increase in available capital resulting from its risk transfer arrangements is commensurate with the change in risk that the undertaking is exposed to.*

*The Solvency Capital Requirement and available capital shall reflect the economic substance of the arrangements that implement the technique. When calculating the Basic Solvency Capital Requirement, insurance or reinsurance undertakings shall only take into account risk-mitigation techniques as referred to in Article 101(5) of Directive 2009/138/EC where:*

*- the reduction in the Solvency Capital Requirements, or increase in the available capital is commensurate with the extent of risk transfer, and*

*- there is an appropriate treatment within the Solvency Capital Requirement of any corresponding risks that are acquired in the process."*

- 5.33 Regarding basis risk, EIOPA advises to transform Guidelines 1, 2 and 3 of EIOPA's Guidelines on basis risk into legislation in the Delegated Regulation.

### **5.8. Reducing reliance on external ratings**

- 5.34 It is advised to make no change to the scope of assets subject to the alternative credit assessment currently provided for in the Delegated Regulation (i.e. unrated bonds) and to not recognise additional methods in this review, but to open an analysis table to investigate how the new alternative credit assessment methods could be tailored to some specific rated exposures under a standard methodology.

- 5.35 In EIOPA's view a decision on possible additional methods allowing for a wider use of alternative credit assessments suitable for corporate exposures that are also rated by credit rating agencies may be taken after the analysis (i) of the implementation of the introduced prudential criteria that allow reducing the capital charges in the standard formula for insurers' unrated debt; (ii) of the impact assessment of future potential new methods suitable for rated bonds. This will need to encompass different facets to attain the required robustness

of the methodology and the needed discriminatory and predictive power, including also the stability of the rating.

## 5.9. Transitional on government bonds

5.36 EIOPA considers that the current requirements of Article 308b(12) of the Solvency II Directive should be amended to ensure cross-sectoral consistency and a level playing field. Consequently EIOPA advises the introduction of a grandfathering provision exempting exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State, which were incurred before 31 December 2019, from the calculation of the market risk concentrations and the spread risk sub-modules in accordance with the standard formula.

Reference table chapter 5		
Opinion	Analysis	Impact analysis
5.1	5.1	5.1
5.2	5.2	5.2
5.3	5.3	5.3
5.4	5.4	5.4
5.5	5.5	5.5
5.6	5.6	5.6
5.7	5.8	5.7
5.8	5.9	5.8
5.9	5.10	5.9

## 6. Minimum Capital Requirement

### 6.1. Calculation of the Minimum Capital Requirement

6.1 Regarding the use and the level of the cap and the floor EIOPA advises not to change the current 25%-45% corridor.

6.2 EIOPA recommends to change the risk factors for the calculation of the Minimum Capital Requirement (MCR) set out in Annex XIX of the Delegated Regulation as follows:

Segment	Factor for technical provisions	Factor for premiums written
Credit & suretyship	16.0%	17.7%
Legal expenses	5.2%	7.8%
Assistance	20.3%	6.0%
Accident	5.4%	No change
Sickness	No change	8.0%

Workers compensation	10.3%	9.0%
NPR health	15.9%	No change

6.3 With respect to potential issues related to the identification of eligible basic own funds items for composite undertakings, EIOPA advises no change to the current calculation of notional MCRs.

## 6.2. Non-compliance with the Minimum Capital Requirement

6.4 EIOPA advises to strengthen the clarity on what is to be expected from insurance undertakings by 'immediately' and by 'observed' in case of non-compliance with MCR as set forth in Article 139(1) of the Solvency II Directive:

*"Insurance and reinsurance undertakings shall inform the supervisory authority immediately and not only in the quarterly reporting prescribed in Article 129(4) where they observe that the Minimum Capital Requirement is no longer complied with, even if the exact level of non-compliance is not yet determined or where...."*

6.5 EIOPA intends to provide further Level 3 guidelines for what is 'observed' in order to have this information exchanged at an early stage.

6.6 EIOPA advises to amend Article 139(2) of the Solvency II Directive as follows:

*"Within one month from the observation of non-compliance with the Minimum Capital Requirement or from the observation of risk of non-compliance ..."*

Further regulation in Level 2 of the minimum content of the short-term realistic finance scheme should be provided.

6.7 Further regulation in Level 2 could also be provided to the supervisory authorities for minimum actions to be taken in addition to just approve/disapprove the short-term realistic finance scheme.

6.8 EIOPA advises to amend Article 139(3) of the Solvency II Directive as follows:

*"Within two months upon receipt of the information determined in paragraph 1 if a winding-up proceeding is not opened, the supervisory authority of the home Member State shall consider to restrict or prohibit the free disposal of assets of the insurance or reinsurance undertaking. ..."*

6.9 EIOPA advises to amend Article 144(1) of the Solvency II Directive as follows:

*"The resolution authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the event that within three months from the observation of non-compliance with the Minimum Capital Requirement the undertaking does not comply with the Minimum Capital Requirement, or the supervisory authority considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme."*

6.10 According to Chapter 12 of the Opinion (see in particular paragraph 12.9), the Member States should have in place an officially designated resolution authority or authorities for the resolution of (re)insurance undertakings; the

power to withdraw the authorisation to write new business and put all or part of the insurance business into run-off should be exercised by that authority, given that this power is part of the set of resolution powers which would be exercised by the Resolution authority in accordance with paragraphs 12.18 and 12.19 of Chapter 12.

- 6.11 EIOPA advises to amend Article 144(1) of the Solvency II Directive to specify that when an undertaking with a withdrawn authorisation enters into the resolution process in accordance with Chapter 12 of this Opinion (see in particular paragraphs 12.31 and 12.32) and a winding-up proceeding is not taking place the undertaking continues to be subject to supervision according to the Solvency II framework.
- 6.12 EIOPA advises that further measures should be developed at Level 2 or Level 3, taking into account that, in accordance with Chapter 12 of this Opinion, the resolution authority is required to implement the pre-emptive resolution plan or to set up an ad-hoc resolution plan in case the former does not exist to ensure an orderly resolution in a realistic timeframe taking into account that the minimum supervisory requirements need to be fulfilled.
- 6.13 The resolution authority should be responsible for the orderly resolution of the insurance undertaking and for this purpose monitors together with the supervisory authority concerned the correct implementation of the plan. Given that during the resolution phase minimum supervisory requirements need to be fulfilled, the NSA should keep specific supervisory powers ensuring continuous compliance with the Solvency II provisions applicable during the resolution process. Both authorities should cooperate regularly and exchange all relevant information. In case of cross border business and no college of supervisors, cooperation platform or other type of cross-border cooperation and coordination arrangement in place the plan needs to be communicated to the host resolution authorities, to the supervisory authorities concerned as well as to EIOPA.

<b>Reference table chapter 6</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
6.1	6.4	6.1
6.2	6.5	6.2

## **7. Reporting and disclosure**

### **7.1. General issues on supervisory reporting and public disclosure**

7.1 EIOPA advises that the Commission:

- a. Continues the implementation of the Digital Finance Strategy and development of the announced Supervisory Data Collection Strategy including potential legislative changes that would clarify and facilitate the use of data already reported within any European reporting framework by any relevant competent authority, both national and European.

- b. Prioritises the area of Collective Investment Undertakings information in this analysis in order to propose the appropriate legal provisions that would allow the sharing of this information between competent authorities.
- c. Promotes the identification of other areas of duplications and inconsistencies between the reporting frameworks across the sectors of the financial industry and continue to work on the foundation of data standardisation, critical for an efficient data-sharing framework, in cooperation with relevant supervisory and regulatory authorities.

7.2 Regarding quarterly reporting, EIOPA proposes to:

- keep the requirement to report Q4;
- reduce the quarterly templates scope as follows (to be implemented in future ITS):
  - o Simplify template on open derivatives (S.08.01) by deleting some cells;
  - o Delete template on derivatives transactions (S.08.02);
  - o Simplify template on Life Technical Provisions (S.12.01) by deleting the information on transitionals;
  - o Simplify template on Non-Life Technical Provisions (S.17.01) by deleting the information on transitionals.

This proposal does not require any amendment to the Solvency II Directive or Delegated Regulation.

7.3 Regarding reporting and disclosure deadlines, EIOPA proposes to:

- delete Article 308b paragraphs 5, 6, 7 and 8 of the Solvency II Directive on transitional period.
- amend annual supervisory reporting deadlines in line with the reporting deadlines applicable during 2019, but keep the reference to weeks and not working days, i.e. 16 weeks for annual individual supervisory reporting and 5 weeks for quarterly individual reporting.
- amend the requirements for undertakings to disclose their SFCR no later than 18 weeks after the undertaking's financial year-end which automatically extend the deadlines for disclosure of group SFCR no later than 24 weeks. This also accommodates the proposal for audit of the SII Balance sheet.
- Considering that the Single SFCR includes both the SFCR at group level and SFCR at solo level and the solo SFCR is proposed to have two distinctive parts (one for policyholders and beneficiaries and another one for other financial users) and that the group SFCR will only have the part of other financial users, to:
  - o align the deadline of the policyholder section of a Single SFCR with the solo SFCR deadline, i.e. 18 weeks (current 14 weeks + 4 weeks extension as currently being proposed at solo level);
  - o align the deadline of the other financial users sections of a Single SFCR with the deadline of the group SFCR, i.e. 24 weeks.



- The Solvency II Directive should also foresee the situations that the deadline for SFCR disclosure should not be sooner, in any case, than the disclosure of regular Audited Annually Reported Financial Statements in case of listed (public) companies.
  - EIOPA proposes to keep the delay of 6 weeks for groups supervisory reporting.
- 7.4 To implement the above changes, amendments are proposed to Article 312(1) of the Delegated Regulation (see annex 7.1 of the analysis background document for the full proposals on amendments of Delegated Regulation articles).
- 7.5 Regarding the reporting currency, EIOPA proposes to keep the *status quo* and not to change the approach but to request for totals in reporting currency in the templates where only original currency is reported.
- 7.6 In the cases where supervisory authorities may require reporting currency two columns will be needed from an operational perspective, one to identify the currency on the contract and other to identify the currency for which the amounts are being reported.
- 7.7 Regarding reporting by reinsurance undertakings, EIOPA proposes the following amendments in the ITS:
- The reporting of S.16.01 not to be required for reinsurance undertakings;
  - References to surrender values should not address reinsurance business.
- 7.8 Regarding specific business models, EIOPA proposes to introduce in the future ITS amendment an information request in Basic Information template (S.01.02) to identify undertakings running a run-off business and captives insurance and reinsurance undertakings (see also section for S.01.02 in the QRTs document).
- 7.9 Regarding gaps identified in the reporting package, EIOPA proposes the following amendments in ITS (to be implemented in the future) – introducing new information on the following areas:
- Cross-border business (please see proposals on S.04s in QRTs document);
  - Cyber risk (please see proposal for new template in QRTs document);
  - Product by product information for both life and non-life (improved S.14 and proposal for new template for non-life in QRTs document)
- Based on the above proposals EIOPA will propose amendments to the ITS in accordance with its mandate.
- 7.10 EIOPA also proposes to the Commission an amendment to:
- Article 112(7) of the Solvency II Directive that would envisage the inclusion in the regular supervisory reporting of the template S.25.01, templates S.26s and S.27 with Standard Formula figures of undertakings that use an internal model. Templates S.25.01, S.26 and S.27 with Standard formula information, for internal model users, would not be part of the public disclosure, and therefore not part of the SFCR.

The proposed amendments to Article 112(7) of Solvency II Directive is as follows:

*"After having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings shall ~~by means of a decision stating the reasons~~ be required to provide supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2."*, and

- to Article 159 of Solvency II Directive to adapt to the reality in terms of the objectives of the information exchange on cross-border activities (see annex 7.3 of the analysis background document for the full proposal)

## **7.2. Solvency and Financial Condition Report**

7.11 Regarding the general approach of SFCR, EIOPA proposes the following amendments to the Solvency II Directive:

- Distinguish the SFCR part addressed to policyholders from the part addressed to other users (e.g. professional public);
- Propose a high level content for the section addressed to policyholders;
- Amend the structure of report from five to four sections (Business and performance, System of Governance, Valuation for solvency purposes and Capital management and Risk profile) and streamline the information requested to be disclosed;
- Introduce standardisation on the information on sensitivities taking into consideration proportionality (see also gaps section);
- Clarify the specific requirements applicable to captives insurance and captives reinsurance undertakings;
- Introduce minimum audit or similar requirements (see also audit section).

7.12 At group level, the amendments above are also applicable with the exception of the section of the report addressing policyholders. In this case, EIOPA proposes that at group level that section is not required.

7.13 Regarding the content of the solo SFCR, EIOPA proposes the following amendments to the Delegated Regulation for solo SFCR:

- Amendments on the structure and content of the SFCR, proposing a structure and content for the new section addressed to policyholders and beneficiaries and proposing a material streamline of the part addressed to other stakeholders;
- For the section addressing policyholders, language requirements are also proposed, in the case of cross-border business;
- The revision of the content led to material reductions but also to some additions: references to sustainability risks and ESG and climate change related issues, LTG related information and standardisation of the sensitivity information;

- Introduce the message that other reports may be referred to when the information is already available in the public domain;
- Deletion of the Summary in the section addressed to other stakeholders. Other stakeholders are mostly professional users and the summary is of less use for these addressees;
- Deletion of requirements on transitional arrangements as the transitional period for the SCFR will expire soon expired.

7.14 Regarding the content of the SFCR at group level, EIOPA proposes the following amendments to the Delegated Regulation for group SFCR and single SFCR:

- Amendments on the structure and content of the solo SFCR apply mutatis mutandis (as referred to in the amendments to the Solvency II Directive, except the section addressed to policyholders);
- Content of the group specific information streamlined;
- Deletion of the requirement to disclose the Summary;
- Clarification that the single SFCR should, for the part of the subsidiaries, include the part addressed to policyholders and this part should be published earlier (as for solo).

7.15 To implement above changes EIOPA proposes amendments to Article 296 of the Delegated Regulation for group SFCR and single SFCR.

7.16 EIOPA also proposes amendments to the current Annex XX of the Delegated Regulation, following the amendments referred to above and a new Annex XXa (also included in annex 7.2 of the analysis background document) defining the structure of the part of the SFCR addressed to policyholders and beneficiaries.

7.17 Specifically aiming additional information on sensitivities, EIOPA proposes:

- the amendments to the Solvency II Directive introducing the standardisation of the information on sensitivities taking into account proportionality with a reference to EIOPA Guidelines with the aim of requesting this standardisation only for groups/undertakings relevant for financial stability purposes.
- the amendments to the Delegated Regulation for solo and group SFCR to implement such a requirement:
  - o Including sensitivity analysis for SCR ratio, SCR amount and Eligible Own Funds to cover the SCR amount;
  - o Including a reduced set of sensitivities addressing economic assumptions but not including for now non-economic assumptions:
    - o Equity markets (-25%)
    - o Equity markets (+25%)
    - o Risk free interest rates (-50bps)
    - o Risk free interest rates (+50bps)
    - o Credit spreads of fixed-income investments (-50bps)

- Credit spreads of fixed-income investments (+50bps)
- Property values (-25%)
- Property values (+25%)
- Undertakings may in addition present a set of sensitivity analysis that in their views better reflects their risk profile, explaining the reasons behind the sensitivities performed.

7.18 Regarding the availability and technical format of the solo SFCR, EIOPA advises that additional requirements are introduced in Article 301 of the Delegated Regulation requiring:

- Minor amendments to refer to the two parts of the SFCR;
- In paragraph 6 require a specific technical format of the report referred to in points 1, 2, 4 and 6 allowing for application of search function for relevant text and numbers;
- New paragraph requiring to insurance and reinsurance undertakings that in case -SFCR reports are published electronically to submit to supervisory authorities under the quantitative reporting templates the exact location where the SFCR report is already available in the website (or will be in due time) and requiring that undertakings keep updated the information about the location in case of a change during the following three years;
- New paragraph indicating that such exact location of the SFCR report in the website may be used by supervisory authorities and EIOPA or the SFCR information submitted according to paragraph 6, to collect, extract, analyse and publicly disclose the underlying information from the corresponding SFCR reports, including the information from quantitative reporting templates. The responsibility for the accuracy of the information, in particular the consistency between information disclosed and information reported to the supervisory authority rests with the undertakings.

7.19 Regarding the technical format of the RSR, EIOPA advises that additional requirements are introduced in Article 312 of the Delegated Regulation:

- require specific technical format to submit the information referred to in Article 312(1)(a) and (b) allowing for application of search function for relevant text and numbers.

7.20 EIOPA will further specify the technical implementation of the availability and technical format of the SFCR and Regular Supervisory Report (RSR) requirements in the relevant Level 3 guidance and technical documentation.

7.21 EIOPA proposes to introduce an auditing or similar requirement in the Solvency II Directive. This should ensure that as a minimum the Solvency II Balance-Sheet is subject in all Member States to similar level of assurance. This engagement should enhance the degree of confidence regarding the compliance of the financial information in the balance sheet with the respective rules and regulations. The proposal is applicable for solo, group and single SFCR.

7.22 Regarding audit or similar requirements, EIOPA proposes the following amendments to the Solvency II Directive:

- Introduction of a new article requiring insurance and reinsurance undertakings, other than captive insurance and captive reinsurance undertakings, as a minimum to subject the balance-sheet to audit or similar requirement as decided by the relevant Member State with a report submitted to the supervisory authority;
- For captive insurance and captive reinsurance undertakings Member States should be allowed to decide if audit requirements should apply or not.

7.23 A detailed proposal on the amendments to the Solvency II Directive and to the Delegated Regulation is included in annex 7.2 of the analysis background document.

### **7.3. Regular Supervisory Report**

7.24 Regarding the frequency and deadlines of the RSR, EIOPA proposes the following amendments in Article 312 of the Delegated Regulation:

- Include a link to the general proportionality principle framework;
- Include a possibility for NSA to request the full report when adequate;
- Extend the deadlines to 18 weeks in line with the publication of the SFCR.

7.25 EIOPA proposes to introduce L3 tools for achieving supervisory convergence by keeping the minimum requirement for submission of full RSR once every 3 years and link this possibility to the general proportionality framework discussed (see Chapter 8).

7.26 Regarding the content and structure of the RSR, EIOPA proposes the following amendments to the Delegated Regulation:

- Clarify the elements of the RSR to be included when the report is being submitted for the first time (new companies or after a number of material changes) and on an on-going basis;
- Further simplify and streamline the RSR:
  - o focusing on material changes – distinction between static and dynamic information;
  - o reducing duplication with ORSA and clarify which information is applicable in case not covered by ORSA; and
  - o delete information that is fully or partially covered by QRTs;
- Amend the structure of report from 5 to 4 sections in line with the amendments proposed at SFCR (Business and performance, System of Governance, Valuation for solvency purposes and Capital management and risk profile) and streamline the information required to be reported;
- Delete Article 314 – Transitional information requirements.

7.27 At group level the above amendments are also applicable while there are also new requirements e.g. information on any material intra-group outsourcing arrangements. In addition, it should be clarified that some of the information

requested should be the adequate one to allow for an assessment of the availability of the own funds at group level.

7.28 EIOPA proposes to issue guidelines to clarify expectations on what to expect in cases when articles of the Delegated Regulation refer to “full description”. If Commission believes that such clarification should be defined in the Delegated Regulation EIOPA advises that the articles addressing the full description are added separately by using as a basis the current description.

7.29 Regarding the possibility for a single RSR, EIOPA proposes a new article allowing the submission of a single RSR under the following conditions:

- Needs agreement by the NSAs concerned, where they can refuse if duly justified. If approved and the content is not satisfactory for the solo supervisors the approval can be withdrawn;
- If agreed at the level of the college, it is the responsibility of each solo insurance undertaking to submit the single RSR to each NCA and each NCA continues to have the power, as if there was a solo RSR, to supervise the specific part of the single RSR concerning the relevant subsidiary. Any non-compliance issues would be shared with the college so that requests to subsidiaries would be at the same time submitted to the parent by the group supervisor;
- Information for any of the subsidiaries within the group must be individually identifiable, each subsidiary needs to have a specific section clearly identified in the single RSR and this should not result in less information regarding the subsidiaries covered;
- Format: the single RSR (as the RSR) should be submitted in a human readable format, i.e. in a PDF file with search function capabilities for text and numbers;
- Languages: Single regular supervisory report in the language or languages determined by the group supervisor; when supervisors comprises supervisory authorities from more than one Member State, the group supervisor may, after consulting the other supervisory authorities concerned and the group itself, require the report in another language most commonly understood by the other supervisory authorities concerned, as agreed in the college of supervisors, that can only be an additional language, the same as for the Single SFCR. Where any of the subsidiaries covered by the single regular supervisory report has its head office in a Member State whose official language or languages are different from the language or languages in which that report is reported, the supervisory authority concerned may require the inclusion in that report of a translation of the information related to that subsidiary into an official language of that Member State;
- The deadline would be the same one as for the group SFCR. The information in the RSR complements the information in the SFCR, meaning that receiving the RSR before the publication of the SFCR would be of reduced added value. It should be noted that for the single SFCR, only the part addressed to policyholders would be required to be published within the solo deadline.

7.30 For consistency reasons, Article 35 of the Solvency II Directive could be amended to introduce the concept of RSR, currently only introduced in Article 304 of the Delegated Regulation.

7.31 To implement the single RSR, EIOPA proposes the following amendments to the Delegated Regulation:

- New article on the structure and content of the single RSR.
- The deadline would be the same one as for group SFCR.
- Amendment of Article 374 to include language requirements for the single RSR

7.32 A detailed proposal on the amendments to the Solvency II Directive and to the Delegated Regulation is included in annex 7.1 of the analysis background document.

<b>Reference table chapter 7</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
7.1	7.1	7
7.2	7.2	7
7.3	7.3	7

## **8. Proportionality**

### **8.1. Thresholds for exclusion from Solvency II**

8.1 EIOPA proposes to maintain the current exclusion from Solvency II to certain undertakings as defined in Article 4 of the Solvency II Directive and to reinforce the application of proportionality, not only across the three pillars of Solvency II but by proposing a new framework for proportionality.

8.2 EIOPA proposes the following amendments to the Solvency II Directive:

8.3 Revise the thresholds laid down in Article 4 by:

- doubling the thresholds related to the (direct) technical provisions;
- allowing an option for the Member States to set the threshold referring to direct gross written premium income between the current 5 million Euros and a maximum 25 million Euros. The current threshold is kept as a default option (no changes in the current drafting of Article 4(1)(a)). Instead, it is proposed to add a new paragraph which provides Member States with an option for adopting a different threshold than the one defined in paragraph 1(a) if such a threshold would apply to a material number of undertakings with low risk profile and representing a residual market share. Such threshold shall not exceed 25 million Euros. (see annex 8.2 of the analysis background document for concrete Article 4 drafting suggestions)

8.4 EIOPA also proposes minor drafting amendments to Article 6 and 8 (see annex 8.2 of the analysis background document for concrete drafting suggestions).

## **8.2. New framework for the application of the proportionality principle**

8.5 EIOPA proposes the following amendments to Solvency II in order to improve the framework for the application of the proportionality principle by undertakings and the supervision of its compliance by supervisory authorities with respect to the Pillar II requirements

### Criteria for identifying low risk profile undertakings and the role of the supervisory authorities

8.6 EIOPA proposes to introduce in the Solvency II framework the following eligibility and quantitative criteria.

8.7 Eligible undertakings to be considered low risk profile undertakings are all insurance and reinsurance undertakings, meeting the criteria reported in the next paragraph, who are not pure reinsurers, don't calculate the Solvency Capital Requirements using (partial or full) internal model and undertakings who are not at the head a group (related undertakings, not at the head of the group, can be considered low risk profile undertakings).

8.8 Low risk profile undertakings are eligible undertakings, as defined in the previous paragraph, who fulfil all the following seven criteria in the last two financial years:

- 1) Life undertakings whose ratio of the gross SCR for interest rate risk submodule over the gross technical provisions is not higher than 5 percent. This criteria applies to undertakings pursuing both life and non-life insurance activities only when the life business is material;
- 2) Life undertakings, excluding the index/unit linked business, whose investment returns is higher than the average guaranteed interest rates and non-life undertakings whose combined ratio is less than 100 percent. Undertakings pursuing both life and non-life insurance activities are required to fulfil both criteria for life or non-life business. In case one of the two type of business is not material, composite undertakings are not required to apply the criteria regarding that type of business;
- 3) Undertakings not underwriting more than 5 percent of annual gross written premiums outside of its home jurisdiction;
- 4) Life undertakings with gross technical provision not higher than 1 billion EUR and non-life undertakings with gross written premiums (GWP) not higher than EUR 100 million. Undertakings pursuing both life and non-life insurance activities are required to fulfil both the above mentioned criteria;
- 5) Non-life and composite undertakings not underwriting more than 30% of the annual gross written premiums in Marine, Aviation and transport or Credit and Suretyship line of business;
- 6) Undertakings not investing in non-traditional investments more than 20% of their total investments (i.e. traditional investments should account for at least 80% of the total investments). For the purpose of this point, traditional investments are considered bonds, equities, cash and cash equivalents and deposits and total investments are considered all the investments excluding



investments covering unit-index linked contracts, excluding Property (for own use), excluding Plant and equipment (for own use) Property (under construction for own use) and including derivatives;

7) Undertakings whose accepted reinsurance, measured by gross written premiums, is not higher than 50%.

8.9 Captives undertakings, due to typical international nature of their business, most of the times based on reinsurance, are not required to fulfil the cross-border (criteria 3) and reinsurance criteria (criteria 7).

8.10 In case an undertaking does not comply with at least one of the required criteria for two consecutive financial years and it can no longer be considered as a low risk profile undertakings for the following year, EIOPA proposes to follow a case-by case approach and entering in a dialogue with the concerned undertaking to assess whether it should be entitled to continue using some proportionality measures or not, taking into consideration the impact on the organisation of undertakings and the change of its risk profile.

8.11 Finally, in order to keep the description of the criteria relatively short and simple, EIOPA considers necessary to provide additional operational guidance with the release of some EIOPA Guidelines.

#### New process for the application of the proportionality principle

8.12 EIOPA proposes the following two-steps approach in case of undertakings complying with the criteria for low risk profile undertakings:

- ex-ante notification (not an approval or administrative process) from undertakings who believe to comply with the criteria for low-risk undertaking reported in paragraph 8.7 – 8.9; and,
- once such a classification has not been challenged by the NCA (i.e. Supervisors did not react to the ex-ante notification), an ex-post reporting (deadline and form to be discussed) of the proportionality measure(s) used by all undertakings (i.e. low risk profile undertakings and not).

8.13 Concerning the ex-ante notification, EIOPA proposes that National Supervisory Authorities may react within one month of the notification of a low risk profile undertaking, but that for the notifications within the first 6 months of entry into force of the amendments proposed such period is extended to two months.

8.14 The notification should be signed by the AMSB and should include the following:

- Evidence of the compliance with the criteria defined in Delegated Regulation;
- Declaration that the undertaking does not plan any strategic change that would materially impact the business model or the risk profile;
- If possible, an early identification of the proportionality measures undertaking expects to implement, in particular the prudent deterministic valuation, mainly whether they plan to use prudent harmonised reduced set of scenarios to calibrate and ad-hoc stochastic supplement;

- Any other qualitative information undertakings considers material regarding its own risk profile.

8.15 For the purpose of the above-mentioned ex-post reporting, EIOPA proposes to include a new template in the annual quantitative reporting template with a list of all proportionality measures used in the relevant financial year.

8.16 Independently from the prior notification, Supervisors will have the possibility to challenge the use of any proportionality measures even if the classification of low risk profile undertakings has not been challenged after the prior notification.

8.17 In case of undertakings not complying with the criteria for Low Risk Profile Undertakings, a different process applies.

8.18 Generally speaking, there might be two cases where some undertakings will not comply with the new criteria for low risk profile undertakings, but at the same the application of the principle of proportionality shouldn't be excluded a priori, namely:

- 1) Undertakings with a very specific risk profile, not captured by the criteria identifying low risk profile undertakings or medium-high risk profile undertakings which intends to apply the proportionality principle with regard to immaterial risks;
- 2) Undertakings willing to apply simplifications for pillar I requirements.

8.19 In the first case of the previous paragraph, an approval process (instead of a notification process) applies with a different timeline and documentation requirements (i.e. two month from the notification by the undertaking, with an extended term of four months for the notifications within the first 6 months of entry into force of the amendments proposed in the advice). Furthermore, those undertakings are required to describe their risk profile and provide adequate justifications why they believe the status of 'low risk profile undertaking' should also apply to them (in the first case of number 1)) or they should entitled to use the principle of proportionality despite their medium-high risk profile (in the second case of number 1)).

8.20 In the second case (i.e. undertakings willing to apply simplification for pillar I requirements), it is proposed to let undertaking applying the measure(s), without prior notification/approval, as currently done.

8.21 Except for the use of simplification for pillar I, where no changes are proposed by EIOPA, undertakings which apply some proportionality measures by the time of the entry into force of the change to the Solvency II included in this advice, with regard to proportionality, may continue to apply such proportionality measures, without applying the new requirements for a period not exceeding four financial years (transitional measure). The new requirements introduced in this advice will apply with regard to new proportionality measure.

The role of the supervisory authorities with regard to the use of proportionality measures not specifically identified in the Solvency II framework

8.22 Following up the lesson learned from the EIOPA Supervisory Statement on the application of the proportionality principle in the supervision of the SCR

and the discussion with its Members, EIOPA advises to clarify in the Solvency II framework that current and future proportionality measures shouldn't be considered as a "close list" of all possible measures and that Supervisors (should) have the power to apply the principle of proportionality in the Supervisory Review Process (SRP), allowing undertakings to comply with the requirements in a proportionate way, not explicitly mentioned in the Solvency II framework.

8.23 The additional proportionality measures, allowed by Supervisors, should not be considered as "new" proportionality measures introduced by Supervisors, referring to a policy-making activity. They should be rather seen as the implementation of the principle of proportionality foreseen in the Directive during supervision.

8.24 In other terms, the concerned flexibility/power/judgement of Supervisors should concern "how" requirements will have to be implemented by the undertakings and not the application of the requirements per se (the "what").

8.25 The mentioned power by Supervisors shall be exercised under certain "safeguards", i.e. it should not lead to a complete exemption from requirements and the proportionality measures should be in line with the general and overarching principle of Solvency II and in the case not addressing pillar II shall be supported by EIOPA supervisory convergence tools.

EIOPA's report on the use of proportionality measures by Member States

8.26 EIOPA proposes to extend the scope of the current EIOPA report on exemptions/limitations of reporting by considering the use of the principle of proportionality for all the three pillars of Solvency II in order to have a complete picture.

8.27 The public report on the overall use of proportionality measures is expected to bring the following benefits:

- Increase the awareness of Supervisor's community on the use of proportionality measures in different Member States, which can ultimately contribute to promote further use of the proportionality measures, where common situations/risks are shared by more Member States, and further convergence in the application/supervision of the principle;
- Increase the awareness of undertakings and all the interested parties on the use of proportionality principle in the EU and better explain the areas/requirements where the principle of proportionality can be used and the reason why;
- Being a factor-finding exercise that can be used to facilitate the process of future revision of the Solvency II requirements or trigger the use of some other supervisory tools (e.g. the launch of peer reviews in some areas);
- Ultimately promote the single market and the level playing field.

Please see annexes 8.4 and 8.5 of the of the analysis background document for EIOPA proposals on the drafting of Level 1 and Level 2 articles to implement the proportionality framework described.

### **8.3. Proportionality in pillar 1**

#### Best estimates

8.28 EIOPA proposes to allow prudent deterministic valuation for contracts with options and guarantees if the four following conditions are satisfied:

- i. The undertaking complies with all the low risk profile undertaking (LRU) criteria.
- ii. The time value of options and guarantees (TVOG), measured based on the prudent harmonised reduced set of scenarios (PHRSS), of the contracts where the prudent deterministic valuation is applied is below 5% of the SCR.
- iii. The undertaking adds to its Best Estimate a stochastic supplement equal to 5% of the SCR. An undertaking may calibrate an ad-hoc stochastic supplement using prudent harmonised reduced set of scenarios in case it accurately reflects its risk profile.
- iv. The stochastic supplement is kept constant through the whole SCR calculation process. Therefore, the loss-absorbing capacity of technical provisions should never be affected by the stochastic supplement.

8.29 To facilitate the assessment of these criteria, EIOPA would publish a prudent harmonised reduced set of scenarios (PHRSS) to be used to estimate the TVOG mentioned in the second criterion. This PHRSS would consist of approximately 10 economic scenarios prudently calibrated.

8.30 The process for the application of the simplification should be the same than for any other proportionality measure, including ex-ante notification and ex-post reporting.

8.31 As for any other proportionality measure, supervisors should have the possibility to challenge the use of prudent deterministic valuation and/or the calibration of the ad-hoc stochastic supplement with the prudent harmonised reduced set of scenarios even if the ex-ante notification was not challenged. Supervisors should also have the possibility to allow the use of prudent deterministic valuation in case some of the criteria are not met in the same terms than for any other proportionality measure.

#### SCR standard formula

8.32 EIOPA proposes the introduction of an integrated approach to the calculation of capital requirements for immaterial risks in the standard formula to enhance the proportionality in the Solvency framework. This approach follows a three-step procedure:

1. Identification step, where all immaterial risks are identified using quantitative information. The following two conditions shall be used to identify immaterial risks in step 1: Each immaterial risk should not represent more than 5% of the BSCR and the sum of all capital requirements for immaterial risks should not be larger than 10% of the BSCR.
2. Application phase, where the immaterial risk SCR is updated with appropriate volume measures.

3. Reassessment phase: after 3 years, the immateriality of the risks identified in step 1 is reassessed.

8.33 In the application phase the SCR of an immaterial risk is calculated as

$$SCR_t^k = \max(SCR_0^k; f^k \cdot Volume_t^k)$$

where

$SCR_t^k$  the capital requirement for immaterial risk k at time t.

$SCR_0^k$  is the capital requirement for immaterial risk k at the start of the application.

$Volume_t^k$  is the undertaking-specific volume measure for risk k at time t

$Volume_0^k$  is the undertaking-specific volume measure for risk k at the start of the application.

and  $f^k = \frac{SCR_0^k}{Volume_0^k}$  is a risk factor for risk k.

8.34 The approach can be applied to risk modules and risk sub-modules of the standard formula as long as the considered risks are immaterial.

8.35 Volume measure needs to be risk-specific and undertaking-specific.

8.36 Due to the rapidly changing market conditions and exposures towards different market risks and the consequence that immaterial market risks can quickly become material, it is proposed to exclude the market risk module from this approach.

8.37 It is also proposed to expand the content of SCR templates S.26 and S.27 to ask undertakings to report the immaterial risks to help NSAs in the identification of immaterial risks via the templates.

8.38 Undertakings should report the application of the approach in their RSR report. Specifically, undertakings should briefly describe for what risk modules the approach is applied and what volume measures have been used to calculate the immaterial risks.

## **8.4. Proportionality in pillar 2**

8.39 EIOPA proposes the following amendments to the Solvency II Directive in order to improve the application of the proportionality principle with respect to the Pillar II requirements:

### Key functions

8.40 EIOPA proposes that the following situations should be admitted for low risk profile insurance and reinsurance undertakings complying with the criteria and applying the process in new Articles 6a and 6b of the Delegated Regulation:

- combination of key functions (except the internal audit function) with operational functions,
- combination of key functions, and
- combination of key function holder with member of the AMSB.

8.41 In particular new paragraphs should be added to Article 268 of the Delegated Regulation as follows:

*"x. The person responsible for a key function, except the internal audit function, may also be responsible for operational functions provided that the following conditions are met:*

*(a) the undertaking is considered low risk profile undertaking;*

*(b) potential conflicts of interests are properly managed;*

*(c) the combination does not compromise the person's ability to carry out her or his responsibilities.*

*x. The person responsible for a key function may also be responsible for other key functions provided that the following conditions are met:*

*(a) the undertaking is considered low risk profile undertaking;*

*(b) potential conflicts of interests are properly managed;*

*(c) the combination does not compromise the person's ability to carry out her or his responsibilities.*

*x. The person responsible for a key function may also be a member of the administrative, management or supervisory body provided that the following conditions are met:*

*(a) the undertaking is considered low risk profile undertaking;*

*(b) potential conflicts of interests are properly managed;*

*(c) the combination does not compromise the person's ability to carry out her or his responsibilities.*

*x. The possibility to combine roles provided in paragraphs XX shall not apply when the supervisory authority concludes that the combination is not appropriate based on the specific circumstances of the undertaking".*

#### ORSA

8.42 EIOPA proposes that the regular ORSA is provided by low risk profile undertakings complying with the criteria and applying the process in new Articles 6a and 6b of the Delegated Regulation every two years and following any significant change of the risk profile.

8.43 In particular paragraph 5 of Article 45 of the Solvency II Directive should be amended as follows:

*"5. Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 at least annually and without any delay following any significant change in their risk profile.*

*By way of derogation from the first sub-paragraph, low risk profile undertakings may perform the assessment referred to in paragraph 1 at least every two years and without any delay following any significant change in their risk profile, unless the supervisory authority concludes based on the specific circumstances of the undertaking that a more frequent assessment is needed. The exemption from the annual assessment shall not prevent the undertaking to identify, measure, monitor, manage and report risks on a continuous basis."*

8.44 In addition, EIOPA proposes that an explicit reference to proportionality is included with respect to the complexity of the stress test and scenario analysis which are part of the ORSA.

8.45 In particular paragraph 2 of Article 262 of the Delegated Regulation should be amended as follows:

*"The elements referred to paragraph 1 shall take the following into account:*

- (a) the time periods that are relevant for taking into account the risks the undertaking faces in the long-term;*
- (b) valuation and recognition bases that are appropriate for the undertaking's business and risk profile;*
- (c) the undertaking's internal control and risk-management systems and approved risk tolerance limits;*
- (d) the result of stress tests and scenario analysis that are proportionate to the nature, scale and complexity of the risks inherent in the undertaking's business.*

Taking into account the empowerment in Article 50(3) of the Solvency II Directive, since Article 262 of the Delegated Regulation relates to Article 45(1)(a) of Solvency II, the amendment should be adopted by the Commission as a regulatory technical standard, following the draft developed by EIOPA.

#### Written policies

8.46 EIOPA proposes that more flexibility is introduced with respect to the frequency of the review of written policies for low risk profile undertakings complying with the criteria and applying the process in new Articles 6a and 6b of the Delegated Regulation. The remuneration policy should also be added to the list of written policies.

8.47 In particular paragraph 3 of Article 41 of the Solvency II Directive should be amended as follows:

*"3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit, remuneration and, where relevant, outsourcing. They shall ensure that those policies are implemented.*

*Those written policies shall be reviewed annually. Low risk profile undertakings may perform a less frequent review, at least every three years, unless the supervisory authority concludes based on the specific circumstances of the undertaking that a more frequent review is needed.*

*Those written policies shall be subject to prior approval by the administrative, management or supervisory body and be adapted in view of any significant change in the system or area concerned."*

#### AMSB

8.48 EIOPA proposes that undertakings regularly assess the composition and effective operation of the AMSB.

8.49 In particular paragraph 6 of Article 258 of the Delegated Regulation should be amended as follows:

*"6. Insurance and reinsurance undertakings shall monitor, and on a regular basis evaluate, the adequacy and effectiveness of their system of governance and take appropriate measures to address any deficiencies. The evaluation shall include an assessment on the adequacy of the composition, effectiveness and internal governance of the administrative, management or supervisory*

*body taking into account the nature, scale and complexity of the risks inherent in the undertaking's business."*

#### Remuneration (deferral of the variable component)

8.50 EIOPA proposes that the scope of the mandatory deferral of a substantial portion of the variable remuneration component in Article 275(2)(c) of the Delegated Regulation is limited in case of low risk profile undertakings, complying with the criteria and applying the process in new Articles 6a and 6b of the Delegated Regulation, taking into account the absolute and relative amount of the variable remuneration received by the staff member. The limited scope would be in line with Article 94 of the Directive (EU) 2019/878; however, the thresholds in the banking framework should be adapted to the characteristics of the insurance market.

8.51 In particular, a new paragraph 4 should be added to Article 275 of the Delegated Regulation with the following draft:

*"4. Unless the supervisory authority concludes differently based on the specific circumstances of the undertaking, the deferral requirement in point (c) of Article 275 (2) does not apply to variable portion of the remuneration when the undertaking meets the following criteria:*

- a) the undertaking is a low risk profile undertaking complying with the criteria and applying the process in Articles 6a and 6b of the Delegated Regulation;*
- b) the variable portion of the staff member's remuneration does not exceed 50.000 euros and one third of the total remuneration."*

8.52 Finally, it should be recognised that the proportionality measures explicitly addressed to low risk profile undertakings (i.e. combination of key functions, biennial ORSA, less frequent review of written policies and exemption of the deferral of the variable remuneration) can also be applicable to other undertakings in specific cases, subject to the consent of the supervisory authority (see section 8.2 of the Advice).

### **8.5. Proportionality in pillar 3**

8.53 EIOPA proposes the following amendments to the Solvency II Directive:

- Amend Article 35 of the Solvency II Directive adapting it to the new proportionality framework proposed under Section 8.2. as described in annex 8.6 Option 1 of the of the analysis background document.

8.54 EIOPA proposes the following amendments to the Solvency II Delegated Regulation

- Amend the RSR frequency so that undertakings classified as low risk profile undertakings should by default be allowed to report the RSR every 3 years unless formally communicated otherwise by the supervisory authority.

8.55 EIOPA proposes the following amendments (please see the individual proposals in the QRTs document) to the ITS on reporting:

- Review the existing risk-based thresholds and create new ones in the quantitative reporting templates;
- Simplify the quarterly submission;



- Delete several quantitative reporting templates and simplify number of other quarterly and annual templates.

Based on the above proposals EIOPA will propose amendments to the ITS in accordance with its mandate.

8.56 In addition to EIOPA's proposals under the current consultation on the principle of proportionality, EIOPA proposes in the area of groups to amend Article 254 of the Solvency II Directive to allow for exemption of groups reporting without the condition of exemption of all solo insurance undertakings belonging to that group.

## **8.6. Proportionality for specific business models**

8.57 Regarding captives EIOPA proposes:

(i) To introduce the following limitations and exemptions into the supervisory reporting (on top of the limitations/exemptions given to captive insurance and reinsurance undertakings under Article 35 following a risk-based approach):

- Limitation from reporting on investments and derivatives (i.e. S.06.02 and S.08.01 not to be reported)
- Limitation from reporting assets and liabilities by currency (i.e. S.02.02 not to be reported);
- Limitation from reporting Information on annuities stemming from Non-Life Insurance obligations (i.e. no currency split applicable to S.16 templates);
- Limitation from reporting Information on annuities stemming from Non-Life Insurance obligations (i.e. no currency split applicable to S.19 templates);
- Limitation from reporting on Solvency Capital Requirement - Non-life and Health catastrophe risk (i.e. only summary table to be reported for S.27 template);
- Limitation from reporting on variation analysis (i.e. variation analysis not to be reported in S.29s templates)

(ii) To introduce, for a reduced set of reinsurance captives undertakings that meet specific criteria, the following limitations and exemptions into the supervisory reporting (on top of the limitations/exemptions given to captive insurance and reinsurance undertakings under Article 35 following a risk-based approach and of the ones listed in 8.6):

- The reporting package shall include only the QRTs disclosed in the SFCR

(iii) With regard to SFCR, EIOPA proposes to introduce the following specific exemptions into the public disclosure for captive insurance undertakings:

- SFCR for professional readers: only QRTs to be provided. No narrative part.

- SFCR for policyholders: to be provided only if the business pursued with regard to policyholders and beneficiaries involves natural persons which can still be considered as risks of the industrial group to which the captive belongs). No audit requirement shall be applicable to SFCR for captives.
- (iv) With regard to SFCR, EIOPA proposes to introduce the following specific exemptions into the public disclosure for captive reinsurance undertakings:
- SFCR for professional readers: only QRTs to be provided. No narrative part.
  - No SFCR for policyholders shall be required;
- (v) With regard to ORSA, the proposal is two-fold:
- With regard to proposals related to the frequency of the ORSA, EIOPA proposes that the full ORSA is performed and, consequently, the ORSA report submitted to the local supervisor every 2 years or without any delay when a change in the risk profile is expected or following any significant change in the risk profile.
  - With regard to proposals related to the content of the ORSA, EIOPA proposes overall guidance on the minimum expected content without limiting the possibility for the captive (re)insurance undertaking to add additional items in the ORSA or, in exceptional circumstances, for the supervisory authority to request additional information.

8.58 Captive insurance undertakings and captive reinsurance undertakings as defined in points (2) and (5) of Article 13 of the Solvency II Directive may use the proportionality requirements listed above if the following requirements are met:

- in relation to the insurance obligations of the captive insurance undertaking or captive reinsurance undertaking, all insured and beneficiaries are legal entities of the group or natural persons eligible to be covered under the group insurance policies of which the captive insurance or captive reinsurance undertaking is part, as long as the business covering natural persons eligible to be covered under the group insurance policies remains immaterial;
- in relation to the reinsurance obligations of the captive insurance or captive reinsurance undertaking, all insured and beneficiaries of the insurance contracts underlying the reinsurance obligations are legal entities of the group of which the captive insurance or captive reinsurance undertaking is part;
- the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance or captive reinsurance undertaking do not relate to any compulsory third party liability insurance.

8.59 With regard to further proportionality measures applicable to reinsurance undertakings described above they may only be used if captive reinsurance undertakings meet the criteria mentioned in the paragraph above and in addition on the following conditions:

- The policyholders of the reinsurance contracts are legal entities of the group (i.e. the parent company or other entities of the industrial group to which the captive belongs);
- Loans in place with the parent or any group company do not exceed 20% of total assets held by the captive, groups cashpools included;
- The maximum loss resulting from the exposures can be deterministically assessed without use of stochastic methods (i.e. limits to losses covered are included in the reinsurance contracts in place).

Reference table chapter 8		
Opinion	Analysis	Impact analysis
8.1	8.1	8.1
8.2	8.2	8.2
8.3	8.3	8.3
8.4	8.4	8.4
8.5	8.5	8.5
8.6	8.6	8.6

## 9. Group supervision

### Scope of application of group supervision

#### 9.1. Definition of the group, including issues of dominant influence; and scope of the group supervision

Lack of clarity in Article 212 of the Solvency II Directive regarding the definitions that support the identification of a group to capture undertakings, which, together, form a de facto group, upon supervisory powers

- 9.1 EIOPA is of the view that to address the issues identified with the definitions that support the identification of a group to capture undertakings, which, together, form a de facto group subject to Solvency II , it is advised that Article 212 of the Solvency II Directive is further clarified in level 2 to allow the supervisory authorities to consider undertakings as undertakings related to each other which, in the opinion of the supervisory authorities (and not necessarily on the basis of a contract), are effectively managed on an unified basis or through centralised coordination as referred to in Article 212(1)(c)(ii) of the Solvency Directive.
- 9.2 It is also advised to clarify in the regulatory framework that the exercise of a dominant influence within the meaning of paragraph 1(c)(ii) of Article 212 does not necessarily fulfil the same criteria as the exercise of a dominant influence within the meaning of paragraph 2 of that article (where paragraph 1(c)(ii) involves various elements including dominant influence while paragraph 2 focuses only on dominant influence and where it is indicated that

supervisory authorities shall “also” consider the content of paragraph 2 in addition to the content of paragraph 1).

9.3 There is also a need for the Solvency II framework to define criteria for considering when undertakings are linked to each other. In that regard, in the case of undertakings linked to each other, the regulatory framework in level 2 should also provide for criteria, which shall be used to determine the undertaking, which is responsible for group supervision requirements.

9.4 The following elements should be considered and included in the level 2 regulations as part of the criteria to consider when undertakings are related to each other, including centralised coordination. It is presented as a non-exhaustive list of examples as follows:

(a) The undertakings concerned have:

- Partly or fully have the same shareholders;
- Members of the AMSB in common, but not a majority;
- Partly or fully have the same management bodies;
- Partly or fully have the same system of policies (investments, risk management, compliance, etc.) and outsourcing arrangements;
- Partly or fully share know-how and the same personnel, including personnel in key functions and key function holders themselves;
- Have financial and non-financial links (even if no direct cash flows exist for some of them) which could be considered as intra-group transactions as if happening within a group; For instance, where the undertakings concerned provide each other with services to offer similar products and/or services, and regular financial and non-financial transactions for these services take place between the undertakings concerned.
- Have common investments, including joint holdings in other undertakings.

(b) Further, centralised coordination is part of the overall analysis of dominant influence independently from the type of undertakings involved. Centralised coordination it is not restricted by geographical location (e.g. it can be cross-border) nor by definition of management roles or definition of provision of services among the undertakings. Centralised coordination also implies that coordination and any associated decisions (of the transactions/activities) are made jointly.

Need to facilitate the application of group supervision under Article 213 of the Solvency II Directive in the case of horizontal groups, groups with multiple points of entry in the EEA, and multiple groups held by the same individual or legal entity

9.5 EIOPA is of the view that to address the challenges encountered regarding horizontal groups, groups with multiple points of entry in the EEA; and multiple groups held by the same individual or legal entity in the EEA, it is recommended that supervisory authorities have powers to require their supervised undertakings, to structure in such a way, which enables the relevant supervisory authority to exercise the group supervision, in cases where the group supervision would not be applicable otherwise or where

effective group supervision is jeopardised. To ensure a consistent use of such powers at EU level, in the case of cross-border groups, other supervisory authorities concerned and EIOPA should be consulted as part of the process. Within this framework, the supervisory authority should be allowed to require the establishment of an EU holding company (similarly to the possibility already allowed under Article 262 of the Solvency II Directive) or the establishment of an undertaking that exercises centralised coordination and dominant influence as laid down in Article 212(1) c (ii) of the Solvency II Directive.

Lack of clarity in other definitions to secure scope of a group subject to Solvency II

9.6 EIOPA is of the view that clarity is needed in relation to other definitions outlined in the Solvency II Directive and possible interactions with other European regulations to ensure a level playing field through sufficiently harmonised rules as well as an effective and efficient supervision of groups and cross-border business. Therefore, EIOPA advises to clarify the definitions of subsidiary, parent undertaking, control, participation and the definition of groups in Article 212 of the Solvency II Directive to ensure that:

- sub-paragraphs (i) and (ii) in Article 212(1)(c) of the Solvency II Directive are not mutually exclusive;
- subsidiaries and participations of undertakings over which a dominant influence is exerted are within the scope of the same group as the undertaking which exerts the dominance influence;
- percentages of control and of ownership can be added up for joint subsidiaries and joint participations when these joint subsidiaries and joint participations are held by undertakings over which a dominant influence is exerted by a unique undertaking;
- in the case of groups defined by undertakings which are linked with another by a relationship as set out in Article 12(1) of Directive 83/349/EEC, subsidiaries and participations of each of these linked undertakings are also part of the group.

**9.2. Definition of insurance holding companies and other challenges related to insurance holding companies and mixed financial holding companies**

Article 212 of the Solvency II Directive does not provide additional explanation of the meaning of 'exclusively' or 'mainly' in the definition of insurance holding companies (IHC).

9.7 EIOPA advises the Commission to further clarify Article 212(1)(f) of the Solvency II Directive in relation to the term 'exclusively' or 'mainly' used in the definition of IHC, so that the term should be understood to refer to a situation where more than 50% of the consolidated balance sheet of the holding company or of the group or any another indicator (e.g. the solvency capital requirement, equity, personnel, etc.) deemed relevant by the supervisory authority, is derived from the insurance sector (including third country insurance (re)undertakings).

9.8 The advice supports the identification of an IHC and ensures a level playing field. It would also allow some level of flexibility for supervisors to take into account other criteria, in certain circumstances, which would be more relevant for the purpose of identification of IHC.

9.9 The advice does not recommend changes to the definition of mixed activity insurance holding company in Article 212(1)(g) of the Solvency II Directive.

Article 214(1) of the Solvency II Directive and powers over insurance holding companies and mixed financial holding companies

9.10 It is advised to amend the wording of Article 214 (1) of the Solvency II Directive (i) to allow supervision and enforcement on the top IHC or mixed financial holding company of the group (excluding mixed activity insurance holding company) and (ii) to request a structural organisation that enables group supervision at holding level or another level in the group where necessary. To ensure a consistent use of such powers at EU level, in the case of cross-border groups, other supervisory authorities concerned and EIOPA should be consulted as part of the decision process.

9.11 It is also advised for the group supervisor to have appropriate and effective supervisory powers and measures to be applied on such holding companies where necessary. A list of possible enforcement measures and the powers referred to be granted to supervisors should consider the following:

- suspending the exercise of voting rights attached to the shares of the subsidiary insurance or reinsurance undertaking held by the insurance holding company or mixed financial holding company;
- issuing injunctions or penalties against the insurance holding company, the mixed financial holding company or the AMBS of that holding company;
- giving instructions or directions to the insurance holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary insurance or reinsurance undertakings;
- designating on a temporary basis another insurance holding company, mixed financial holding company or insurance or reinsurance undertaking within the group as responsible for ensuring compliance with the requirements set out in Articles 218 to 246 of the Solvency II Directive;
- restricting or prohibiting distributions or interest payments to shareholders;
- requiring insurance holding companies or mixed financial holding companies to divest from or reduce holdings in insurance or reinsurance undertakings or other financial sector entities;
- requiring insurance holding companies or mixed financial holding companies to submit a plan on return, without delay, to be back in compliance.

**9.3. Article 214(2) of the Solvency II Directive – Exclusion from the scope of group supervision**

Exclusion of undertakings from the scope of group which can lead to complete absence of group supervision or application of group supervision at a lower / intermediate level in the group structure.

9.12 It is advised to introduce in the Solvency II framework an overall principle on the exclusion from group supervision to ensure exceptional cases are adequately justified, documented, monitored and all relevant parties in the decision are also involved in the process (including EIOPA):

9.13 Exclusion from group supervision should be carefully considered by the group supervisor, taking into consideration the nature, scale and risks the entity excluded poses to the group. The group supervisor should not exclude one or more undertakings from scope of group supervision where such a decision would result in complete absence of group supervision. In very exceptional and justified cases, a waiver from group supervision could be allowed after consulting EIOPA and any relevant competent authority concerned and should be subject to on-going monitoring. When assessing each case on its own merits, the group supervisor should also ensure that any supervisory decision to exclude the top holding/ultimate parent undertaking/major shareholding from scope of group supervision and to apply the group supervision at an intermediate level should carefully consider any potential impact on the solvency position of the group and full overview of the risks the group faces or may face.

Negligible interest (Article 214(2)(b) of the Solvency II Directive) vs. achieving the objectives of group supervision.

9.14 The consideration of criteria of “negligible interest” with respect to the objective of group supervision should take into account at least the following criteria:

- the size of the entity potentially subject to exclusion when compared with the size of the group,
- the potential impact on group solvency,
- any relevant intragroup transactions or financing,
- whether the related undertaking (other than a subsidiary) belongs also to another group as a subsidiary, and is included in the scope of group supervision exercised over the other group,
- whether encompassing the related undertaking in the group supervision would lead to receiving additional valuable information about the group (for example related but not subsidiary regulated entities).

#### **9.4. Supervision of intragroup transactions (IGTs) and risk concentrations (RCs)**

No inclusion in the current definition of IGTs of reference to IHC, mixed financial holding company, mixed-activity insurance holding company, and third country (re)insurance undertakings as one of the possible counterparties of the IGTs

9.15 EIOPA advises the Commission to amend Article 13 (19) of the Solvency II Directive in order to include at least any transaction by which a (re)insurance undertaking, third country (re)insurance undertaking, IHC, mixed financial holding company relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an

obligation, whether or not contractual, and whether or not for payment. Where a regulated entity from other financial sectors at the top of the group does not fall under the definition of a mixed-activity insurance holding company (Article 212(1)(g) of the Solvency II Directive), Article 265 of the Solvency II Directive also applies to these entities. This independently from the regulated entity (e.g. a bank) being subject or not to financial conglomerates (FICOD) IGTs reporting. As regards to a proportionate approach, Article 213(3) of the Solvency II Directive allows group supervisors to waive the reporting of IGTs and RCs in order to avoid reporting under Solvency II and FICOD simultaneously.

- 9.16 Within this framework, the supervisory authorities would be allowed based on their supervisory needs to include in the scope of IGTs reporting further type of counterparties (in particular the transactions between entities belonging to the insurance part of the group for which the group solvency is calculated, and the rest of the group).

Need for clearer criteria for the application of thresholds for IGTs and RCs

- 9.17 The nature, structure and complexity of a group might result in the necessity of having less restrictive criteria in setting thresholds for IGTs and RCs reporting. It is recommended that Article 244(3) of the Solvency II Directive is amended so that the current criteria in place (SCR and/or technical provisions) are extended to allow the introduction of additional criteria such as eligible own funds or a qualitative criterion, as deemed necessary by the group supervisor for the purpose of setting thresholds for IGTs and RCs reporting. A qualitative criterion is defined by the group supervisor on the basis of a risk-based approach<sup>8</sup>.

### **Third countries**

#### **9.5. Article 262 Solvency II Directive - Clarification**

Further regulatory clarity needed on the application of Article 262 of the Solvency II Directive

- 9.18 The Commission should retain the current wording of Article 262(1) and in doing so continue to offer EEA group supervisors the option to either apply Solvency II group supervision at the level of the ultimate non-equivalent third country group or to apply "other methods".
- 9.19 The Commission should further clarify in the legislation the objectives and the wording used in Article 262(2) of the Solvency II Directive. This to ensure there is a clear expectation as regards as to the "other methods" that supervisors can make use in addition to what is already provided in this article. Therefore, the legislation should inform that the following objectives should be considered in ensuring an appropriate supervision of the (re)insurance undertakings in a group:
- i) to limit the contagion risk from the third-country group and the EU sub-group(s) or isolated undertakings;

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<sup>8</sup> See section 9.3.4.4 in the Background Analysis document.



- ii) to preserve the capital allocation and the quality of capital of the EU sub-group(s) or isolated undertakings and prevent creation of capital;
- iii) to assess risks at the level of the world-wide group context with a particular focus on the risk of contagion and the impact of unregulated entities within the group;
- iv) to ensure cooperation between all concerned supervisors (within the EU and/or outside of the EU) and that at least one supervisory authority has an overall view of the group and its associated risks and establish protocols for cooperation between groups.

9.20 The supervisory authorities can develop or set alternative methods in addition to the one already outlined in Article 262(2) of the Solvency Directive as deemed necessary to address the objectives outlined above. This is to let the supervisory authorities to apply their own supervisory experience as well as to adequately manage each group on a case-by-case basis.

9.21 It is also advised that the supervisory authorities shall clearly document the rationale for the choice of one or several methods as defined above. The notification process (as noted in the last paragraph of Article 262 of the Solvency II Directive) should also include EIOPA as one of the concerned parties.

9.22 The Commission should also clarify in the legislation that the establishment of an EEA holding company can be required as an "other method" under Article 262(2) of the Solvency II Directive when no such holding company exists encompassing all EEA business of the group. However, the establishment of an EEA holding company should not be mandatory where the supervisor already applies "other methods" that allow it to achieve the objectives of Solvency II group supervision.

Other issues identified in the application of current provisions of Article 262 on third countries

9.23 The Commission should seek to further clarify Article 262(2) of the Solvency II Directive to improve consistency of drafting with Article 213 (2) (c ) regarding definition of ultimate third-country parent undertaking of the group: types of ultimate third-country parent undertakings outlined when defining the cases of application of group supervision, as referred to in Article 213(2)(c).

9.24 The Commission is advised to clarify in the legislation that the provisions under Article 262 of the Solvency II Directive aim at ensuring appropriate supervision of EEA insurance and reinsurance undertakings which belong to a group within the meaning of Article 212 and Article 213(2)(c) of the Directive.

9.25 The Commission is advised to clarify in the legislation that it is the EEA group supervisor the one to have powers under the Solvency II framework to apply 'other methods' to ensure appropriate supervision of EEA entities belonging to a wider international group.

## **Rules governing the methods for calculating group solvency, including the interaction with Directive 2002/87/EC (FICOD)**

### **9.6. Treatment of Insurance Holding Companies (IHC), Mixed Financial Holding Companies (MFHC)**

Need to clarify how a notional SCR should be calculated and how to treat the IHC and MFHC for the purpose of the group solvency calculation, in particular of a notional SCR and own funds for such undertakings

- 9.26 Under the current regulatory framework, it is not clear how to treat the IHC and MFHC for the purpose of the group solvency calculation, in particular if a notional SCR should be calculated for such undertakings, hence leading to an uneven playing field.
- 9.27 EIOPA advises that the regulatory framework is amended to include clearly the legislative provision of a notional SCR for both the parent and intermediate IHC and MFHC, including those in third countries, similarly to the provision of a notional capital requirement for non-regulated undertakings carrying out financial activities.
- 9.28 A notional SCR for such holdings should be calculated on the basis that the IHC or MFHC should be treated as an insurance undertaking for the purpose mentioned in, inter-alia, Article 336(b), Article 330(4)(a) and Article 372(2)(c)(ii) of the Delegated Regulation. If IHC or MFHC are included under method 2, these will be also treated as an insurance undertaking when calculating notional own funds and a notional SCR for the purpose of the group solvency calculation.
- 9.29 The notional solvency capital requirement for IHC and MFHC should be calculated in accordance with Articles 100 to 127 of the Solvency II Directive and consider the elements discussed in the policy analysis where there is a clear consideration for (i) the overall scope and application of the Notional SCR (ii) Notional SCR for IHC/MFHC under Method 1; (iii) Notional SCR for IHC/MFHC under Method 2 and Combination of Methods as presented in the analysis of the policy option.
- 9.30 EIOPA advises that when determining the contribution of the related entities to the group SCR for the purpose of the availability assessment, the solvency capital requirement of the ultimate parent company (insurance or holding company) should be included in the calculation of the contribution on the basis of their SCR, net of the equity risk related to the participations. If performing a calculation net of equity risk is too burdensome for the ultimate parent then they can avail of simplifications in the calculation by applying a gross calculation.

## **9.7. Article 229 of the Solvency II Directive – Non-availability of information and undertakings deemed as non-material. An alternative for a proxy Method to calculate group solvency requirements**

Lack of clarity and consistency in the application of Article 229 of the Solvency II Directive in particular in cases where imposing Solvency II calculation is burdensome or impossible.

- 9.31 Article 229 of the Solvency II Directive refers to the non-availability of information necessary for calculating the group solvency of a (re)insurance undertaking, concerning a related undertakings with its head office in a member state or a third country. Nevertheless, there are cases where the application of Article 229 although in line with the regulation may not be the best solution.
- 9.32 Therefore, EIOPA advises to introduce a simplified calculation for the purpose of group solvency calculation when dealing with cases when market consistent valuation is applied (i) but applying Solvency II rules would be too burdensome (ii) lack of enough information to apply Solvency II rules or (iii) other reasonable factors are determined by the group supervisor on a case by case basis. This as an exceptional and an alternative treatment to the current default option of a deduction from own funds eligible for the group solvency calculation as provided in Article 229 of the Solvency II Directive.
- 9.33 The simplified calculation under this policy option acknowledges that European groups are investing and expanding outside the EEA, and that groups need rules that also facilitate an international level playing field. However, it should also be noted that the simplified approach cannot offer a preferential treatment to non-equivalent third countries in comparison to equivalent third countries.
- 9.34 The simplified calculation should, however, not apply to undertakings that represent a significant percentage of the investments in the group out of the total group assets. Materiality thresholds for the application of the alternative approach are generally considered on the basis of total group assets, and are in the range of 0.1% at individual basis, and 0.3% on aggregated basis.
- 9.35 The use of any simplifications should be subject to approval by the group supervisor and subject to an on-going (annual) review, in order to ensure a level playing field and facilitate a consistency of application.
- 9.36 The simplified calculation proposed will use the equity method (IFRS or local accounting rules that follow a market consistent valuation).
- 9.37 If the value of the participation is positive in the group balance sheet, then the relevant shocks of equity, currency and concentration risks are applied. When calculating the solvency capital requirements, the value of the undertaking is shocked for equity risk, currency risk and concentration risk.
- 9.38 The output of the calculations cannot be lower than the proportion of local capital requirements (“the floor”) for that undertaking. The output of the calculation would then be added to the group SCR calculation. However, if the

local capital requirements are not known, then the simplified approach would not be possible.

9.39 On the contrary, if the value of the participation is negative no shocks are applied.

9.40 When calculating own funds, these are taken in full according to the accounting rules (IFRS or local accounting rules that follow a market consistent valuation).

### **9.8. Scope of method 2 (where used exclusively or in combination with method 1)**

Need to clarify the scope of undertakings to be included under method 2 and their treatment to ensure a consistent treatment across methods (same scope of entities under all methods) and across EEA

9.41 The current framework for the scope and application of method 2 is not comprehensive enough. Therefore, EIOPA advises that the regulatory framework should clarify the scope of undertakings to be included under method 2 and their treatment to ensure a consistent treatment across methods (same scope of entities under all methods) and across EEA.

9.42 EIOPA is of the view that Article 233 of the Solvency II Directive should clearly identify the undertakings to which method 2 would be applicable and the Delegated Regulation should clearly prescribe the treatment for such undertakings. In particular:

(i) If the IHC or MFHC can be included under method 2, they should follow on the policy recommendation on 9.3.6 (see background analysis document) regarding the application of a notional SCR and notional Own Funds

(ii) Regarding the treatment of other financial sectors, see EIOPA advice under section 9.16 and section 9.3.16 of the background analysis document.

### **9.9. Partial internal model (PIM) and integration techniques**

There is no specific provision about the application of integration techniques to partial internal models at group level

9.43 The lack of regulatory provisions about application of integration techniques to partial internal models at group level leads to questions on the application of integration techniques provided for the solo level in Article 239 and Annex XVIII of the Delegated Regulation. Firstly, the design of the integration techniques assumes that they refer always to integration of "risks" and not to "undertakings"; and secondly the relation between the integration technique 1 and method 2 is not clear<sup>9</sup>. Therefore, EIOPA advice is to clarify the requirements on integration techniques in the Delegated Regulation for internal models at group level that are partial with respect to entities within the scope of the group by indicating the following:

9.44 In general, there is no mutatis mutandis approach to translate integration techniques for risks in Article 239 of the Delegated Regulation to groups, especially in cases, in which the model is partial with respect to entities. Also, integration technique 1 may be feasible in most cases but the assessment of its appropriateness should take into account:

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<sup>9</sup> See section 9.3.9.4 of the Background Analysis document

- (i) Its effectiveness and similarity to method 2, and
- (ii) The treatment of isolated undertakings excluded from the scope of the internal model at the level of the group whose capital requirements are added to those of the modelled part, in particular where the proposed recognition of full or partial diversification between the isolated entities may have no economic sense. This may for example take place when the standard formula is applied to the “new, hypothetical undertaking” created from several undertakings, which are excluded from the scope of the internal model at the group level, but not linked among each other even through capital ties. In such cases and for consistency purposes, the integration technique 1 should not be used as a “by default” approach to calculate a diversified SCR for the undertakings concerned which under method 2 would be included separately (one by one).

9.45 For all other integration techniques at group level, or in the case of several major business units within a solo undertaking, the appropriateness of the integration technique for the specific case would have to be demonstrated by the group as stipulated in Article 239 (4) of the Delegated Regulation for an alternative integration technique from paragraph 3 of Article 239. Similarly to Article 343(5) (a) (iii) of the Delegated Regulation the undertakings and groups should explicitly show that this technique does not result in an underestimation of the overall risks the group is exposed to as part of the assessment required in Article 239 (5) (b) that the resulting Solvency Capital Requirement appropriately reflects the risk profile of the undertaking or group. This would imply to demonstrate that there is no recognition of diversification benefits that do not exist (e.g. between the same risk in the modelled and unmodelled parts). Regarding the techniques referred to in paragraphs 2 and 3 of Article 239 of the Delegated Regulation, different from the solo case, these techniques are not considered to be recommended by the regulation for the integration of undertakings<sup>10</sup>, but if chosen, these would have to satisfy the same requirements as an alternative technique in order to ensure that in a specific case they are still appropriate (cf. Article 239 (5) of the Delegated Regulation).

9.46 It is also advised to make an explicit reference in the Delegated Regulations about the linkage of the assessment of appropriateness of method 2 (Article 328 of Delegated Regulation) with the assessment of appropriateness of the use of method 1 with the integration technique 1 (Article 343 of the Delegated Regulation). The decision about the use or refusal of the method 2 should be made in conjunction with the analysis of the use of method 1 with the integration technique 1 as an alternative and vice versa.

### **9.10. Group SCR calculation when using Combination of methods**

A need for clarification of principles to ensure appropriate coverage of risks in the group SCR under the combination of methods. This especially concerns equity risk for participations, currency risk and concentration risk.

9.47 EIOPA advises to introduce principles for the case of use of the combination of methods only that ensure that (i) there is no double counting of risks, namely

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<sup>10</sup> See paragraphs 9.296-9.232 of the background analysis document

the equity risk for participations outside the consolidated part, as this risk is expected to be covered by adding the solo SCR without allowing for diversification and (ii) no material risks are being neglected but are adequately covered in the group solvency calculation. This particularly pertains to currency risk and market concentration risk.

9.48 The Delegated Regulation would explicitly cover equity risk for participations, currency risk and concentration risks, as these risks allow for an explicit description of the treatment in the standard formula. Other risks that might emerge or be relevant in specific cases would be dealt with on a case-by-case basis based on existing supervisory powers.

9.49 For the standard formula with respect to currency risk reference should be made to Article 188 of the Delegated Regulation and for market concentration risk to Articles 182 – 187 of the Delegated Regulation. For internal models, reference should be made to Articles 343 and 349 of the Delegated Regulation and thus the usual internal model requirements.

9.50 The recommended change to the Delegated Regulation could read along the following lines: Where the group supervisor decides, in accordance with Article 220(2) of Directive 2009/138/EC, to apply to the group a combination of methods 1 and 2: Neither impacting the calculation of the capital requirements for the entities included by method 2 nor impacting the requirement to add up the capital requirements for these entities and the consolidated group Solvency Capital Requirement calculated for the part of the group which is covered by method 1, the latter shall also cover any currency and market concentration risk that might be caused by those undertakings which are included by method 2 to the part of the group covered by method 1. No additional capital requirement for equity risk shall be calculated. If the part of the group which is covered by method 1 uses the standard formula to calculate currency and market concentration risk, the capital requirement for these risks shall be determined in accordance with Article 13, Article 188 and Articles 182 to 187 of this regulation. If the part of the group which is covered by method 1 applies an internal model approved according to Article 345 or Article 349 of this regulation currency risk and market concentration risk could be considered in the internal model.

9.51 The above could also be supported by a recital referring to the following principles (see 9.284 to 9.286 of the background analysis document):

1. With respect to the non-consolidated part, each related insurance or re-insurance undertaking is considered each on its own, e.g. no subgroup consolidation is allowed.
2. According to Article 335 of the Delegated Regulation, the combination of methods:
  - i.) should not lead to any double counting of risks, namely the equity risk for participations outside the consolidated part, as this risk is expected to be covered by adding the solo SCR without allowing for diversification.
  - ii.) nor should lead to material risks being neglected from being adequately covered in the group solvency calculation. This particularly pertains to currency risk and market concentration risk.

### **9.11. Group Solvency – Application when using combination of methods**

Need for Article 233 of the Solvency II Directive to explicitly state that Method 2 (where used exclusively or in combination with Method 1) used to calculate the group solvency requirements applies to single undertakings (where used exclusively or in combination with Method 1).

- 9.52 The current framework for the scope and application of method 2 is not comprehensive enough. There are no provisions as to how the combination of methods shall be processed where Method 2 is used in combination with Method 1. Therefore, there is need for Article 233 of the Solvency II Directive to explicitly state that Method 2 (where used exclusively or in combination with Method 1) used to calculate the group solvency requirements applies to single undertakings (where used exclusively or in combination with Method 1).
- 9.53 EIOPA advises the Commission to state explicitly that Method 2 as outlined in the Solvency II framework applies to individual undertakings (where used exclusively or in combination with Method 1), i.e. entity by entity.
- 9.54 It is also advised to amend Articles 220, 227, 234 and 235 of the Solvency II Directive to refer to the new wording.

### **9.12. Own funds requirements for groups**

- 9.55 The classification of own-fund items at group level shall follow the solo criteria and therefore it relies on the wording and interpretation of the framework of solo undertakings. However, it shall also meet additional requirements at group level. EIOPA advises the Commission to provide for that the regulation on classification of own-fund items at group level is clarified, in particular in relation to the following policy issues:

Classification of own funds at group level and the reliance on criteria for classification at solo level - issues with application of Article 330 (1)(d) of the Delegated Regulation

- 9.56 The current wording of Article 330(1)(d) is not consistent with the other group own fund provisions outlined in Articles 331 to 333 of the Delegated Regulation. Therefore, EIOPA advises a deletion of paragraph 1(d) of Article 330 of the Delegated Regulation.
- 9.57 Such an amendment would clarify and confirm that in the case the provisions in Articles 331 to 333 of the Delegated Regulation (including the requirements in Articles 71, 73, and 77 of the Delegated Regulation) are not met, this would lead to the non-recognition of the full amount of that own-fund item at group level. It would also avoid that an own-fund item (under method 2) not compliant with Articles 331 to 333 of the Delegated Regulation (including reference to Articles 71, 73, and 77 of the Delegated Regulation) could still be considered available at group level.

Assessing “free from encumbrances” in particular in relation to own-fund items issued by an insurance holding company or mixed-financial holding company (recital 127 of the Delegated Regulation)

- 9.58 Divergent practices and legal interpretations derived from lack of clarity on the free from encumbrances and linkage of relevant articles with recital 127

of the Delegated Regulation. In particular, the interpretation of recital 127 at group level and the consequences of not meeting the provisions in Articles 331 to 333 of the Delegated Regulation. Therefore, EIOPA advises to amend the Delegated Regulation to include a provision based on recital 127 concerning IHC/MFHC in the group. Such provision should clearly indicate that in order to protect policyholders and beneficiaries of (re)insurance undertakings belonging to a group in the case of a winding up of any of the undertakings included in the scope of the group supervision, it would be sufficient to provide for the suspension of repayment/redemption of an own-fund item in a winding-up situation, and EIOPA also advises that this is limited to winding-up situations of any EEA (re)insurance related undertakings of the group.

9.59 The supervisory authority should still have the possibility to waive the suspension of repayment or redemption of that item in exceptional circumstances, for example for non-material related not subsidiary undertakings.

9.60 The policy proposal does not preclude that new provisions in the Delegated Regulations may also be considered appropriate when assessing whether group own funds issued by parent insurance undertakings are free from encumbrances.

#### Other issues

9.61 EIOPA recommends clarifying the title of Article 331 of the Delegated Regulation by revising the subheading/title for Article 331 of the Delegated Regulation to be aligned with paragraph 3 of the same Article which mentions both participations and related (re)insurance undertakings.

9.62 EIOPA also recommends clarifying Article 332 of the Delegated Regulation to also include reference to parent third-country (re)insurance undertakings. This would ensure a consistent application with the Articles 331 and 333 of the Delegated Regulation, which do not only mention related undertakings.

### **9.13. Availability assessment of own funds**

#### Inclusion of own fund items to cover the solo contribution to group SCR (Article 330(5) of the Delegated Regulation)

9.63 Keeping the approach where the sum of non-available own funds of each related undertaking is compared to that related undertaking's contribution to group SCR is considered a balanced approach between the spirit of recognizing own funds as available up to the coverage of the solo SCR diversified, and the need to take into account the diversification benefits, and to limit the transferability over the contribution to the group SCR. Therefore, EIOPA advises no change with regard to the availability assessment under Article 330(5) of the Delegated Regulation.

#### Formula for calculating of the contribution to group SCR- Need to clarify the inclusion of undertakings in the SCR Diversified.

9.64 EIOPA advises to clarify the inclusion of all undertakings taken into account in the SCR diversified for the purposes of calculating the group SCR where the related undertaking is included with Method 1. The Delegated Regulation should clarify that the inclusion of the insurance holding companies and mixed financial holding companies should be taken into account in the calculation of



the contribution to the group SCR for the purpose of the availability assessment according to Article 330 of the Delegated Regulation in order to avoid overestimation of the solo contribution to the group SCR, which would result in including a greater amount of non-available own funds in the eligible own funds at group level.

9.65 For further details on the treatment of IHC and MFHC please refer to section 9.6 of this Advice and 9.3.6 of the background analysis document. Ancillary service subsidiaries are excluded from the policy advice.

Availability assessment of specific items within the reconciliation reserve, the benefit from transitional measure on technical provisions or risk-free interest rates

9.66 There is supervisory concern regarding the significance of the benefit from transitional measures on technical provisions or risk-free rates in the Reconciliation Reserve. The key issue is the group's ability to use such own funds in case of need (transferability and fungibility). Liquidity risk, which is not quantified under Pillar 1 by groups using the standard formula, may also need consideration in such cases. Therefore, EIOPA advice is to include in the regulations additional disclosures that would allow the group supervisor to take action if the group SCR coverage is significantly dependant on own funds stemming from the benefits on transitional measures on technical provisions or risk-free interest rates. Significant reliance on the benefits of a transitional is not limited or does not only refer to breaching the group SCR, and depends on the financial position of each group.

9.67 The benefits of transitional measures under this policy issue will not be subject to an availability assessment under Article 330 of the Delegated Regulation. Nonetheless, it is important (i) to understand the significant impact on solvency ratio of these transitional measures at group level while also (ii) acknowledging the impossibility of demonstrating the transferability of such benefits when contributing to the group solvency.

9.68 EIOPA advice requires that the group should calculate and disclose the solvency position without the assumption that transitional benefits are available by default. The group supervisor can take actions if groups significantly rely on the benefits of transitional and that could misrepresent the actual ability of the group's own fund to be transferred and to absorb losses across the group. This measure will have an impact on disclosures but should be also included in the Solvency II Directive to facilitate the supervisor taking necessary supervisory measures. Significant reliance on the benefits of a transitional is not limited or does not only refer to breaching the group SCR and depends on the financial position of each group.

9.69 The solo undertakings concerned will not be affected by the group supervisor's decision.

EPIFPs and the availability assessment of own funds under Article 330 of the Delegated Regulation

9.70 EIOPA advises to introduce in the Delegated Regulations a requirement to consider EPIFPs as part of the regular availability assessment. EPIFPs should still be not subject to a default assumption of non-availability, but the availability should be justified. The groups are expected as part of their self-

assessment of own funds to justify availability of EPIFPs, on the basis of Article 330(1) of the Delegated Regulation, in order to determine the effectively available own funds at group level to cover the group solvency requirements. It should be noted in any case that, in accordance with Article 330(5) of the Delegated Regulation, non-available own funds can be taken into account in the group solvency up to the contribution of each company to the group SCR.

#### Other issues related to Article 330 of the Delegated Regulation

9.71 The interlinkage between Article 330(5) of the Delegated Regulation and Article 222(4) of the Solvency II Directive must be clarified as it has led to different interpretations and applications:

- a) The wording of Article 222 (4) of the Solvency II Directive focus on the Solvency Capital Requirement of the related undertakings while Article 330 of the Delegated Regulation focus on the contribution to the group SCR.
- b) Article 330 (5) of the Delegated Regulation seems to refer to an own-fund item while Article 222(4) of the Solvency II Directive makes a reference to a sum of own funds.

9.72 Therefore, it is advised that (a) the clarification should be in the direction of the recognition of non-available own funds up to the contribution to the group SCR; and (b) that the application should refer to the sum of all own-fund items of a related undertaking that cannot effectively be made available to cover the group SCR.

9.73 According to Article 330(3) of the Delegated Regulation, it is unclear to which supervisory authority the participating undertaking shall demonstrate that the assumed non-available own-fund item indeed is available at group level, and this appears to create different applications. Therefore, the wording on Article 330(3) of the Delegated Regulation should clarify that the participating undertaking should demonstrate it to the satisfaction of the group supervisor.

### **9.14. Minority Interest – Basis and approach to calculation of minority interest to be deducted from the consolidated group own funds**

#### Need for a clear basis and approach for the calculation of minority interest at a regulatory level (level 2)

9.74 The amount of minority interest to be deducted from group own funds must be considered according to Article 330 of the Delegated Regulation. However, the Regulation does not provide an explanation on the basis and approach to calculation of minority interest to be deducted from group own funds, and this creates supervisory convergence and level playing field issues. Therefore, EIOPA advises the European Commission to further clarify the basis and approach to be followed for the calculation of the item minority interest in Solvency II to ensure a level playing field.

9.75 EIOPA advises that the calculation of Minority Interest is based on a Solvency II valuation to take into account any revaluation from accounting to solvency II, and it should also be net of intragroup subordinated debt and intragroup ancillary own funds, and should include external subordinated debt.

9.76 As regards to the approach, EIOPA advises that Minority Interest deductions from group own funds need to be separately managed from the availability assessment on group own funds. The Minority Interest deductions is an additional step to be applied after an availability assessment is carried out for each subsidiary.

9.77 The Delegated Regulation should also clarify that when calculating the Minority Interest to be deducted under Article 330 of the Delegated Regulation it should imply that the process of determining the availability at group level of eligible own funds of related undertakings requires for paragraph 5 to precede paragraph 4 of Article 330 of the Delegated Regulation. Therefore, the part of the minority interest exceeding the subsidiary's contribution to group SCR is deducted from the group own funds in the calculation of minority interest.

9.78 The policy advice would be aligned to the current Guideline 14 of EIOPA's guidelines on group solvency. The amount of minority interests of a subsidiary to be deducted from group own funds should be determined by calculating the amount referred to in point (a) and multiplying it by the percentage referred to in point (b):

The excess available own funds over the contribution to the group SCR calculated as:

(a.) The total eligible own funds of the subsidiary (net of intragroup subordinated debt and ancillary own funds) minus the higher of the following:

- (i) The contribution of the insurance undertaking to the group SCR;
- (ii) The amount of total non-available own funds from the subsidiary undertaking (net of intragroup subordinated debt)

It should be noted that any non-available own funds in excess of the contribution are still a deduction under the overall own funds calculation but this amount is not subject to the application of a MI %.

(b) The percentage of minority interest regarding the subsidiary concerned is the percentage used for the purpose of establishing the consolidated accounts

## **Calculation of the minimum consolidated group SCR (including the impact on the level of diversification benefits)**

### **9.15. Minimum Consolidated Group SCR**

Lack of clarity and alignment of the scope of undertakings included in the minimum consolidated group SCR (Min.Cons.SCR) versus the undertakings included in the group SCR

9.79 There is lack of clarity and alignment of the scope of undertakings in the Min.Cons.SCR in relation to the group SCR. The existent regulations have not led to an adequate level playing field nor ensures that the risks derived from IHC and MHFHC are captured in the Min.Cons.SCR.

9.80 EIOPA advises to include into the legislation the content of EIOPA guideline 21b) of EIOPA Guidelines on group solvency calculation and to align the scope

of undertakings included in the Min.Cons.SCR with the scope of undertakings included in the group SCR by adding the notional MCRs of IHC and MFHC to the current calculation of the Min.Cons.SCR. The notional MCR for these undertakings should be equal to the 35% of their notional SCRs.

Calculation method for minimum consolidated group SCR (Min.Cons.SCR) and related mutatis mutandis issues

- 9.81 The way of calculating the Min.Cons.SCR does not ensure – at all times – that the ratio of Eligible Own Funds (EOF)/Minimum Capital Requirements (MCR) is always greater than the ratio EOF/SCR. This added to the “mutatis mutandis” application at group level of the requirements related to solo MCR creates a “trigger inversion situation” for some groups.
- 9.82 EIOPA advice is to confirm a no change to the existing methodology of the minimum consolidated group SCR calculation (i.e. a floor of the group SCR using a simple calculation and for which no diversification benefits are brought into the calculation).
- 9.83 EIOPA advises to clarify the Min.Cons.SCR purpose, by incorporating in the legislation that the Min.Cons.SCR is the minimum floor for the entities that are included on a consolidated basis and its method is a mechanism to safeguard that the group SCR is not lower than the sum of MCRs solo. EIOPA is of the opinion that the Min.Cons.SCR should not any longer trigger the same supervisory actions as at solo level (e.g. all relevant elements from Article 139 of the Solvency II Directive).
- 9.84 Therefore, EIOPA also advises setting a new trigger metric that is directly calculated as a percentage of the total group SCR and it should be the lower value of 45% of the group SCR and the floor of the group SCR (Min.Cons.SCR). This will ensure a proper supervisory ladder also for groups, and prevent increasing or introducing a new capital requirement. Hence, the new trigger metric should be used for the application of mutatis mutandis issues at group level of the requirements related to solo MCR, and any supervisory actions regarding breaches, own fund triggers, etc. The new trigger metric should consequently prevent the situation encountered by some groups regarding the issue of the “mutatis mutandis” application.

**Solvency II and the interactions with FICOD and any other issues identified with other financial sectors (OFS)**

**9.16. Inclusion of other financial sectors (OFS)**

- 9.85 EIOPA has identified the issue that referencing to sectoral rules, including regulations on financial conglomerates create challenges for the insurance industry and supervisors. The lack of clarity creates different interpretations, thus EIOPA recommends the Commission to provide sufficient guidance on how relevant sectoral rules, in practice, should be taken into account when calculating group solvency, and on the interactions, if any, with other applicable OFS regulations. In particular:

Lack of clarity on inclusion of related undertakings in Other Financial Sectors (OFS) into Solvency II.

9.86 Since Article 329 of the Delegated Regulation does not mention anything in relation to the method used and technique applied for including undertakings from other financial sectors, which leads to some divergent interpretations, EIOPA advises to clarify that Article 329 of the Delegated Regulation is always applicable when other financial sectors entities are included in the Solvency II group solvency calculations. EIOPA also advises that these undertakings are included using a technique as described under Article 335(1)(e) and Article 336(1)(c) which means that the own funds and capital requirements for these undertakings are aggregated to the total group own funds and to the total group SCR respectively. This technique should be used independently of the method used for the calculation of group solvency.

Allocation of own funds from Other Financial Sectors into relevant Solvency II tiers for the purpose of Solvency II calculations.

9.87 Although the proposal consulted does not imply any reclassification according to Solvency II rules for own-fund items from OFS entities, EIOPA is conscious that it would be challenging to implement this policy in particular as it would require supervisors and groups to be fully familiar with the regulations applied to other financial sectors, and in particular the rules across OFS may not be comparable to Solvency II.

9.88 After considering the above, EIOPA recommends no change, and therefore the status quo would remain for this policy issue.

Clarify the ability of excess of own funds from OFS to absorb losses in the insurance part of the group

9.89 The availability assessment under Article 330 of the Delegated Regulation covers two key elements, capacity of own funds to be transferred to other parts of the group, and ability to absorb losses derived from other undertakings in the group. It is EIOPA's view that a total absence of availability assessment of the excess own funds of an OFS entity would imply that in some cases, where the "insurance part" of the group is undercapitalised, the solvency ratio of the overall insurance group may still appear to be satisfactory. This regardless of whether the excess of capital of the OFS entities can effectively absorb losses stemming from the insurance undertakings within the group. Therefore, this policy issue focuses on the ability of certain own funds of the OFS to absorb losses.

9.90 In order to have sufficient assurance that the own funds from the Other Financial Sectors (OFS) can be effectively used to absorb losses in the insurance part of the Solvency II group, and to avoid misinterpretation of the financial position of the Solvency II group, EIOPA's advice is to require an analysis of the loss-absorbing capacity of own-fund items both from a group (self-assessment) and a supervisory perspective. This analysis should particularly be performed in case the excess of own funds stemming from Other Financial Sectors is deemed material. The analysis will take into account a proportionate and a risk based approach.

9.91 It is advised that: (i) Subordinated debt instruments; and Deferred tax assets; if included in sectoral own funds in excess of OFS sectoral capital requirement are assumed as not effectively available to absorb losses in the group solvency under Solvency II unless the group can demonstrate to the satisfaction of the group supervisor that they are able to absorb losses.

9.92 (ii) For other own-fund items in excess of the OFS sectoral capital requirements the groups may include them in the group own funds. If a supervisory authority on its own or through the college of supervisors have concerns regarding the ability of such own funds to absorb losses, the group should demonstrate to the satisfaction of the supervisory authority that such sectoral own funds can absorb losses arising in the insurance part of the group. The ability to transfer excess own funds for the purpose of absorbing losses in the insurance part of the group should appropriately take into account among others whether there are non-distributable reserves or own-fund items, for which the loss absorbability is restricted by the specificities of the undertakings in other financial sectors. This also includes such funds and items that cannot be transferred even if not specifically labelled as non-distributable items.

Lack of clarity on the inclusion of own funds and capital requirements subject to sectoral rules when OFS entities form a group

9.93 There is a need to clarify in the regulations that both the capital requirements and own funds coming from other financial sectors that form a group subject to sectoral group supervision outside the insurance group can be taken up, only in those cases, using the group figures coming from the OFS group. Therefore, EIOPA advises the Commission to clarify in Articles 329, 335 and 336 of the Delegated Regulations that when related undertakings in OFS form a group subject to sectoral group supervision, group own funds and group capital requirements that are calculated according to sectoral rules should contribute to the group solvency calculation instead of the sum of the capital requirement and own funds of each individual undertaking.

Need to clarify which capital requirements for credit institutions, investment firms and financial institutions should be included in the group solvency.

9.94 Currently the only guidance available for inclusion of capital requirements from credit institutions, investment firms and financial institutions is the answer to EIOPA Q&A 1344<sup>11</sup>, however challenges with the application and enforceability of a Q&A have been highlighted by supervisory authorities. In addition, there are clear differences on what constitutes capital requirements under Solvency II versus regime for credit institutions, investment firms and financial institutions and what are consequences of not covering the requirements in both frameworks.

9.95 Therefore, EIOPA advises the Commission to clarify what should be included in the group solvency calculation as capital requirements for credit institutions, investment firms and financial institutions mentioned in Article 336 of the Delegated Regulation taking into account the different nature of capital buffers of such undertakings, and Solvency II capital add-ons. In particular, the

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<sup>11</sup> [https://www.eiopa.europa.eu/content/1344\\_en](https://www.eiopa.europa.eu/content/1344_en)

purpose of the inclusion of capital buffers set for the whole local market in the context of level playing field should be duly considered. The aim of having the same rules for all groups (with participation in credit institutions, investment firms and financial institutions) subject to Solvency II, regardless of the fact whether the insurance group are identified as financial conglomerate or not should also be taken into account.

9.96 Finally, EIOPA is also aware that changes to the regulatory framework of Other Financial Sectors may affect the interaction with the existent Solvency II framework. It is important that any revision by the legislator on the solvency requirements of other financial sectors avoids any unintended spill overs on the interaction between the legislation for other sectors with the existent Solvency II framework.

### **9.17. Application of Article 228 of the Solvency II Directive – Related credit institutions, investment firms, and financial institutions**

Lack of clarity regarding the methods of inclusion of related credit institutions, investment firms and financial institutions in group solvency requirements calculation (Article 228 of the Solvency II Directive), and interaction with FICOD, and other articles of the Solvency II framework

9.97 EIOPA is of the opinion that related undertakings which are credit institutions, investment firms or financial institutions should be included in accordance with sectoral rules regardless of the method used in the group solvency calculation and using a technique as described in policy issue 9.3.16(1) of the background analysis document.

9.98 Considering that Article 228 of the Solvency II Directive has been transposed differently into national law among Member States and that its interpretation has been a debate over time, it is important to ensure 1) a level playing field regarding the treatment of related undertakings referred to in Article 228 and 2) the result of such treatment would be consistent to Solvency II methods of calculation group solvency requirements. It is also necessary to facilitate, where applicable, flexibility to deduct any of these participations from the own funds eligible for the group solvency of the participating undertaking.

9.99 Therefore, EIOPA advises to remove Article 228 paragraph 1 of the Solvency II Directive which makes reference to FICOD methods. As a result a related credit institution, investment firm and financial institution should only be included in the solvency calculations using Solvency II rules (see further details on policy issue 9.3.16(1) of the background analysis document). Such treatment would result in a harmonised treatment for such related undertakings. Article 68(3) of the Delegated Regulation should also be amended accordingly so that references are only made to Solvency II methods for the inclusion of related credit institutions, investment firms and financial institutions in solvency calculations.

## **Governance requirements - uncertainties or gaps related to the application of governance requirements at group level**

### **9.18. Mutatis mutandis application of solo governance requirements to groups – Article 40 of the Solvency II Directive (definition of the AMSB for groups); and Article 246 of Solvency II Directive (supervision of the system of governance)**

9.100 In order to address the issues identified with Article 246 of the Solvency II Directive which imposes the mutatis mutandis application by insurance groups of the requirements laid down in Articles 41 to 50 of the Directive (which are applicable to solo entities), but it doesn't explicitly refer to Article 40 (responsibility of the AMSB of insurance and reinsurance undertakings).

9.101 EIOPA advice is to amend the Solvency II Directive to ensure that Article 40 of the Solvency II Directive also explicitly applies to insurance groups. In particular, EIOPA advises that the legal text should state clearly that the AMSB of the parent (re)insurance or IHC or MFHC at top of the group would be responsible for the compliance with all group requirements. In order to achieve the objectives of adequate system of governance at group level it is important to consider the advice regarding group supervisory powers provided in section 9.1 of this Opinion on facilitating the application of group supervision under Article 213 of the Solvency II Directive in the case of horizontal groups, groups with multiple points of entry in the EEA, and multiple groups held by the same individual or legal entity; and section 9.2 on the application of Article 214(1) of the Solvency II Directive and powers over holdings.

9.102 For comprehensive details on the preferred policy option, it is recommended to see paragraphs 9.602 to 9.607 of the policy analysis in the background analysis document.

9.103 EIOPA also advises for regulations at Level 2 to be more specific regarding the system of governance requirements at group level to avoid some of the mutatis mutandis issues identified regarding the application of Articles 41 to 50 of the Solvency II Directive to groups. Priority should be given to consistency and management of conflict of interest issues between group and solo undertakings. Therefore, the following principles must be set out at Level 2 for the identification of the entity or persons responsible for governance requirements at group level and to ensure as a minimum that:

- In case of accumulation of functions at solo and group level, that the competencies and functions at group level are clearly distinguished and justified, avoiding conflicts of interest (the mutatis mutandis principles refers to Articles 41(1) and 49, and recital 2, 3, of the Solvency II Directive);
- Consistency between the written policies of all the entities within the group and the group's policies to avoid of conflict of interest (the mutatis mutandis principles refers to Article 41(3) of the Solvency II Directive);
- The risk management system should cover at least all activities conducted at group level and the risks that are relevant to deal with at group level, including non-insurance activities and risks arising from non-insurance



entities (the mutatis mutandis principles refers to Articles 41(2), 44, 45 of the Solvency II Directive).

9.104 For a comprehensive list of principles that should be considered please refer to paragraph 9.606 of the background analysis document where the preferred policy option is described.

<b>Reference table chapter 9</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
9.1	9.3.1	9.1
9.2	9.3.2	9.2
9.3	9.3.3	9.3
9.4	9.3.4	9.4
9.5	9.3.5	9.5
9.6	9.3.6	9.6
9.7	9.3.7	9.7
9.8	9.3.8	9.8
9.9	9.3.9	9.9
9.10	9.3.10	9.10
9.11	9.3.11	9.11
9.12	9.3.12	9.12
9.13	9.3.13	9.13
9.14	9.3.14	9.14
9.15	9.3.15	9.15
9.16	9.3.16	9.16
9.17	9.3.17	9.17
9.18	9.3.18	9.18

## **10. Freedom to provide services and freedom of establishment**

### **10.1. Efficient information gathering during the authorisation process**

10.1 EIOPA advises to amend the first paragraph of Article 18 of the Solvency II Directive by adding the requirement currently included in par. 2.5.1 of the Decision on collaboration, as follows:

*“(i) To declare if there had been a formal or informal request for an authorisation to establish an insurance or reinsurance undertaking or other financial undertaking or intermediary in another Member State or third country which has been rejected or withdrawn and the reasons for the rejections or withdrawal”*

### **10.2. Information exchange between home and host supervisors in case of material changes in the FoS activities**

10.2 EIOPA advises to amend Article 149 of the Solvency II Directive by adding a new paragraph, as follows:

*"In case of any material change in the business pursued by the insurance undertaking under the freedom to provide services, the insurance undertaking shall inform the supervisory authority of the home Member State immediately. The supervisory authority of the home Member State shall inform the supervisory authority of the host Member State concerned without delay."*

10.3 EIOPA advises to amend Article 23(1) (a) of the Solvency II Directive by adding the phrase: *'and their geographic focus'* at the end of the sentence.

### **10.3. Enhanced role for EIOPA in complex cross-border cases where NSAs fail to reach a common view in the cooperation platform**

10.4 EIOPA advises to amend the new Article 152b of the Solvency II Directive, by adding a new paragraph , as follows:

*- "In case the supervisory authorities concerned fail to reach a common view in the collaboration platform within a time limit established by EIOPA, EIOPA may, in accordance with Article 16 of Regulation (EU) No 1094/2010 issue recommendation to the supervisory authority concerned.*

*- Where the supervisory authority concerned does not comply with that recommendation within two months, it shall state the reasons including the steps it has taken or intends to take in order to address the concerns of the other supervisory authorities involved.*

*- EIOPA shall assess those steps and decide whether they are sufficient and appropriate. In case they are not deemed appropriate, EIOPA shall make its recommendation public together with those reasons and proposed steps."*

10.5 Furthermore, EIOPA advises to slightly amend paragraph 2 of the new Article 152a of the Solvency II Directive, as follows:

*"(2) The supervisory authority of the home Member State shall also notify EIOPA and the supervisory authority of the relevant host Member State where it identifies deteriorating financial conditions or other emerging risks, including consumer protection risks, posed by an insurance or reinsurance undertaking carrying out activities based on the freedom to provide services or the freedom of establishment that may have a cross-border effect. The supervisory authority of the host Member State shall also notify EIOPA and the supervisory authority of the relevant home Member State where it has serious and reasoned concerns with regard to consumer protection. The supervisory authorities may refer the matter to EIOPA and request its assistance in case no bilateral solution could be found".*

### **10.4. Cooperation between home and host NSAs during ongoing supervision**

10.6 EIOPA advises to amend Article 36 of the Solvency II Directive by adding a new paragraph 7 as follows:

*"7. In case of material cross-border insurance business under the right of establishment or the freedom to provide services, the supervisory authority of the home Member State shall actively cooperate with the supervisory authority of the host Member State to assess whether the insurance undertaking has a*

clear understanding of the risks that it faces, or may face, in the host Member State.

This cooperation shall cover at least the following areas:

- (a) system of governance including the ability of the head office's management to understand the cross-border market specificities, risk management tools, internal controls in place and compliance procedures for the cross-border business;
- (b) outsourcing arrangements and distributions partners;
- (c) business strategy and claims handling;
- (d) consumer protection.

8. Where appropriate, the supervisory authority of the home Member State shall inform in a timely manner the supervisory authority of the host Member State about the outcome of its supervisory review process which concerns the cross-border activity, in particular where the supervisory authority of the host Member State has already raised concerns."

### **10.5. Explicit power of the host supervisor to request information in a timely manner**

10.7 EIOPA advises to amend the title and the text of Article 153 of the Solvency II Directive as follows:

The title of Article 153 is replaced by the following: "*Timeframe and language of information requests*".

The text of Article 153 is replaced by the following:

*"The supervisory authorities of the host Member State may require the information which they are authorised to request with regard to the business of insurance undertakings operating in the territory of that Member State to be supplied to them by the supervisory authorities of the home Member State or by the insurance undertakings in a reasonable timeframe and in the official language or languages of that State. The supervisory authorities shall discuss how to proceed with the information requests in order to guarantee the adequate timeliness. If the supervisory authority of the host Member State addresses the insurance undertaking directly, it shall inform the supervisory authority of the home Member State about any information request."*

<b>Reference table chapter 10</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
10.1	10.6	10.1
10.2	10.7	10.2
10.3	10.8	10.3
10.4	10.9	10.4
10.5	10.10	10.5

## **11. Macprudential policy**

- 11.1 EIOPA is of the view that the macroprudential perspective should be incorporated into the current prudential Solvency II framework through amendments to the legislation.
- 11.2 This approach, which would supplement the current microprudential approach in a consistent and coherent way, should include in the Solvency II Directive the definition of macroprudential objectives and the additional tools and measures set out in this Opinion. These comprise capital-, liquidity-, exposure-, and pre-emptive based tools and measures that should broaden the current toolkit of macroprudential measures at the disposal of supervisory authorities.
- 11.3 The proposed macroprudential approach would also supplement certain provisions that already have a certain macroprudential impact, in particular, those that refer to the long-term guarantees measures and measures on equity risk.

### **11.1. Capital surcharge for systemic risk**

- 11.4 EIOPA is of the view that supervisory authorities should have the power to set a capital surcharge to address one or more entity-, activity-, or behaviour-based sources of systemic risk as defined in the background analysis document.
- 11.5 Supervisory authorities should have the discretion to make use of this tool, whenever they deem it necessary to mitigate an identified systemic risk or the build-up thereof. They should clearly document the rationale for the surcharge, apply it in a proportionate way and only as long as the conditions that lead to the application of the surcharge remain in force. Supervisory authorities must also take into account procyclical effects when considering the use of this tool.
- 11.6 However, in order to assist consistent conditions of application and avoid inconsistent use across the EU, EIOPA should develop technical standards or guidelines on the procedures for decisions to trigger, set, calculate and remove capital surcharge for systemic risk.
- 11.7 While it should be set up as a separate Pillar 2 tool, EIOPA considers the capital surcharge for systemic risk as a useful supplement to the currently existing microprudential capital add-on that can be applied in cases where the SCR does not adequately reflect the specific risk profile of an undertaking (Article 37 of the Solvency II Directive).

### **11.2. Additional measures to reinforce the insurer's financial position**

- 11.8 EIOPA is of the view that supervisory authorities should be granted with additional measures to reinforce the insurer's financial position to address sector-wide shocks.

11.9 These measures should consist of the possibility of restricting or suspending dividend or other payments to shareholders and the possibility of restricting the purchase of the insurer's own shares.

11.10 Supervisory authorities should have the discretion to make use of these tools in exceptional circumstances. According to the specific situation, these measures can be applied to the whole market or undertakings with potentially vulnerable risk profiles. In the latter case, the decision should be supported by the evidences resulting from the supervisory process (e.g. results of stress tests, forward looking assessments, etc.). The application should last for as long as the underlying reasons that justify the measure are present and should be regularly reviewed (e.g. every 3 months), and removed as soon as the underlying conditions that motivated the measure are over.

11.11 In order to assist consistent conditions of application, EIOPA should issue guidelines to further specify the existence of "exceptional circumstances".

### **11.3. Concentration thresholds**

11.12 EIOPA is of the view that supervisors should be granted with the power to define soft thresholds for action at market level if a certain exposure increases dramatically and/or reaches a significant level, and this creates concerns from a financial stability perspective.

11.13 Supervisors should have the discretion whether to intervene or not and how to intervene. It should be stressed that high concentrations per se do not point to a risk to financial stability, a pre-condition for supervisors to intervene.

11.14 In order to assist consistent conditions of application, EIOPA should issue guidelines to further specify on the procedures for decisions to set the soft thresholds at EU level, while taking into account the conditions in the different markets.

### **11.4. Expand the use of the ORSA to include the macroprudential perspective**

11.15 EIOPA advises to include a specification in Article 45 of the Solvency II Directive ("Own risk and solvency assessment") that explicitly refers to the need to take the macroprudential perspective into account.

11.16 The need for (re)insurance undertakings to include explanations about their considerations on the macroeconomic situation, its spillover effects and market-wide developments with the potential to turn into sources of systemic risk, as defined in this Opinion, should also be clarified.

11.17 In addition, supervisory authorities should also be required to consider the ORSA reports from a macroprudential perspective and include these considerations in their microeconomic supervision of undertakings.

### **11.5. Expand the prudent person principle to take into account macroprudential concerns**

11.18 EIOPA advises to include a reference in Article 132 of the Solvency II Directive on the prudent person principle explicitly referring to the need for undertakings to take into account macroeconomic and macroprudential

concerns (such as the risk related to the credit cycle and economic downturn, or other potential sources of systemic risk that may be relevant to them) when deciding on their investment strategy.

11.19 Supervisors should also be required to consider macroprudential concerns that are relevant for the undertaking in their assessment on whether it complies with the prudent person principle.

### **11.6. Pre-emptive recovery and resolution planning**

*See chapter 12 on Recovery and Resolution where this tool is further elaborated.*

### **11.7. Systemic risk management plans (SRMP)**

11.20 EIOPA is of the view that supervisory authorities should have the power to require undertakings to draft and maintain SRMPs for undertakings that are more likely to create and/or amplify systemic risk through an entity, activity or behavioural channel.

11.21 Supervisors should have the discretion to determine which undertakings should draft an SRMP, based on the size of the undertaking, its global activity, the interconnectedness with the financial system, potential substitutability concerns as well as the nature of exposures, scale, and complexity of the undertaking's activities.

11.22 In order to assist consistent conditions of application EIOPA should issue guidelines to further specify the scope of undertakings subject to SRMP.

### **11.8. Liquidity risk framework**

11.23 Liquidity risk monitoring and stress testing should allow supervisors to identify undertakings with particularly vulnerable risk profiles. When vulnerabilities are identified, EIOPA is of the view that supervisory authorities should be granted with specific powers for additional mitigating measures.

11.24 These measures should incentivise insurers to reinforce their liquidity position (e.g. via reduction in exposures more prone to liquidity risk and/or incentivise insurers to increase the available liquidity) and would be set only when national supervisors have enough evidence regarding the existence of the liquidity risk vulnerabilities as well as the efficiency of the proposed measures for these identified insurers.

11.25 In order to assist consistent conditions of application EIOPA should issue guidelines to further specify the operational details of a potential Pillar 2 liquidity risk framework as described.

### **11.9. Liquidity risk management plans**

11.26 EIOPA considers that Article 44 of the Solvency II should more explicitly refer to the need to have a liquidity risk framework in place as part of the risk management policies, which ensures that undertakings are able to realise investments in order to settle their financial obligations when they fall due, even under stressed conditions, without being forced to liquidate assets below fair values.

- 11.27 EIOPA is of the view that all undertakings within Solvency II should be required to draft liquidity risk management plans for identifying and addressing potential liquidity stresses.
- 11.28 However, in accordance with the proportionality principle, supervisors should be given the possibility to waive certain undertakings, based on the nature of the exposures as well as the scale and complexity of the undertaking's activities that make them less vulnerable to liquidity stresses.
- 11.29 These plans could be combined with those already required plans that project the incoming and outgoing cash flows in relation to assets and liabilities for undertakings using the matching adjustment and the volatility adjustment in line with Article 44 of the Solvency II Directive.
- 11.30 In order to assist consistent conditions of application EIOPA should issue guidelines to specify when undertakings would be exempted from drafting a liquidity risk management plan.

### **11.10. Temporary freeze on redemption rights**

- 11.31 EIOPA considers that supervisory authorities should be granted with the power to temporarily freeze the redemption rights of policyholders in exceptional circumstances.
- 11.32 The power should be applied only as a last resort measure, for a short period of time and only to undertakings affected by a significant liquidity risk (e.g. upward interest rate shocks).
- 11.33 Moreover, the exercise of this power should be linked to, or preceded by, the prohibition of distributing dividends, bonuses and other means of variable remuneration to management or shareholders.
- 11.34 In order to assist consistent conditions of application EIOPA should issue guidelines to further specify the existence of "exceptional circumstances".
- 11.35 Supervisory authorities should pay special attention to potential side effects on the economy and effects on the rights of policyholders, including of a cross-border nature, before temporarily freezing the redemption rights for the whole or a significant part of the market. EIOPA should play a relevant role to ensure the correct application of the tool and to ensure that policyholders in both home and host jurisdictions are adequately protected.

<b>Reference table chapter 11</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
11	11.3	
11.1	11.4.1	11.1
11.2	11.4.2	11.2
11.3	11.4.3	11.3
11.4	11.4.4	11.4
11.5	11.4.5	11.5
11.6	11.4.6	11.6
11.7	11.4.7	11.7

11.8	11.4.8	11.8
11.9	11.4.9	11.9
11.10	11.4.10	11.10

## **12. Recovery and resolution**

12.1 EIOPA is of the view that a minimum harmonised recovery and resolution framework for (re)insurance undertakings should be established. Harmonised recovery and resolution principles applied in a proportionate way contribute to adequately protecting policyholders as well as maintaining financial stability in the EU.

12.2 Minimum harmonisation entails the definition of a common approach to the fundamental elements of recovery and resolution, while leaving room for Member States to adopt additional measures at national level, subject to these measures being compatible with the principles, minimum requirements and objectives set at EU level.

### **12.1. Recovery measures**

#### **12.1.1. Pre-emptive recovery planning**

12.3 EIOPA is of the view that Solvency II should be supplemented with a requirement for undertakings to develop and maintain recovery plans in a pre-emptive manner.

12.4 The requirement should capture a very significant share of each national market in the EU. Further work may be needed to carefully determine the exact market coverage level.

12.5 Supervisory authorities should decide on the undertakings subject to the requirement on the basis of harmonised criteria. These include the size, cross-border activity, business model, risk profile, interconnectedness, and substitutability of undertakings.

12.6 Moreover, in accordance with the proportionality principle, EIOPA advises to introduce simplified obligations for eligible undertakings.

#### **12.1.2. Preventive measures**

12.7 EIOPA is of the view that the Solvency II rules on the recovery of (re)insurance undertakings should be further developed with the introduction of a set of preventive measures for supervisors. The use of the measures should be based on reasonable justification, on an assessment of the risk and following the principle of proportionality.

12.8 The following set of measures should be introduced in Solvency II:

- Require more intensive dialogue with the undertakings, scheduling regular meetings with the company's management in order to better understand the strategy of the company, recent technical and financial results, recent changes in insurance products and investment and their impact on the solvency position as well as to have up to date information on measures taken or measures to be taken by the company in order to improve the



SCR coverage ratio (e.g. conservative dividend policy, increase of own funds, de-risking), including any recent dialogue between the undertakings and its qualifying shareholders/owners on possibility of capital support;

- Require additional or more frequent reporting;
- Require the administrative, management, or supervisory body of the undertaking to take preventive measures within a specific timeframe in case of concrete risk of progressive and structural deterioration of its capital position that may put the undertaking under stress and the undertaking's inaction leads to an increased risk to policyholders. This could also include a requirement to update the pre-emptive recovery plan when assumptions set out in the initial plan do not appear realistic, and to take the measures set out in the updated plan;
- Require the undertaking to limit variable remuneration and bonuses.

## **12.2. Resolution measures**

### **12.2.1. Resolution authority**

12.9 EIOPA is of the view that Member States should have in place an officially designated administrative resolution authority or authorities for the resolution of (re)insurance undertakings.

12.10 Those Member States that have more than one authority in place should ensure clear mandates, allocation of roles and responsibilities as well as a high degree of coordination.

### **12.2.2. Resolution objectives**

12.11 EIOPA advises to clearly set out in the legal framework the objectives for resolution without an ex-ante predefined ranking:

- To protect policyholders, beneficiaries and claimants;
- To maintain financial stability, in particular, by preventing contagion and by maintaining market discipline;
- To ensure the continuity of functions of undertakings whose disruption could harm the financial stability and/or real economy;
- To protect public funds.

### **12.2.3. Resolution planning**

12.12 EIOPA is of the view that resolution authorities should be required to develop and maintain resolution plans and conduct resolvability assessments in a pre-emptive manner for undertakings. The governance process around developing, maintaining and updating the resolution plan should benefit from the participation of all relevant authorities involved in supervision and resolution of an insurer, and where appropriate, CMGs and the insurer itself. Whereas resolution authorities are in the lead of the resolution planning process, supervisors play a fundamental role in terms of providing support to resolution authorities. Supervisors have to provide all relevant information that the resolution authority may need to draft, maintain and update the plan, as well as communicating any material change to the legal or organizational structure

of the institution or to its business or financial position. EIOPA expects cooperation and coordination between resolution authorities and supervisors.

12.13 The requirement should capture a significant share of each national market in the EU. Further work may be needed to carefully determine the exact market coverage level. EIOPA believes that the scope for resolution planning would be smaller than that for pre-emptive recovery planning.

12.14 Resolution authorities should decide on the undertakings subject to the requirement on the basis of harmonised criteria. These include the size, cross-border activity, business model, risk profile, interconnectedness, and substitutability of the business.

12.15 The existence of critical functions and other functions that are material for the financial system or the real economy at European or national level (as proposed in Box 12.4 of the analysis background document), should be taken into account for the consideration of the need for a proportionate resolution planning. In case the approach is finally taken on board by the Commission, EIOPA should issue guidelines to further specify the criteria for the determination of the relevant functions to be preserved in resolution to ensure consistency in the determination of the scope.

12.16 In accordance with the proportionality principle, EIOPA advises to introduce simplified obligations for eligible undertakings.

12.17 Furthermore, EIOPA is of the view that resolution authorities should be given the power to require the removal of identified material impediments to the resolvability of undertakings where duly justified.

#### **12.2.4. Resolution powers**

12.18 EIOPA is of the view that national resolution authorities should be equipped with a broad set of resolution powers. At a minimum, the set of common resolution powers should include:

- Prohibit the payment and allow the recovery of variable remuneration to administrative, management, or supervisory body, senior management, key persons in control functions and major risk-taking staff, including claw-back of variable remuneration;
- Withdraw the authorisation granted to an undertaking and put all or part of the insurance business contracts into run-off (i.e. requirement to fulfil existing contractual policy obligations for in-force business);
- Sell or transfer the shares of the undertaking in resolution to a third party;
- Sell or transfer all or part of the assets and liabilities of the undertaking under resolution to a solvent undertaking or a third party (including a bridge institution or management vehicle);
- Create and operate a bridge institution to which the assets and liabilities of the undertaking in resolution is transferred;
- Override any restrictions to the (partial) transfer of the assets and liabilities of the undertaking in resolution under applicable law (e.g. requirements for approval by shareholders, policyholders' consent for transfer of insurance

contracts or consent of the reinsurance undertaking for transfer of reinsurance);

- Temporarily restrict or suspend policyholders' rights to surrender their insurance contracts;
- Stay rights of reinsurers to terminate or not reinstate coverage relating to periods after the commencement of resolution of their contractual counterparties;
- Stay the early termination rights associated with derivatives and securities lending transactions;
- Impose a moratorium with a suspension of payments to unsecured creditors and a stay on creditor actions to attach assets or otherwise collect money or property from the undertaking in resolution;
- Ensure continuity of essential services (e.g. IT) and functions by requiring other entities in the same group to continue to provide essential services to the undertaking in resolution, any successor or an acquiring entity;
- Take control of and manage the undertaking in resolution, or appoint an administrator to do so;
- Restructure, limit or write down liabilities, including (re)insurance liabilities, and allocate losses to shareholders, creditors and policyholders.

12.19 The order of the powers listed above should not be regarded as an indication of the sequence in which these powers could be exercised. EIOPA believes that traditional resolution tools, such as portfolio transfer or (solvent and insolvent) run-off, which have proven to be adequate in the past, should be given priority when resolving undertakings.

12.20 The exercise of the resolution powers should be subject to adequate safeguards:

- The hierarchy of claims should be respected, while providing the flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class;
- Creditors, including policyholders, should not incur a loss greater than they would have incurred in a winding-up under normal insolvency proceedings (the "no creditor worse off than in liquidation" (NCWOL) principle).

12.21 With respect to the resolution power to restructure, limit or write down insurance liabilities, resolution authorities should take account of some additional safeguards as set out in Box 12.5 of the analysis background document.

#### **12.2.5. Cross-border cooperation and coordination**

12.22 EIOPA is of the view that cross-border cooperation and coordination arrangements between national resolution authorities for crisis situations should be established. These arrangements could be based on currently existing ones, taking into account the materiality and proportionality principle.

12.23 This should also include arrangements for the safe and secure exchange of information between jurisdictions.

12.24 In accordance with the principles set out in Article 21(1) of the EIOPA Regulation, EIOPA should have a leading role in ensuring the consistent and coherent functioning of these cross-border arrangements across the EU.

**12.3. Triggers**

**12.3.1. Triggers for the use of preventive measures**

12.25 EIOPA is of the view that adequate triggers for the use of preventive measures should be introduced at the EU level.

12.26 These triggers should be judgment-based and allow for sufficient supervisory discretion to assess the situation and decide on the need for preventive measures.

12.27 The triggers should contain relevant qualitative and quantitative factors, but should not result in a new, pre-defined intervention level.

**12.3.2. Triggers for entry into recovery**

12.28 EIOPA is of the view that non-compliance with the SCR, as defined in the Solvency II Directive, is an appropriate trigger for entry into recovery.

12.29 The Solvency II framework should however be supplemented with the introduction of preventive measures.

**12.3.3. Triggers for entry into resolution**

12.30 EIOPA is of the view that adequate triggers for entry into resolution should be introduced at the EU level.

12.31 The triggers should be judgment-based and allow for sufficient discretion to assess the situation and decide on the need for resolution actions.

12.32 The triggers for resolution should include:

- a) The undertaking is no longer viable or likely to be no longer viable and has no reasonable prospect of becoming so;
- b) Possible recovery measures have been exhausted – either tried and failed or ruled out as implausible to return the undertaking to viability – or cannot be implemented in a timely manner;
- c) A resolution action is necessary in the public interest.

<b>Reference table chapter 12</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
12	12.3.3	
12.1.1	12.3.4.1	12.1
12.1.2	12.3.4.2	12.1
12.2.1	12.3.5.1	12.2
12.2.2	12.3.5.2	12.2
12.2.3	12.3.5.3	12.2
12.2.4	12.3.5.4	12.2
12.2.5	12.3.5.5	12.2
12.3.1	12.4.1	12.3

12.3.2	12.4.2	12.3
12.3.3	12.4.3	12.3

## **13. Insurance guarantee schemes**

### **13.1. Need for harmonisation of national IGSs at EU level**

13.1 EIOPA is of the view that that every Member State should have a national IGS in place for the protection of policyholders in the event of insurance failures. The national IGSs should meet a minimum set of harmonised features and be adequately funded.

13.2 The exact structure of the schemes should be left to the discretion of Member States. This could be a separate national IGS or a mechanism that will deliver a similar outcome provided that it meets the harmonised minimum requirements. For the sake of simplicity, EIOPA will use the term IGSs or policyholder protection schemes throughout this Opinion. This should however be understood to include alternative mechanisms which pursue the same objective of protecting policyholders in the event of failure and achieve a similar outcome as IGSs.

13.3 EIOPA advises to consider the harmonisation of national IGSs within the broader context of recovery and resolution. EIOPA calls for the harmonisation of national recovery and resolution frameworks for (re)insurers.

### **13.2. Minimum harmonised principles**

#### **13.2.1. Role and functioning of IGS**

13.4 EIOPA advises that an IGS should be set up as a mechanism with the primary aim to protect policyholders, which can be achieved by:

- i) paying compensation swiftly to policyholders and beneficiaries for their losses when an insurer becomes insolvent; and/or
- ii) ensuring the continuation of insurance policies (for instance, by funding or promoting a portfolio transfer or taking over and administrating the portfolio).

EIOPA considers both functions as equally valid, given that they both meet the primary objective to protect policyholders. The use of one or other function may depend on the several aspects such as the way in which the IGS is designed or the specific situation. Concerning the latter, for example, the continuation of insurance policies might be more beneficial to ensure policyholders protection. This could happen, for example, when the continuation of policies facilitate a portfolio transfer to another insurer.

All the harmonised features of an IGS proposed by EIOPA should be applied irrespective of the IGS function (i.e. compensation and continuation). However, their operational application could be different depending on the specific features of each of these two functions.

### **13.2.2. Geographical coverage**

13.5 EIOPA advises that the geographical coverage of national IGSs should be harmonised based on the home-country principle.

13.6 EIOPA identified and assessed several ways for operationalising the home-country approach and come up with different options, as well as their related pros and cons:

- Option 1: The home country pays the policyholders of the host country following the rules of the host country
- Option 2: The home country pays the policyholders of the host country following the rules of the home country.
- Option 3: The home country pays the policyholders the minimum EU harmonised coverage level for all business lines agreed at EU level. Host IGS to top-up if needed.
- Option 4: The home country pays the policyholders the minimum EU harmonised coverage level for all business lines decided by the host country. Host IGS to top-up if needed.
- Option 5: The home country pays the policyholders the minimum EU harmonised coverage level for the business lines agreed at EU level, including the compulsory insurances of the host country paid at the coverage level of the host. Host IGS to top-up the non-compulsory business lines agreed at EU level if needed.

13.7 Even if all the five options presented could be considered feasible for operationalising the home-approach principle, EIOPA considers Option 5 as a possible compromise, given that it allows reaching a balanced consistency with the home-country control principle applied in insurance supervision.

### **13.2.3. Eligible policies**

13.8 EIOPA advises that national IGSs should cover specific life policies and specific non-life policies.

The proposal for minimum harmonisation should cover:

- i) claims-related protection where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries (such as, for instance, fire insurance, accident insurance, liability, suretyship products if the beneficiary is a natural person, sickness and other damages to property);
- ii) contract-related protection (such as, for instance, health, savings, and life including occupational pensions by life insurers falling under Solvency II);

Unearned premiums should not be covered.

13.9 Member States should have the flexibility to identify the policies commercialized at national level, which correspond to the business lines to be covered at EU level and provided by the Solvency II Directive. Member States could also extend coverage to other lines of business relevant in their jurisdiction.

#### **13.2.4. Eligible claimants**

13.10 EIOPA advises that national IGSs should cover natural persons and micro-sized legal entities (i.e. policyholders and beneficiaries). The meaning of micro-sized entities is the one as defined by the European Commission.

13.11 Where the policyholder is a company not covered by the schemes (i.e. SME and large-size), its related beneficiaries or third parties should still have the right to claim for compensation to the IGS (e.g. accident at work, airplane crash).

13.12 Additionally, EIOPA advises to introduce restrictions to exclude persons closely connected to the failed insurer from the coverage (such as the Board of directors and managers of the failed insurer).

#### **13.2.5. Coverage level**

13.13 EIOPA advises to introduce a minimum harmonised coverage level for claimants. The coverage level should be set so that it does not leave policyholders and beneficiaries exposed to considerable financial or social hardship, while bearing in mind the cost of funding of IGSs.

13.14 To achieve this, Member States should guarantee up to 100% of a certain amount (e.g. EUR 100.000) for selected eligible policies associated to social hardship. Beyond this EUR amount, a percentage cap of coverage level should be considered. No quantitative analysis has been carried out to determine the amount. An impact assessment would be required to determine the sustainability of the coverage level.

13.15 For other policies, the maximum coverage in terms of a percentage cap could apply.

13.16 A deductible amount should also be defined for the eligible policies.

13.17 Compulsory insurance policies could be considered, in line with the compromise proposed with the option 5 related to the operationalisation of the home country principle.

13.18 Member States could increase the level of coverage in their jurisdiction.

#### **13.2.6. Funding**

13.19 EIOPA advises that Member States should ensure that IGSs have in place adequate systems to determine their potential liabilities. The available financial means of IGSs should be proportionate to those liabilities.

13.20 EIOPA is of the view that IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. Further work is needed in relation to specific situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.

13.21 An appropriate target level for the funding of IGSs should be defined across Member States, taking into account the national market specificities. This target level should be accompanied by a suitable transition period to ensure that the target level can be achieved without major disruptions to the industry.

13.22 Moreover, EIOPA advises to consider the introduction of upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs to mitigate the risk of overburdening the industry.

#### **13.2.7. Disclosure**

13.23 EIOPA advises to establish requirements for the adequate, clear and comprehensive disclosure to consumers and policyholders about the existence of IGSs and the rules governing the entitlement to coverage under such schemes.

13.24 Disclosure requirements should apply to both insurers and national IGSs.

13.25 The disclosure requirements should be proportionate and not be used as a marketing tool.

13.26 The disclosure requirements should be in accordance with, but not limited to, the requirements set out in Article 8(3)(e) of the PRIIPs Regulation.

#### **13.2.8. Cross-border cooperation and coordination**

13.27 EIOPA advises to establish cross-border cooperation and coordination arrangements between national IGSs. This should also include arrangements for the exchange of information and dealing with compensation claims at national level on behalf of other IGSs.

13.28 In accordance with the principles set out in Article 21(1) of the EIOPA Regulation, EIOPA should have a leading role in ensuring the consistent and coherent functioning of these cross-border arrangements across the EU.

#### **13.2.9. Core principles and transitional phase**

13.29 The core principles reported in the table 13.5 of the background analysis are common features that the IGSs and alternative mechanisms are expected to comply with, regarding the proposed minimum set of harmonised features proposed in EIOPA's Opinion.

13.30 To ensure a certain degree of flexibility to the Member States, EIOPA advises that the complete implementation of the minimum set of harmonised features proposed in the Opinion should be preceded by a transitional phase that should be sufficient long in order to allow for a comprehensive compliance with the proposed harmonised features, while ensuring an adequate convergence pace, whereby:

- During this period, while the Member State transitions to a fully-fledged IGS or alternative mechanism that fulfils all the minimum set of harmonised features stated in EIOPA's Opinion, it is allowed to utilise other mechanisms. These mechanisms established within the Member State provide for an additional layer of policyholder protection despite not meeting all the harmonised features stated in EIOPA's Opinion;
- In the "Final phase" it is required to have a fully-fledged IGS or alternative mechanisms established within the Member State, that fulfil all the minimum set of harmonised criteria stated in EIOPA's Opinion.



13.31 At the beginning of the transitional phase, EIOPA should collect information from the supervisory authorities and evaluate the degree of compliance of the mechanisms with the harmonised features. EIOPA should assess the compliance of all the harmonised features at the end of the transitional phase and should report the result of this assessment to the Commission.

**13.2.10. Review clause**

13.1 EIOPA should conduct a review of the adequacy of the harmonised features. This should be done at least every five years after the harmonised framework becomes effective.

13.2

Reference table chapter 13		
Opinion	Analysis	Impact analysis
13.1	13.3.1	13.1
13.2.1	13.3.2.1	13.2
13.2.2	13.3.2.2	13.3
13.2.3	13.3.2.3	13.4
13.2.4	13.3.2.4	13.5
13.2.5	13.3.2.5	
13.2.6	13.3.2.6	13.6
13.2.7	13.3.2.7	
13.2.8	13.3.2.8	
13.2.9	13.3.2.9	
13.2.10	13.3.2.10	

**14. Other topics of the review**

**14.1. Other transitionals**

14.1 EIOPA advises not to change the transitional provision of Article 308b(15) of the Solvency II Directive, considering that the transitional is no longer meaningful because Member States will no longer make use of it by 31 December 2022.

14.2 Keeping the transitional unchanged will not resolve the divergence in quantitative requirements between the Solvency II Directive and the IORP II Directive. EIOPA advises that harmonised solvency rules should not be introduced for IORPs at this point in time. In order to enhance cross-sectoral consistency and to contribute to preventing regulatory arbitrage and promoting equal conditions of competition, EIOPA reiterates its opinion to strengthen the IORP II Directive with a common framework for risk assessment and transparency for IORPs.

**14.2. Fit and proper requirements**

In relation to ongoing assessment of AMSB members or persons that have other key functions

14.3 EIOPA proposes to amend the Solvency II Directive as follows:

- paragraph 2 of Article 30:

*'Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its system of governance, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Community level.*

- paragraph 2(a) of Article 36:

*'The system of governance, including the fit and proper requirements and the own-risk and solvency assessment, as set out in Chapter IV, Section 2;*

paragraph 3 of Article 42:

*'Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons referred to in paragraph 1 and 2 no longer fulfil the requirements referred to in paragraph 1 or have been replaced for that reason.*

- add to Article 42 a new paragraph:

*'Where a person who effectively runs the undertaking or has other key functions does not fulfil the requirements set out in paragraph 1, the supervisory authorities shall have the power to remove such person from that position.'*

In relation to ongoing assessment of qualifying shareholders

14.4 EIOPA proposes to amend the Solvency II Directive as follows:

- Amend paragraph 3 of Article 19:

*'The supervisory authorities shall require insurance and reinsurance undertakings, its qualifying shareholders and other natural or legal persons with which the insurance and reinsurance undertakings have close links to provide them with the information necessary to monitor compliance with the conditions (..)*

- Amend paragraph 1, second sentence of Article 24:

*'Those authorities shall refuse or in accordance with Article 62, shall withdraw the authorisation, if (....)*

- Amend Article 25's title and first sentence:

*Refusal or withdrawal of authorisation*

*Any decision to refuse or withdraw an authorisation shall state full reasons and shall be notified to the undertaking concerned.*

- Amend paragraph 1 of Article 62 first sentence as follows:

*'(....)where the influence exercised by the persons referred to in Article 57 is likely to operate against the sound and prudent management of an insurance or reinsurance undertaking, the supervisory authority of the*

*home Member State (...) is held, sought or increased (...). Such measures may consist, for example (...) or withdrawal of authorisation.'*

14.5 In case this Opinion is followed, Articles 22 to 27 of the CRD could be amended for consistency.

14.6 EIOPA proposes to amend the Solvency II Directive as follows:

- Add the following two sentences to paragraph 3 of Article 26:

*'Where several supervisory authorities need to be consulted, a joint assessment may be requested by any supervisory authorities concerned from the supervisory authority of the home Member State where the authorisation has been sought or originally granted.*

*The supervisory authority of the home Member State shall consider the conclusions of the joint assessment when taking its final decision.'*

- Add the following sentence to paragraph 3 of Article 26:

*'The supervisory authorities referred to in paragraph 1 may refer the matter to EIOPA. EIOPA may also act on its own initiative on the basis of objective reasons in accordance with the powers conferred on it by Regulation (EU) No 1094/2010.*

*In accordance with Article 16 of Regulation (EU) No 1094/2010, EIOPA may issue recommendation to the supervisory authority concerned. Where the supervisory authority concerned do not comply with that recommendation within two months, it shall state the reasons including the steps it has taken or intends to take in order to address the concerns of the other supervisory authorities involved.*

*EIOPA shall assess those steps and decide whether they are sufficient and appropriate. In case they are not deemed appropriate, EIOPA shall makes its recommendation public together with those reasons and proposed steps.'*

<b>Reference table chapter 14</b>		
<b>Opinion</b>	<b>Analysis</b>	<b>Impact analysis</b>
14.1	14.1	14.1
14.2	14.2	14.2

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