	Comments Template on Implementing Technical Standards On the procedures to be followed for the approval of the application of a matching adjustment	Deadline 30 June 2014
Name of Company:	Insurance Europe	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-14-007@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.** The numbering refers to Implementing Technical Standards on the procedures to be followed for the approval of the application of a matching adjustment.	
Reference	**Comment**	
General Comment	Insurance Europe welcomes the Implementing Technical Standards (ITSs) provided to undertakings in seeking supervisory approval of the application of a matching adjustment and the opportunity to comment on them. While administrative law and supervisory practice vary among Member States, it is important to set a common denominator that reflects administrative best practice and does not become too bureaucratic. The ITSs should be drafted in such a manner that they do not provide an undue burden for industry and for supervisors. Therefore, the **principle of proportionality** should be applicable to the documentation to provide in the applications and EIOPA should make it easier to prove that the requirements set in	

	the Directive are satisfied. **ITSs should be restricted to process. They should not introduce new requirements** that are not included in the Directive. Some evidence to be provided in the application introduces new requirements that are not necessary to assess the fulfilment of the requirements included in Article 77b and 77c of the Directive. Furthermore, we believe that generally speaking **the length foreseen for the approval period is too high** and should be shortened to eg three months, as is the case for Ancillary Own Funds (AOFs) and Special Purpose Vehicles (SPVs) approval processes. In addition to this, to further decrease the burden both on the supervisory authorities and the undertakings, we strongly advise that **"fast-track" processes** are put in place, meaning that when undertakings already have received the supervisory approval to apply the Matching Adjustment (MA) to a portfolio, it should be able to use again the application or refer to it when requesting approval for eg a new product which has similar characteristics. The period to get the approval should also be much shorter in such cases. Besides, **we deplore the lack of consistency across all the different ITSs on approval processes.** In line with the ITSs on the Internal model approval, we believe that where the supervisory authorities request further information, the decision for a suspension of the six months approval period should be left up to the insurance or reinsurance undertaking. Last but not least, we disagree with **the lack of approval if no response from supervisor is reached within the deadline**. Supervisors shall not remain silent and further clarity should be provided in this respect. Should this happen and when the timeline for approval has elapsed, the undertaking should be able to consider that the application of the MA has been approved. Indeed, there is no justification to leave an undertaking in a situation of uncertainty when the application is complete and receipt of submission has been received. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	

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Recital (1)		
Recital (2)		
Recital (3)		
Recital (4)		
Recital (5)		
Recital (6)		
Recital (7)		
Recital (8)		
Article 1 (1)		
Article 2 (1)	We do not clearly see the added value of this paragraph. Maybe it is better to specify that when insurance undertakings apply for a MA, a written application should be submitted and is subject to prior supervisory approval as mentioned in Article 77b (1) of the Directive.	
Article 2 (3)	*"..Any other relevant information"* Further clarification is needed on this wording, while avoiding to have documentation too burdensome for insurance undertakings.	
Article 2 (4)	We strongly believe that flexibility should be given to (re)insurers when applying for MA. Anytime the structure and characteristics of MA portfolios allow it, the option of submitting only one application for approval of the use of MA covering all MA portfolios should be given to (re)insurers at entity level. On the other hand, we agree that an application per portfolio/product should be possible when MA portfolios are clearly separated and/or significantly different from one another.	
Article 2 (5)		
Article 3 (1) a		
Article 3 (1) b	We believe that the requirement for line-by-line asset information on MA portfolios might be unduly onerous and burdensome both for supervisors and undertakings. It also has to be clarified that, since the approval process is foreseen to last six months, the assets eventually reported will have evolved during that period.	

	For this reason, we think that more flexibility should be given as long as undertakings are able to demonstrate that they comply with the requirements and therefore we suggest the following rewording: *"details of the assets within the assigned portfolio, which shall**, at the firm's discretion,** consist of line by line asset information **or** assets by asset class, credit quality and duration together with the procedure used to group such assets for the purposes of determining the fundamental spread referred to in paragraph 1(b) of Article 77c of Directive 2009/138/EC;"*	
Article 3 (1) c		
Article 4 (1) a	There is no sub-paragraph (j). It shall be replaced by (i).	
Article 4 (1) b	The reference to mortality risk can be replaced by the reference to Omnibus II, Article 77b(1)(f).	
Article 5 (1) a		
Article 5 (1) b		
Article 5 (1) c	This requirement should be amended. The draft DAs require that own funds should only be adjusted once the use of the MA is approved. Therefore, it does not make sense requiring adjustments on own funds where the MA has not been approved yet but only a simulation of the new solvency position once the MA gets approved. ITSs should not set out new requirements that are not included in the Directive or the DAs.	
Article 5 (1) d	This requirement should be amended. The draft delegated acts require that an adjustment is made to the calculation of the SCR once the use of the MA is approved. Therefore, it does not make sense requiring the adjustment to the SCR where the MA has not been approved yet but only a simulation of the new solvency position once the MA gets approved. ITSs should not set out new requirements that are not included in the Directive or the DAs.	
Article 6 (1) a		
Article 6 (1) b	This requirement should be deleted. The approval of the use of the MA is restricted to the satisfaction of the requirements included in articles 77b and 77c of Omnibus II.	

	The requirement in article 44(2) applies only once the use of the MA is approved. Omnibus II does not require the "use test" for the MA. ITSs should not extend this requirement.	
Article 6 (1) c	This requirement should be deleted. The approval of the use of the MA is restricted to the satisfaction of the requirements included in articles 77b and 77c of Omnibus II. The requirement in article 44(2a)(b) applies only once the use of the MA is approved. Omnibus II does not require the "use test" for the MA. ITSs should not extend this requirement.	
Article 6 (1) d	This requirement should be deleted. The approval of the use of the MA is restricted to the satisfaction of the requirements included in articles 77b and 77c of Omnibus II. Omnibus II does not require the "use test" for the MA. The requirement in Article 45(2a) applies only once the use of the MA is approved. ITSs should not extend this requirement. Until the approval of the use of the MA, ORSA based on regulatory requirements should be performed without including the MA. Our understanding is that ORSA related to 45(1)(b) should only be based on measures approved by the supervisory authority without assuming the use is already granted.	
Article 6 (1) e		
Article 6 (1) f	The requirement about other relevant applications is onerous and we do not see the rationale to ask for such details. We do not see how the fact to apply eg for the approval of an SPV is supposed to influence the supervisory decision to approve or not the application of a MA. We believe instead that supervisors should be keeping track in any case of all the applications done by an undertaking –and are probably already doing it-. Therefore there is no need for this additional requirement made to undertakings. Should this still be applied, we understand this request as providing a simple note appended to the application at hand and destined to let the authorities know-via a reference number for instance- that there are other applications for approval for which a response is still pending. At least, clarification is needed as to the fact that the requested information submitted already earlier for the sake of any one application currently being processed must not be submitted again alongside of the present application.	
Article 7 (1)	We believe that all the information listed in Articles 2 to 6 already provides the	

	appropriate level of detail needed for the supervisory assessment and is already and costly for undertakings. Therefore we would re-insist on the need to apply the principle of proportionality and to limit additional requests by supervisory authorities, especially since leaving this freedom could lead to uneven playing field among Member States and undertakings. In case further evidence are requested by supervisors the rationale behind this request needs to be communicated to undertakings.	
Article 7 (2)	Within 30 days of the receipt of an application, the supervisory authority shall determine whether the application is complete and communicate this in writing. Where an application is determined to be incomplete, the supervisory authority shall specify in the same written communication what additional information and evidence is required to complete the application.	
Article 7 (3)	The request for adjustments should be limited to bringing the application to compliance with the regulations.	
Article 7 (4)	Six months appear to be an excessive period for the approval of an application to use the MA when compared to the approval period for an entire internal model which is of the same length. This suggests the assumption that both workloads are similar which is hard to defend when contrasted against the scope of both applications. MA approval should take a significantly shorter period, such as three months, as is done for AOFs and SPVs. Furthermore, if an undertaking has already received approval for a MA portfolio and a new similar product is created then it should get the new approval needed within a very short time frame and with less evidence to provide (eg by being able to refer to the previous application). Additionally, any adjustments requested from the supervisory authority should be in line with the Directive and should not lead to a longer approval period. Indeed, given all the aspects and criteria covered in an application, we believe that even if some parts were missing the supervisory authority could already start reviewing the application while the undertaking does its best to provide the additional information in a timely manner. Therefore the period should not be interrupted, except if too much information were missing. We would however assume that the undertaking's administrative, management or supervisory body would only forward applications they consider to be complete.	

Article 7 (5)	In consistency with other ITS approval processes, any further evidence for the assessment of the application seems to give too much leeway in requesting documentation and creates a risk to ensure convergence and effectiveness of application of the regulation. The timeline around the approval and any deadline should be communicated to the undertaking for sake of clarity. Should additional information be requested by the supervisor, the deadline should be discussed and agreed by the undertaking to account for the amount of work depending on the nature of the additional information being requested.	
Article 7 (6)	In case of failure of the supervisory authority to reach a conclusion within the six months, the supervisor should communicate as soon as possible an update to the undertaking regarding the evolution of the process. The periods defined for the supervisory approval processes are already long. Therefore, when the timeline for approvals has elapsed, the company should be allowed to consider the application of the MA as approved. Indeed, there is no justification to leave an undertaking in a situation of uncertainty when the application is complete and receipt has been received. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	
Article 7 (7)		
Article 7 (8)		
Article 7 (9)	There should be a simplified procedure when an undertaking informs the supervisor for a change in its application process and this should not be considered as a completely new application. The reference to where the time period is set should be corrected to paragraph 4 instead of 3.	
Article 7 (10)		
Article 8 (1)		
Article 8 (2)	This paragraph should be deleted. The proposed wording appears to go beyond Omnibus II and the criteria set out there. Approval of the use of the MA is restricted to the requirements included in Articles 77b and 77c of the Directive. It is against	

	maximum harmonization that each supervisory authority could include additional requirements. This is not foreseen in the Directive. Furthermore it risks giving rise to uneven playing field among Member States and would result in undue uncertainty for undertakings.	
Article 8 (3)		
Article 8 (4)		
Article 8 (5)		
Article 8 (6)		
Article 9 (1) a	This paragraph is not in line with the Framework Directive, which makes it up to the undertaking to inform immediately the supervisory authority when it realises that it is no longer able to comply with the requirements set in Articles 77b and 77c of the Directive. Therefore, this should be amended in order to align with the Directive, and to avoid the risk that undertakings are penalised, should supervisors discover the issue in first place. Should this not be done, the basis for supervisors to consider that the undertaking does not comply anymore with the requirements should be made transparent.	
Article 9 (1) b	As stated above, we disagree with this paragraph which is not in line with the Directive. Therefore, it should be amended. Otherwise, we believe that at least reference should be made to supervisory dialogue with the undertaking, in order to agree on the necessary measures to restore compliance, thus making easier point c). This would help to avoid that undertakings end up having huge losses in case the MA approval is revoked.	
Article 9 (1) c		
Article 9 (2)		
Article 10 (1)		
Annex I: Problem definition		
Annex I: Baseline		
Annex I: Section 3		
Annex I: Section 4	We are concerned that the regulations do not permit approval to be granted for prospective portfolios. Given the delay between application for MA approval and	

	granting of this approval this provides serious issues both for firms with existing portfolios and for new entrants. For existing firms this brings forward the date at which they need to be matching adjustment compliant -an unhelpful step in an already very tight implementation timetable-. There are also clearly situations (such as transfers of business between firms) where it is appropriate for permission to be granted (to the firm receiving the business) prospectively. To prevent this could lead to material harm to policyholders in some circumstances. We are also concerned about the competitive implications of this requirement. For a new entrant wishing to compete in a business line where competitors are already using the MA this requirement means that they have to operate in this market without use of the MA for up to six months. This will make it much more difficult to enter these markets and compete effectively against incumbents. Given the significance of these issues it would be helpful for EIOPA to share the nature of the legal feedback received and explore whether an alternative interpretation might also be consistent with the directive.	
Annex I: Section 5	Policy Issue 1: No standardised application template. This standard is sufficient for the check that all the necessary information is given. It might be required from the undertakings to point in the application which part satisfies which requirement. Policy Issue 5 Option A, Costs: Is it true that the failure of the supervisor not to reach the decision in the given timeframe has no costs for the supervisors. Is there no consequence for the supervisor if they don't follow the given timeframe elsewhere in the legislations? There's no assessment of the costs for the undertakings. At least for them it might have costs. If the undertaking has made its plans assuming the timeframes will be respected the failure might have some operational additional costs to fix the plans eg the capitalisation plans and unexpected capitalisation costs.	
Annex I: Section 6	We agree with the preferred policy options that are suggested here and would like to emphasise in particular for option 8, that the result should not be just a 'pass/fail'	

	decision but it should allow supervisors to set out adjustments they would wish to see to enable a pass.	