

**Comments Template on EIOPA-CP-19-006
Consultation paper on the Opinion on the 2020 Review of Solvency II**

Stakeholder name:	<i>Gesamtverband der Deutschen Versicherungswirtschaft e. V. (GDV, German Insurance Association)</i>	
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Questions to stakeholders	Response	
Q2.1	<p>Under the current Solvency II legislation the three criteria</p> <ul style="list-style-type: none"> • depth, liquidity and transparency (DLT) of both swap markets and bond markets, • matching criterion of liabilities with bonds cash flows and • residual volume criterion for bonds <p>have to be fulfilled cumulatively when setting the last liquid point (LLP) where the extrapolation of the risk-free interest rate term structure starts. For the euro, under market conditions similar to those of 2014, a LLP of 20 years is explicitly given by the European legislator. In order to ensure that the rules applicable to the LLP in the risk-free interest rate term structure ensure its stability in different market situations, including market crisis situations and periods of increasing interest rates, EIOPA has been asked to provide evidence on these criteria to determine the LLP.</p> <p>However, in the consultation we see primarily a strong tendency to increase the LLP for the euro beyond 20 years. For this purpose, the actually decisive criteria – that are to be examined according to the Call for Advice – would then be adjusted in a results-driven manner. In particular, the bond criterion is called into question. This seems to be based on the view that, regardless whether bond markets are sufficiently deep and liquid or not, a reliable valuation of technical provisions purely on the basis of market data was possible beyond 20 years, too. In fact, this means to rely entirely on derivative markets.</p> <p>We strongly doubt that this view is appropriate. Instead, for insurance business, the bonds market is crucial. Because this market is not sufficiently deep and liquid beyond the maturity of 20 years for the euro, the proven LLP must not be increased.</p> <p>In the following, our answer shows that</p> <ul style="list-style-type: none"> • the bond criterion needs to be maintained, • the established criteria rule out an increase of the LLP for the euro but rather hint towards a reduction (thus, among the presented options, option 1 is the best one by far), • in general, an increase in the LLP leads to higher volatility in solvency ratios, 	

- the presented additional safeguards (part of options 2, 3 and 5) would be excessive.

The bond criterion needs to be maintained

Hedging insurance obligations with swaps is neither sensible nor possible on a large scale. Ultimately, the bond market is decisive for hedging. Therefore, for determining the LLP, a mere reference to the swap market is not appropriate, but could have very detrimental effects. In any case, the bond market must also be considered.

Insurance liabilities are pre-dominantly covered by bonds, so that the matching criterion (that refers to bond volumes being sufficient to cover liability cash flows) remains an important theoretical and practical consideration for setting the LLP. The assertions made by EIOPA that insurers could and should use derivatives (swaps) to cover liability cash flows to a large extent remains a theoretical consideration, which in practice seems not even desirable given that the interconnectedness with the banking sector and liquidity risk (obligation to provide collateral immediately) would substantially increase. This would give rise to serious macro-prudential concerns that EIOPA explains (and requests additional intervention tools for) in Chapter 12 on macro-prudential policy. In addition, in some Member States insurance law prevents a greater use of derivative instruments through the ineligibility of corresponding collateral amounts for covering insurance liabilities (e.g. in Germany).

The current criteria, which relate to matching liabilities, should be kept. Should the bond criterion be removed, multiple issues would arise, some of which are also related to the three issues identified by EIOPA (underestimation of technical provisions, risk management incentives, stability of the solvency position and impact on financial stability):

- this decision would increase the volatility of technical provisions and therefore the procyclicality of life insurance business (relation to issue III);
- the swap market is dominated by a relatively small number of players, increasing possibilities for market manipulation (also relation to issue III);
- for maturities above 20 years, the forward rates deduced from the interest rate swap curve differ strongly from those calculated using bond yields (relation to issue I).

A higher LLP could possibly force insurers to try to hedge their interest rate exposure with swaps instead of bonds. This would imply serious disadvantages and risks:

- Swap market neither sufficient nor reliable: The current net volume of the swap market is far from sufficient to cover the European insurance obligations – not in total, and certainly not for the longer maturities. Moreover, the reliability of the swap supply which depends on only a few providers is questionable. Especially in a crisis, it could break away and lead to an open interest rate risk position for insurers that cannot be closed at this point in time.
- Systemic risk for financial stability: Replacing a significant part of insurers’ bond investments with receiver swaps means that banks acting as counterparty will have to enter into huge amounts of payer swaps. However, if the hedging needs of insurance companies are not finally matched by corresponding bonds or similar counter positions, there are inevitably large open positions somewhere in the financial system. In the event of a crisis, a chain reaction on the derivatives market could then occur. For regulatory reasons, banks can only enter into these

open positions to a very limited extent. Even if banks were able to also hedge most of their exposure, this would increase the interdependency between insurers and banks, thus creating an additional systemic risk. Most probably, only hedge funds will ultimately be available as counterparties. We are strongly convinced that the legislator does not want to make the stability of the European insurance market dependent on derivative markets and hedge funds instead of the sovereign Member States (as major bond issuers). In any case, the mutual dependence of insurance companies, banks and hedge funds would increase.

- **Increased risk for insurers:** If insurers hedge their long-term liabilities with long-term swaps based on short-term instruments (floating leg), they must in turn hold additional (money market) instruments with short maturities that provide them with an (unsecured) interbank interest rate. This also increases the systemic dependence on the banking sector. Furthermore, the small number of players in the swap market increases concentration risk, because the swap market offers less opportunities for spreading risks over numerous issuers, and the central clearing mechanism which is now used for most trades concentrates risk even further.
- **Reduced opportunity for long-term and sustainable investments:** The investments in short-term instruments needed to match the floating leg of the swaps effectively crowd out insurers' long-term investments. As a result, insurers can much less contribute to the financing of the real European economy and of Member States' national budgets. In addition, it becomes much more difficult to generate excess returns for the benefits of their policy holders.
- **Incompatibility with national law:** As the regulatory guarantee and profit sharing requirements for life insurance with profit business in Germany are linked to investment returns under local GAAP rules, the choice of investment is crucial. Receiver swaps are less well suited than bonds for this because they need to be depreciated directly when their market value decreases while the technical interest rate for valuating insurance liabilities changes only slowly over time. This leads to increased volatility of statutory profits on which the German mandatory policyholder participation is based. A high volatility of these profits often leads to policyholder+C8 participation levels which might be not sustainable and thus erode the safety of the guarantees for policyholders with long-term contracts. Moreover, for many undertakings, hedging by means of derivatives is in any case only possible to a limited extent because collateral – which is particularly high in the case of longer maturities – must be provided which is no longer eligible for the security funds ("Sicherungsvermögen") prescribed by national law. Thus, most liability cash flows must be matched with bonds. Large scale hedging with derivatives is not feasible at least in Germany.

The established criteria rule out an increase of the LLP but rather hint towards a reduction

While the swap market, considered in isolation, seems to be DLT for particular maturities beyond 15 years (at 20, 25, 30, 40 and 50 years), the bond market delivers different results. In EIOPA's own analysis the matching criterion limits the LLP to 15 or 23 years (with or without unit/index linked liabilities respectively, 2018 data) and the residual volume criterion limits the LLP to 22 years. In summary there is no evidence that the LLP of 20 years for the euro should be increased.

Thus, among the presented options, option 1 (no change) is the best one of by far. It is in line with bond market liquidity, avoids artificial volatility and preserves model stability.

What is missing is an analysis of a lower LLP. In our view, keeping the framework unchanged would mean that the current LLP of 20 years would have to be reduced to 15 years:

- Fair analysis for the individual maturities yields an LLP of 15 years: EIOPA's analysis of the matching criterion implicitly assumes that insurers would be the only demanders of bonds. If the calculation is adjusted at least for the volume which is permanently withdrawn from the market by the ECB purchases, the variant without UL/IL also results in an LLP of 15 years (instead of 23 years).
- Decreased liquidity since the European legislator's decision: EIOPA has not carried out a DLT analysis of the Euro-denominated bond market. An own analysis shows that multiple indicators (bid-ask spreads, trading volumes, trading book inventories) point to a stable or even decreased bond market liquidity compared to the reference year 2014 when the LLP was – after careful consideration – set to 20 years. The ratio of bonds available on the market (excluding the volume permanently withdrawn by the ECB) to technical provisions in Europe has even fallen by approximately 20% since the reference year 2014. Covering obligations with bonds has therefore become more difficult, not easier, since the LLP was established at 20 years. An increase in the LLP is therefore not justifiable. Instead, at most a reduction would have to be considered.
- Confirmation by the 6 % criterion: Applying the residual volume criterion to our data also points to a lower LLP. The proportion of investment-grade bonds with maturities of 20 years or higher has fallen from 6.4% to 5.2% between 2014 and 2019, leading to an LLP below 20 years. Further restrictions on credit quality (only taking into account either AAA- and AA-rated bonds or only AAA-rated bonds) show even larger shifts. Again, this is mostly due to the ECB's asset purchase programme.
- Moreover, EIOPA's DLT analysis of swap market has several flaws: The statement that the swap market is DLT for several maturities above the current LLP is only based on 2016 and 2017 data, whereas the Call for Advice stated that this evidence needs to be provided "at the very least for 2016–2018". The chosen threshold (50 M€ daily volume) also seems too low.

In general, an increase in the LLP leads to higher volatility in solvency ratios

- Higher volatility in contradiction to a desirable long-term orientation: In general, a later start of extrapolation reduces the stabilising effect of extrapolation and leads to a greater transfer of short-term interest rate volatility into the valuation of long-term insurance liabilities. Fluctuations in the solvency ratios increase and burden the insurance business model, which is based on continuity and a long-term perspective.
- Increased uncertainty: Even if the swap market in itself is considered sufficiently DLT, there are considerably more contradictions between different market information for longer maturities, which could lead to completely different yield curves. The reliability and robustness of the results decreases.
- Procyclicality: Increased hedging of longer maturities against fluctuations in the (swap) market, which is enforced by the regulator, can lead to procyclical investment behaviour.
- Increasing the side-effects of ultra-loose monetary policy: The unconventional measures taken by the ECB have – according to a statement of its own chief economist – lowered the level and slope of the yield curve into a range that would otherwise not have been possible. This market distortion affects insurers' solvency ratios all the more, the later the extrapolation begins. Earlier extrapolation reduces this collateral damage while increasing the LLP would increase pro-cyclical impacts.
- Adverse effects on risk management: Lastly, stability and legal certainty in the construction of the risk free interest rate term structure is needed to facilitate appropriate risk management.

Furthermore, EIOPA's analysis seems to be based on the assumption that a long-term position which is matched with swaps is a position

		<p>with low risk. This is a quite narrow view, neglects spread risk, statutory reporting and tax implications. An LLP of more than 20 years would be inappropriate and may lead to wrong investment decisions.</p> <p>Summarizing, increasing the LLP is in no way justified and would only increase volatility.</p> <p>Regarding option 5 we appreciate that the determination of the FSP would remain based on bond data. However, we see no need for a change in the extrapolation method. If option 5 should be investigated further, we consider it necessary to increase the extrapolation parameter a.</p> <p>The presented additional safeguards would be excessive</p> <p>The additional safeguards that are foreseen in options 2, 3 and 5 which are based on a purely fictitious LLP of 50 years (sensitivity analyses that should be disclosed in SFCR as well as a right for supervisors to disallow dividend payments/other capital distributions if the SCR was breached under this fictitious assumption) would effectively introduce a 50 year LLP as the default. Undertakings would then have to base their risk management methods and decisions on this scenario. This would be excessive and completely inappropriate.</p> <p>The suggested addition of a supervisory intervention point for NSA, who should receive the power to deny dividend payments and other capital measures, where a simultaneous non-application of the VA and the transitional measures on technical provisions in combination with a LLP of 50 years and a reduction of UFR by 100 bps results in a non-compliance with the SCR, is undermining the role of pillar 1 as the measurement tool of the current solvency position. As long as pillar 1 indicates that the SCR is covered, the undertaking is considered solvent under the existing Solvency II framework and should be free to adjust its capital. There is no need for the introduction of further constraints that compromise the clear Solvency measurement objective of pillar 1. Furthermore it introduces effectively a 50 year LLP combined with a 100bp lower UFR as the Solvency measurement parameters that are the binding constraint for risk management. Risk management cannot assume that supervisors can in doubt be "convinced" by any demonstrations by the undertaking that capital measures "do not put at risk the protection of policyholders...", given that this is a subjective assessment for which EIOPA has not outlined any further criteria.</p>
	Q2.2	The current MV-Freeze approach should be maintained.
	Q2.3	<p><u>Deficiency 1: Over- and undershooting of the VA</u></p> <p>With respect to issue 1 and 2, only possible overshooting is analysed. In our view, in particular undershooting of the VA is an important issue. Excessive deductions in the calculation result in a VA that neither sufficiently mitigates spread exaggerations nor accounts for the illiquidity premium that can be safely earned because of illiquid liability cash flows.</p> <p>Over- and undershooting has different drivers: (a) Excessive deductions in the calculation of the VA such as the application ratio of 65%, (b) differences between the spread / interest rate sensitivity of assets and liabilities e.g. due to duration or size, (c) mismatches between companies' own asset portfolios and the reference portfolio resulting in a deviation between the individual asset spread and the reference</p>

		<p>spread.</p> <p>We strongly believe that a 100% general application ratio would be appropriate and consistent with the fact that identified risks are addressed separately in specific adjustments before the general application ratio is applied. This would eliminate double counting of risks.</p> <p>We disagree with the proposal of a risk adjustment that is proportional to the market credit spread, which does not reflect actual default experience – event through the financial crisis. Asset spreads should be corrected by long-term expected defaults and the risk of unexpected defaults should be addressed within capital requirements.</p> <p>This should mitigate under- and overshooting, and reflect the economic impact resulting from the asset-liability profile well enough to yield meaningful supervisory results for valuation and capital requirements (in particular a dynamic VA for internal models).</p> <p><u>Deficiency 2: No consideration of the illiquidity characteristics of liabilities in current VA</u> (Life) insurers' liability cash flows are very stable, well predictable and spread over a long period of time. This "illiquid" characteristic of the liabilities – in the following briefly called "predictability" – allows to invest in illiquid assets and to earn a premium above the risk-free interest rate which should be reflected in the VA.</p> <p>The current VA does not account for this additional return because there are too many / too large deductions in the calculation. Hence, the issue is not that undertakings with hardly "illiquid" cash flows may benefit too much from the VA (presented as deficiency 2) but instead that undertakings with clearly predictable cash flows do not benefit to a sufficient extent (undershooting). Already the provisions covering the existing VA require companies to prepare a liquidity plan that provides evidence that the predictability of their liabilities allows the VA to be earned. Any portfolios for which this can be demonstrated should receive the full VA benefit, without further deductions based on an application factor relating to illiquidity.</p> <p><u>Deficiency 4: Misestimation of the risk correction of VA</u> A risk correction is only required to reflect the economic risks resulting from the long-term business model, i.e. be based on economic risks resulting from holding assets that are not subject to forced selling. Thus the risk correction should account for long-term expected defaults, while unexpected defaults should be covered within capital requirements. In particular a risk adjustment that is proportional to the market credit spread is not reflecting long-term defaults, in particular not in times of financial crisis, with substantial market exuberance, as the financial crisis has shown.</p> <p><u>Deficiency 5: VA almost always positive</u> If credit spreads in the market are negative, this should be recognized in the calculation of the VA to reflect the economics of the long-term insurance business model. However, in the scenario where spreads are low and depressed, as described in paragraph 2.294 any "search for yield" behavior should be assessed whether there are heightened risks under the insurance business model: The fundamental credit quality of assets is already considered through the risk correction (for default losses), while other risks such as a sudden "increase in market spreads" (and corresponding price drops) are not relevant where assets need not be sold, and where the material risk is default, which is</p>
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		<p>then already reflected in risk correction and capital requirements (unexpected default).</p> <p><u>Deficiency 7: interest rates with VA are not market consistent</u> Insurance liability valuation cannot be fully market-consistent because there is no deep, liquid and transparent market in such liabilities. As such the concern and argument that market-consistent valuation is required to avoid arbitrage opportunities is not relevant, because such arbitrage presupposes an active market – which is non-existent. Therefore insurance liability valuation should reflect as closely as possible the economic realities of the insurance business model in a going concern perspective, i.e. reflect that with stable long-term liabilities, there is no exposure to forced asset sales. Therefore considerations around valuation and risk capital can focus on expected defaults (risk correction in valuation) and unexpected default (capital). Other components of the asset market credit spread are much less relevant for liability valuation / capital requirements.</p>
	Q2.4	<p>We agree that cliff effects of the country-specific VA are an issue.</p> <p>However, we do not understand why the application of the country-specific VA depends on the undertaking's legal domicile in the country in question and not on the composition of its liability structure and capital investments (i.e. the undertaking's actual exposure to bonds from that country) which are decisive for its vulnerability.</p> <p>A key aspect of the VA is that it contributes to a deepening of the capital markets union which also needs to be considered in this context (see our comment to paragraph 2.3 [?]).</p>
	Q2.5	<p>A VA approach that includes rating dependent risk corrections in the VA (based on long-term default expectations) as well as rating dependent credit risk requirements to reflect the risk of unexpected defaults (over the credit cycle) complemented by a test/report that provides evidence that assets are not subject to forced selling should sufficiently prevent wrong investment incentives.</p>
	Q2.6	<p>Liquidity buffers should not be used directly in the VA calculation. However, a sufficient liquidity buffer could qualify undertakings for a full recognition of the VA without any application ratios.</p>
	Q2.7	<p>The volatility adjustment is a complex matter that can have a high impact on the capital requirements. It is linked to the discussion whether long-term investment brings more stability into expected yields. We think that spread risk is overstated in the current approach, that in particular the 65% general application ratio should be deleted, the VA should be fully applied on all maturities and further approaches should be discussed on their pros and cons.</p> <p>The risk correction should not be changed to become proportional to the credit spread, since this is not reflecting the long-term expected default expectations, that are the relevant benchmark under a long-term insurance business model that is not subject to forced selling. Failing to acknowledge that long-term defaults are not proportional to the point-in-time credit spread will result in unnecessary pro-cyclicality of the VA, i.e. in times of crisis the VA becomes less effective driving companies into unwarranted asset sales, thereby contributing to further exacerbating the crisis.</p> <p>The general application ratio should be increased to 100% because specific risks resulting from duration differences between assets and liabilities (including the level of fixed-income instruments held), as well as liquidity considerations are reflected in the application ratios</p>

		under Options 4 and 5. Failing to do so results in a double-count of risks.
	Q2.8	The general application ratio should be set to 100% (option 2). Retaining a general application ratio of 65% with additional further downwards adjustments resulting from considerations of fixed income allocation, duration mismatch and "illiquidity" features results in material double counting of corrections. The 65% as the existing overall impact estimate of such effects should rather be replaced by the more detailed considerations reflecting a better quantification of such effects and not applied in addition to the unspecific 65% hair cut which was set as the result of a political process rather than an actuarial derivation.
	Q2.9	<p>Yes. The VA applied in the spread risk scenario has to be consistent with this scenario (dynamic VA). This holds for both internal models and the standard formula. Moreover, the introduction of a dynamic VA in the standard formula would - at least partly - balance oversubscription which in particular occurs in the standard formula in weak markets.</p> <p>For all versions of a VA, its concrete value depends on the level of spreads. Therefore, the VA used for the balance sheet valuations which is calculated with spread values currently observed at the market does not fit to the different spread values assumed in the spread risk scenario.</p> <p>In order to overcome this defect, the VA should be applied dynamically in both internal models and the standard formula. Dynamical application ("dynamic VA") means to calculate a special value of the VA for the spread risk scenario. It should be calculated with the same method as for the balance sheet, and for the standard formula it should be calculated and published by EIOPA. The only difference to the VA for the balance sheet is that first the spread risk factors are applied to the assets of the reference portfolio before then the resulting spreads of these assets are used as input for the VA calculation.</p> <p>Moreover, the dynamic VA is a possibility to mitigate the effect of the massive overestimation of spread risk for long term investors (such as life insurance companies).</p>
	Q2.10	<p>No, we disagree to consider the correlation. As outlined in our comment on paragraph 2.946, we believe that the scope of the strategic equity risk charge and its design primarily depend on the participating undertaking's will to keep the participation. Hence, should there really be any issues with regard to the application of the strategic equity risk charge, these should be solved in the determination of the scope of application by requiring more actions with respect to strategic participations (a potential indicator: implementation of system of governance) than for non-strategic participations.</p> <p>Furthermore, a determination of correlations is practically not feasible, because by definition of strategic equity investments there is not enough market data to evaluate such a correlation.</p>
	Q2.11	-
	Q2.12	-
	Q3.1	There are no convincing arguments why a net EPIFP should – for supervisory purposes – be split into the group of loss making contracts and the group of profit making contracts (per line of business) with the impact of reinsurance shown separately. Such information does not change its nature as a component of the reconciliation reserve and does not provide meaningful information on realizable cash values, as

transactions are typically not mirroring regulatory contract groupings such as Solvency II defined homogeneous risk groups or Solvency II defined lines of business. The classification for the risk groups depends on criteria like market and underwriting risks.

Both the split into loss making and profit making as well as the separation of impact of reinsurance would only be an additional burden without any gain in more insight. Policies within one homogenous risk group can differ by guarantee level, but as well by different contractual and policyholder characteristics resulting in different levels of profitability. In more detail, EPIFP is very much dependent not only on the risk profile of policies but also the current state (capital markets, assets held, assumptions for profit sharing etc.). To illustrate this consider policies with guaranteed interest rates. For the valuation of the technical provisions at December 31st, 2018 EPIFP may have been positive for all policies in one homogeneous risk group. As of September 30th, 2019 the same homogeneous risk group may contain policies with positive or negative EPIFP depending on the remaining durations of the policies. Especially for policies with collective profit sharing mechanism that require stochastic monte carlo simulations for the valuation of the technical provisions it is virtually impossible to precisely derive homogeneous risk groups that are homogeneous with respect to the sign of EPIFP.

For Non-Life business the identification of profit/loss making contracts is often too granular to assess on contract by contract level, such information on profitability might not even be available. It is not possible to distinguish between profitable policies and loss-making policies on a contract level. For a given policy it is not possible to tell in advance whether it will make a profit (i.e. there will be no claim) or a loss (i.e. there will be claims). This means that homogeneous risk groups cannot be more granular than product portfolio. In cases of policies issued to larger groups of risks (i.e. motor fleet) the homogeneous risk groups are already created taking into account the available information. Further, it is unclear how exactly a separation should be made: Assuming a division with respect to the expected amount of loss, it may be necessary to review it annually: it is typical that individual contract generations change their profitability over time. As a result, the division into homogeneous risk groups is not stable. Against this background, it is unclear why profitability should have any significant impact on the risk of the contract.

Additionally, when calculating the impact of reinsurance on EPIFP, the homogenous risk groups have to be compatible with the reinsurance contracts. For example for a stop-loss-reinsurance contract in a certain LoB the impact of reinsurance on EPIFP can only be determined if all contracts of this LoB are regarded when calculating gross EPIFP. If the LoB would be split into parts for calculating gross EPIFP, it is not possible to determine the impact of reinsurance. So when determining the homogeneous risk groups for calculating (gross) EPIFP, the structure of the reinsurance contracts has to be considered. Further split into loss making and profit making as well as the separation of impact of reinsurance would be an additional burden beyond proportionality principle.

One idea could be to distinguish between profit-making policies and loss-making policies if the policies differ in respect to lapse rates (expected lapses or risk of changes of lapse rates) and the lapse rates are materially large and possibly fluctuating from one year to another. If they differ then there is a risk that only or largely profit-making policies are terminated. So mixing the two groups up when calculating gross EPIFP and offset losses with profits within the mixed up group of policies can be a problem. Only in this case it could be necessary to distinguish between profit-making and loss-making policies. However, if the lapse rates do not differ between profit- and loss-making contracts or the lapse rates are small so that it does not materially influence EPIFP-calculation than there is no need to distinguish between the two groups. This should generally be the case for all undertakings. In particular for one-year contracts in private consumer nonlife-

		<p>market. Due to the definition of contract boundaries, the risk after this one-year-runtime is not considered when calculating technical provisions and thus not in calculating EPIFP. For calculating technical provisions and EPIFP only lapses before the end of the one-year-runtime are relevant. But these lapses are only possible under very special and restrictive circumstances like the occurrence of a claim. This possibility to terminate the contract before the end of the one-year-runtime is rarely used, so these lapse rates are very small. Thus they have only a small impact on technical provisions and EPIFP. Furthermore there is no difference in these lapse-rates between policies that are profit-making or loss-making (when estimated in advance) as these two groups do not differ in for example the occurrence of claims in which case there is an option to terminate the contract before the end of the one-year-runtime. Distinguishing between profit-making and loss-making policies is therefore not necessary.</p> <p>In nonlife LoBs we think that it is sufficient to calculate EPIFP without further differentiation especially in respect to profit-making and loss-making.</p> <p>With respect to the IFRS 17 reference made in section 3.1.3.1 it is also worth to clarify that a definition of homogenous risk groups allowing for the sign of EPIFP is not consistent or even similar to the onerous contract definition in IFRS 17.</p>
	Q3.2	No, because we believe new undertakings will have addressed the expected future expenses in their business cases.
	Q3.3	It is in line with the observations of our members, that the risk margin can be more sensitive to interest rate changes for long term business – both due to discounting itself but also due to the projection of the unhedgeable risk (higher base of risk capital requirements from longevity, lapse, etc.)
	Q3.4	The recognition of the volatility adjustment (VA) in the relevant risk free interest rate term structure used for the discounting of the future SCRs could increase consistency between the undertaking and the reference undertaking. However, the application of the VA in the current reference undertaking leads to the existence of a spread risk in the calculation of the future SCRs. We agree with EIOPA that this measure could lead to an increase in the sensitivity of the projected SCRs to changes in interest rates. Therefore, taking into account the pros and cons detailed by EIOPA, we agree not to consider VA/MA in the calculation of the risk margin.
	Q3.5	<p>We support the analysis of the CRO-CFO Forum that shows the limitations in the current Solvency II CoC rate. In particular, the empirical influence of market risks on the empirical beta in undertakings should be taken into account, for instance in turbulent times for financial markets (debt crisis, 2018).</p> <p>Additionally to the inconsistencies provided by the CRO-CFO Forum, we would like to add another aspect related to the CoC rate calculation. Our analysis suggests that the current CoC rate is based on a strong connection (“beta”) between insurers’ share prices and the general equity market. This issue has not been addressed by EIOPA in the current consultation.</p> <p>The reason for this is a massive overweighting of a few big companies which belong to major equity indices. Because of the increasing dissemination of passive investments which simply replicate an index and, in addition, the close following of many actively managed funds, index members automatically exhibit some increased co-movement with the reference index. However, this artificial effect tells nothing about the underlying risk of these companies and their business. Accordingly, current data proves that smaller companies exhibit a significantly lower co-movement with the index. Thus, if the few big companies are not over-weighted, the connection between listed</p>

		<p>insurers and the general equity market is much lower. This results in a substantially lower CoC rate of about 4%. Besides, it should be noted that this value is probably still conservative as listed insurers are not a representative sample of the European insurance market.</p> <p>Besides that, we think that for the risk margin on group level, diversification effects should be recognised. The current Solvency II framework allows insurers to restructure their organisations in order to enable appropriate diversification and overcome artificial constraints. However, the current risk margin approach does not give sufficient allowance for diversification between risks within an insurance company. Changes in this regard should be taken to amend this fact. The risk margin should include diversification effects between the Lines of Business (LoBs) and within the Group.</p>
	Q3.6	A unique definition of homogenous risk groups is not necessary, the Delegated Acts are sufficient.
	Q3.7	No, there are other criteria to consider for the use of model points than the homogenous risk groups. So it is possible that there are some model points within one homogenous group.
	Q3.8	In general, the homogenous risk groups are the same for the best estimate valuation and the EPIFP calculation.
	Q3.9	-
	Q4.1	The EPIFP is available to absorb losses with the same mechanisms that any other asset is available to absorb losses: If the asset suffers a loss in its own value it is as such directly absorbing this loss by itself. To cover operational losses (e.g. in the underwriting result) any asset must be sold to compensate for the loss in cash, similarly the EPIFP can be made available to generate cash, through transactions such as sale of legal entities, portfolio transfers, reinsurance arrangements and securitization. The timeframe for the completion of these transactions in 6 to 9 months is realistic. As such there is no indication for EPIFP not belonging to Tier 1 capital. Furthermore not recognising EPIFP as Tier 1 capital will make it more difficult for insurers to offer long-term products. The same is true in a group context: There is no indication why EPIFP should represent an own fund item of lower quality than any other asset.
	Q5.1	In our view, an appropriate source is an MSCI / INREV report published 2017. In the analysis, MSCI / INREV calculate an appropriate risk factor based on data for the European real estate market: https://www.msci.com/documents/10199/239004/MSCI+Real+Estate+Solvency+II+2017+Update+Report/136d5292-c850-4485-b187-94b1218bc626
	Q5.2	-
	Q5.3	<p>No, most correlations need not to be amended and should be kept as they are. Concerning lapse risk, there is a huge proportion of lapse risk arising from biometric products without investment component. There is no indication that this correlates with interest rate risk.</p> <p>However, there are two exceptions:</p> <ul style="list-style-type: none"> • The correlation between interest rate down risk and spread risk should be reduced. The presented evidence does not justify a two-sided correlation. • The dependency of the correlation parameter on the interest rates (Article 164 (3) DR) can lead to cliff effects. In order to avoid this, we would ask EIOPA to consider a simplification and fixing the correlation parameter.
	Q5.4	The current lump-sum recognition of non-proportional reinsurance covers in the standard formula should be maintained. However, we support the introduction of other options (as mentioned in paragraph 252–254) for better recognition of non-proportional reinsurance. These should also allow recognition of non-proportional reinsurance over a broader range of lines of business, especially in reserve risk. At

		<p>the very least the USP for non-proportional reinsurance should be expanded to also apply to reserve risk.</p> <p>The common non-proportional reinsurance plays a much larger role in the catastrophe risk modules. We agree that the scenario-based recognition of nonCat non-proportional reinsurance covers within the premium and reserve risk may complicate this module unnecessarily.</p>
	Q5.5	<p>Adverse Development Covers protect cedants against a negative run off of their P&C claims reserves. However, the risk mitigating impact of ADCs is currently not adequately reflected in the standard formula. The volume measure for reserve risk only takes the current net best estimate reserves into account, not the fact that an ADC provides coverage for adverse developments of incurred losses for the upcoming year and thereafter. As ADCs are a form of non-proportional reinsurance, ideally a single method for recognising non-proportional reinsurance in premium and reserve risk can be found.</p>
	Q5.6	<p>The concept of finite reinsurance has been introduced in 2005 to delimit a special category of reinsurance, which may require special monitoring due to a limited risk transfer. In order to avoid an abuse of such forms of reinsurance, the European Regulation required insurers to take special measures in risk management and the controlling of corresponding contracts, and introduced special additional reporting requirements to supervisors</p> <p>Examples of “critical contracts” have been in the past, e.g.:</p> <ul style="list-style-type: none"> • Non-Life Reinsurance with limited liability due to e.g. claims dependent additional premiums (so-called spread loss reinsurance contracts); • Transfer of undiscounted claim reserves with a predefined repayment schedule (so-called time and distance reinsurance contracts) ; • Reinsurance contracts with loan character due to payback clauses. <p>Under Solvency II such constructions are no longer possible:</p> <ul style="list-style-type: none"> • In general, the recognition of risk mitigation of reinsurance contracts is subject to the proof of an effective risk transfer (Article 210 of the Delegated Acts). • There is no need for special rules for reinsurance contracts, under which discounted cash-flows, e.g. an "explicit and material consideration of the time value of money" is relevant, since all reserves under Solvency II are to be discounted in any case. This includes the concept of "Reinsurance Recoverables", as it requires an economically correct valuation of all payments under a reinsurance contract, taking full account of any interest payments. • The improvement of solvency ratios through reinsurance with a loan character (financings) is not possible under Solvency II, as all payments to the reinsurer are to be recognized on the basis of the "best estimate" in the solvency balance sheet. In addition, contracts with unconditional repayment obligations must also be accounted for and recognized as a future cash outflow. <p>Since most of these critical forms of finite reinsurance have already no effect in the solvency balance sheet due to the contract boundary concept and the consideration of the time value of money a revision of the Solvency II rules may be reasonable in order to allow for a more target oriented regulatory framework. This refers to:</p> <ul style="list-style-type: none"> • the definition of finite reinsurance (Article 210 of the Directive); • the recognition of finite reinsurance in the SCR standard formula (Article 208 of the Delegated Act).

		<p>To reflect the fact that under Solvency II the discounting effects are already considered appropriately, the reference to timing risk and the time value of money should be deleted from the definition of 'finite reinsurance'. Article 210 (3) of the Solvency II Directive could be adjusted as follows:</p> <p>“For the purposes of paragraph 1 and 2 finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, exceeds the premium over the lifetime of the contract by a limited but significant amount, and there exist contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.”</p> <p>Article 208(2) of the Delegated Act could be adjusted as well in order to better reflect the risk mitigating effect of finite reinsurance contracts.</p> <p>Regarding the question on the recognition of finite reinsurance in the SCR standard formula we understand the concerns of EIOPA that the recognition of some finite reinsurance contracts under the standard formula can result in a higher SCR relief compared to the risks transferred to the reinsurer. This is especially the case for proportional reinsurance with result dependent conditions. In view of the large range of finite reinsurance contracts, where some of them still transfer significant risk to the reinsurer, we think that a simple calculation method can take account of this fact. The objective is to receive partial solvency relief for finite reinsurance depending on the insurance risks transferred.</p> <p>We think that for proportional reinsurance an approach based on the following properties could be developed:</p> <ul style="list-style-type: none"> • the ratio between the situation with and without loss mitigating features of result dependent conditions in an extreme loss scenario compared to the expected loss is measured; • the extreme scenario is the 200-year-event which could be approximated by the expected loss plus three times the standard deviation of losses; • the numerator depicts the difference in reinsurance result between the expected loss scenario and the extreme loss scenario; • the denominator depicts the difference in reinsurance results as before, but without loss mitigating features. <p>This defines the Allowance Ratio, which could be the basis for calculation of the solvency relief of a proportional reinsurance contract in the premium and reserve risk module of the SCR standard formula.</p>
	Q5.7	-
	Q8.1	Conservative estimates on all immaterial SCR submodules as well as on immaterial balance sheet and reporting items should be made possible.
	Q8.2	<p>Both proposals by EIOPA are not mutually exclusive. Simplified calculations do already exist in the Delegated Regulation. It makes sense to introduce new simplified calculations of capital requirements where appropriate. And it is just as appropriate to introduce an integrated simplified calculation for immaterial risks. Option 2 and 3 should be implemented.</p> <p>Apart from that, conservative estimates for immaterial SCR submodules as well as for immaterial balance sheet and reporting items should</p>

		<p>be allowed. Calculations in the standard formula include often more than 20 out of 40 submodules. Many of them are immaterial and make only a small contribution to the overall SCR. However, their accurate calculation ties up resources of risk management without contributing to policyholder protection. One approach to solving this problem is provided by EIOPA's recently published supervisory statement. This allows undertakings to re-use results of SCR calculations of immaterial submodules for up to four years.</p> <p>To simplify the actual calculations, the Solvency II Directive should be adjusted. Article 109 requires that simplified calculations must be calibrated in accordance with Article 101(3), i.e. they must comply with the value-at-risk approach with a 99.5% confidence level. An adaptation of the Directive, which allows conservative estimates of a potentially higher confidence level, would make sense.</p> <p>In addition, a similar approach would be useful for immaterial balance sheet and reporting items.</p>
	Q9.1	The integration of a partial model into Solvency II standard formula is highly complex and very demanding.
	Q9.2	<p>As also outlined in our comment on paragraph 9.261, we see that FX and concentration risk are not explicitly considered in the D&A method. However, for practical reasons, the consideration is not feasible as there is no look-through or consolidation, i.e. FX risk or concentration risk regarding individual balance sheet items can't be considered. Hence it would be equally false, i.e. an overrepresentation, to simply apply the FX risk charge to the related undertaking's own funds as a whole (excess of assets over liabilities), as this may neglect that some items are denominated in the reporting currency of the parent undertaking (e.g. euro); equally, diversification effects that are economically warranted may be ignored.</p> <p>Therefore, we believe that a simplified approach is necessary (i.e. FX and concentration risk should be ignored). In this context, we want to remind the fact that the D&A method already comprises a conservatism buffer as it does not allow for a diversification benefit. In addition, there is further conservatism through the stricter handling of "availability of own funds at group level" (Article 330 Delegated Regulation) and even additional buffers for selected third-countries like the US. All in all, we believe that these buffers are adequate to compensate for the unmodelled FX and concentration risk, i.e. the simplified approach is also justifiable.</p> <p>In this context, and further to the topic of double-counting where a combination of methods is applied, we would like to offer to EIOPA our observations on how to calculate the tiering limits where a group uses both accounting consolidation (AC) and D&A with respect to (re)insurers and furthermore integrates OFS entities. This also relates to the issues which EIOPA touches in paragraph 9.282 (D&A: entity by entity) and paragraph 9.400 (Group MCR) as well as paragraph 9.442 (OFS and tiering).</p> <p>For purposes of the Group SCR and Group MCR, the solo tiering limits apply mutatis mutandis. However, as per EIOPA opinion (EIOPA-BoS-16-008) and the QRT, where a combination of methods 1 (AC) and 2 (D&A) is used, distinct tiering limits should be used for each sub-group of the group, i.e. primarily (i) the (re)insurance group subject to AC ("AC group", i.e. standard formula or internal model SCR), as well as (ii) D&A (re-)insurers and (iii) OFS entities.</p> <p>No justification was provided for this approach to Tiering limits, and for issuers with a centralized funding function (typically in the AC group), the EIOPA opinion artificially reduces the maximum headroom for subordinated debt of (re)insurers: for Tier 2/3, the SCR of the AC</p>

		<p>group limits the headroom, and not the entire group requirement (AC plus D&A plus OFS entities).</p> <p>We note that the D&A entities are not included in the group as a single "sub-group". It appears that the full use of a group's entire headroom for Tier 2/3 and restricted Tier 1 would require issuance of these instrument out of each and every of those D&A entities and the OFS group. Incentivizing non-centralized funding has no clear benefit, but many obvious disadvantages (cost, fungibility), and goes opposite to the standard approach for banks. Therefore, the tiering limits on a group basis should be calculated for the entire group, i.e. the limit for Tier 2/3 should be set against the total group requirement, and not just e.g. the SCR (IM/SM).</p>
	Q9.3	<p>See our answer to question Q9.4 – we understand the motivation of the market standard contractual "recital 127 language". There should be no differentiation in this respect between own funds issued by unregulated holding entities or related (re)insurers on the one hand, and own funds issued by the ultimate parent (re-)insurers.</p>
	Q9.4	<p>Of the three options presented, we support Option 2. The key challenge of implementation is the tendency of NSAs to oblige issuers of sub debt instruments to include contractual repayment prohibitions that prevent the redemption in case of winding-up situations. While we support their intention, such contractual clauses can have unintended consequences, in particular for long dated or perpetual instruments. For example, for globally active (re)insurers it is important to limit the applicability of the contractual clause to the winding-up of EEA insurers in order to avoid "rogue state risk", which may manifest itself when, in a failed state, a (small) subsidiary is subjected to a "technical winding up" that the issuer (parent) cannot prevent. Such a situation should not have an impact on the issuer's ability to repay own funds instruments.</p> <p>Where NSAs insist on a contractual reflection of Recital 127, the suggested limitation of the clause's scope to the winding up of EEA subsidiary (re)insurers as well as the ability of the NSA to waive the redemption prohibition are both crucially important – hence our support for Option 2. In addition, it should be clarified that for instruments that are intended to qualify as group own funds, all EEA subsidiary (re-)insurers within the scope of that group must be captured by Recital 127, irrespective of the type of whether the issuer is a participating (re-)insurer, a related (re-) insurer, and ASU, IHC, or MFHC). We are not sure to what extent it is the purpose of Option 3 to make sure that Recital 127 should apply to all these potential different kinds of issuers.</p> <p>Allow us to emphasize the constructive approach we take by supporting Option 2. Recital 127 establishes an aim, which is on the one hand intelligible from a policyholder perspective – a parent should not redeem own funds if a (re)insurer in the group defaults – which, however, on the other hand violates binding company law principles according to which a company in general assumes no liability for affiliated companies. From a legal perspective, it is hardly justifiable that a non-binding recital violates binding company law principles.</p> <p>Therefore, at a minimum, we believe that it is important to reduce the scope of Recital 127 to subsidiary (vs. related) EEA (re)insurers (vs. any (re)insurer). But in our opinion, it should be reconsidered if it is necessary at all to amend the Delegated Regulation to include a principle indicating the purpose of recital 127. According to the current tiering criteria, any redemption of an own fund item is subject to prior regulatory approval irrespective of Recital 127 (see Article 71 (1) (h), 73 (1) (d), 77 (1) (d) Delegated Regulation). The very purpose of the requirement to obtain prior supervisory approval for the redemption of any own funds item and at all times is that issuers can avoid unnecessary risks that arise from explicit clauses in contracts. A NSA that approves a request for redemption must be assumed to be able to</p>

		<p>prohibit redemptions in case a meaningful subsidiary is subject to winding up procedures. Hence, in our view there is no need for an explicit contractually defined Recital 127 redemption prohibition. No such contractual prohibition exists for (equity) unrestricted Tier 1, it is questionable why it should be required for weaker forms of own funds. Relying on the regulator to make an informed decision at the time – rather than relying on contractual clauses that may have been written many years prior to redemption – is a better, less error prone means to address the justified concerns expressed by Recital 127.</p> <p>Summarising the above, in our view an amendment is not necessary. However, if a principle indicating the purpose of recital 127 shall be included in the Delegated Regulation we prefer option 2. Any amendment of the Delegated Regulation should not result in further tightening the requirements. In contrast and as stated above, it is of utmost importance to include the suggested limitations.</p>
	Q9.5	<p>The availability concept is derived from Solvency I, where the group was not treated as an economic entity. Now under Solvency II, the group is treated as such an (economic) entity. Yet the concept of availability requires to reallocate the own funds of the entity "group" to the individual undertakings, while sticking to one (diversified) SCR of the entire entity. This obviously causes larger conceptual issues and difficulties.</p> <p>One of the flaws of the concept is demonstrated as follows: we understand the rationale to be that a group must not show a high solvency ratio if all the capital is locked in one entity and cannot be used to offset deficiencies which other entities have. Even if such rationale was justified, one would expect that the group solvency ratio would be at least as high as the lowest solvency ratio of any entity ("floor") – despite any non-availability deductions. However, no such floor exists, and the group solvency ratio may well be lower than the lowest solo solvency ratio, e.g. where a very large (re-) insurance entity has a very high amount of non-available own funds, and thus contributes to the group amount an amount of own funds roughly identical to its diversified SCR contribution.</p> <p>We also understand from discussions with analysts and stakeholders that the concept and its rationale are in fact not convincing, and we perceive confusion among these persons when comparing own funds with the IFRS shareholders' capital, where we have no artificial deduction positions due to transferability.</p> <p>A second flaw is the assumption that one entity of the group would need to give away a part of its own funds to increase own funds of a different entity in the group. This is, however, obviously not the case (i.e. a related undertaking can give a subordinated loan to a sister undertaking without reducing its own funds). Hence it is not convincing to require that own funds items be "legally transferrable". Given these flaws and inconsistencies, we rather propose a fundamental review of the concept of availability before discussing its extension or enhancement. A sound alternative approach could be to include discussions on possible transferability constraints in the supervisory dialogue between group and supervisor. In any case, when keeping the current regime, it should be borne in mind that it was developed as a simplification. This shall not be suspended by additional requirements not in line with the original purpose of the simplification. Therefore, if the current regime shall be kept, the availability deductions should be limited to minorities, surplus funds, deferred taxes and subordinated debt.</p>
	Q9.6	<p>EPIFP should continue to be treated as an available own fund item at group level since there are several methods to monetize EPIFP. This can be done through a sale of legal entities, customer portfolios, through re-insurance arrangements or VIF monetization agreements. In</p>

		<p>the past some insurers already used these transactions to fund M&A activities. Securitisation of future in-force profits is a further method.</p> <p>The time span of 6–9 months to monetize is realistic.</p> <p>As outlined above, it is not necessary to legally transfer the own fund item itself, i.e. the EPIFP itself, which can only be transferred by transferring the policies, which is against the going concern view. However, we believe that the EPIFP from the policies can be economically transferred through reinsurance or securitization. Furthermore, in substance, EPIFP is shareholder money which must for reasons of symmetry be reflected as also the pertaining risks are reflected.</p>
	Q9.7	<p>In principle, a clarification on the definition of minority interests is welcomed. We also agree that minority interest should be calculated based on Solvency II valuation.</p> <p>In general we refer to our answers to questions Q9.5 and Q9.6. Solvency II treats the group as one economic entity and consequently should follow a full consolidated approach, where the minority interests are included as if they were part of this entity or an "after minority approach" and where a haircut at least on minorities would not be necessary like e.g. in ICS or Rating Frameworks.</p> <p>As answered to question Q9.5 we rather propose a fundamental review of the necessity of the concept of availability before discussing any extension or enhancement.</p> <p>As outlined in our comment to paragraph 9.381, we believe that case 1.c (Solvency II valuation, equity, no subordinated debt) is the correct approach.</p> <p>Firstly, Solvency II is the decisive valuation method, and there is no reason to deviate from this for the determination of minorities. Secondly, we do not see why external subordinated debt is to be considered in the context of minorities as it is deemed "unavailable" anyway. It should also be noted that only direct minority interests are considered in the presented approach and the issue of indirect minority interests in multi-tiered groups is ignored.</p>
	Q11.1	<p>Capital surcharges for systemic risks can already be activated under the existing provision. Article 37 of the Solvency II Directive already allows for capital add-ons if supervisors conclude that the risk profile of the insurer deviates significantly from the assumptions underlying SCR calculation, or its systems of governance deviate significantly from the standards set out. Therefore, a macroprudential capital surcharge tool separate from the existing tool is not needed.</p> <p>It would also be difficult to apply as there is no clear delimitation between macro- and microprudentially-motivated capital requirements. In addition, capital surcharges for systemic risk are less predictable and less effective compared to other tools, especially if a high return can be expected from the systemically relevant activity. At the same time it needs to be acknowledged that – in contrast to banking activities, where the concrete transmission mechanisms for systemic risk have been identified from practical experience, such as the inter-banking market and the credit cycle – the transfer mechanisms for traditional insurance (such as direct contagion of other institutions by the failure of an insurer or common exposures in the sector, that could give rise to common reactions that may trigger or amplify market-wide effects</p>

		<p>in asset prices or liquidity) are theoretically conceivable mechanisms for which, however, very little practical experience is available and that have never even come close to systemic dimensions. As such there is little evidence or practical guidance available for concrete quantitative prevention approaches. In particular the added value of a generic right for supervisors (or other authorities) to raise additional capital requirements is not clear, and EIOPA has not explained how they should impact systemic risk.</p> <p>Creating a temporary higher capital cushion once a crisis is about to begin is likely to be pro-cyclical, while the additional capital is likely not to be sufficient to mitigate losses from a full blown crisis impact. De-incentivizing the build up of systemic risks pre-supposes the exact relevant activity is identified, in which case macroprudential policy aimed directly at this activity would be more immediately and directly impacting the level of systemic risk. While monitoring of systemic risk levels through various market-wide indicators, complemented by sector-wide recovery planning is a meaningful approach to prepare for a crisis situation, we think that a generic right to impose additional capital requirements, for which the triggers and underlying reasoning are unclear is not addressing the issue effectively.</p> <p>The instrument should therefore be applied in a subsidiary way to other more effective measures. Before imposing a capital surcharge, a comprehensive analysis should routinely be performed, taking into account both expected benefits and direct as well as indirect costs arising from the surcharge. In particular, it must be clearly analysed to what extent the SCR already takes the systemic risk into account. Further, an application of the principle of proportionality is essential, based on the actual level of risks a business model or activity implies for the stability of the financial system. Additionally, capital add-ons are not permanent uplifts and have to be cancelled by the supervisor if the specific situation ends. Therefore, a close monitoring is necessary. Any additional capital requirements imposed by authorities that affect single entities, even in the context of a European market-wide measure, must be subject to legal appeal at court. As long as the concrete economic circumstances under which capital surcharges can be imposed are not laid out, it is not possible to design the principles that should govern the triggers, calculation and removal of such charges.</p>
	<p>Q11.2</p>	<p>We appreciate EIOPA's rejection of hard concentration thresholds as inappropriate for the insurance industry. However, in our view, soft concentration thresholds are not a suitable macroprudential instrument either. Therefore, NSAs should not be granted the power to define soft thresholds.</p> <p>As EIOPA states, concentration risk is already sufficiently covered in the current Solvency II approach. Excessive concentrations are addressed by the PPP and regulatory measures like the ORSA, existing supervisory powers, as well as the reporting of risk concentrations for financial conglomerates. Considering the limited unaddressed potential systemic risk from the insurance industry, we do not share the conclusion that soft concentration thresholds would be useful as a macroprudential instrument that NSAs could apply at their discretion. Our conclusions regarding both costs / benefits and effectiveness / efficiency of this instrument differ substantially from EIOPA's assessment (see our comment on paragraph 11.79).</p> <p>In addition, soft concentration thresholds would be a difficult instrument for NSAs to apply. There are great operational challenges, as EIOPA acknowledges. We agree with EIOPA that high concentrations per se are not an indicator of a contribution to potential systemic risk. It is not clear what would constitute a "dramatic increase" or a "significant risky level" at market level or how this could be ascribed to individual insurers, taking into account company-specific investment strategies and asset-liability considerations. The concept of "risk to financial stability" which is used to trigger a potential intervention by an NSA is not properly defined, so that, for example different /</p>

		<p>inconsistent applications between NSAs were to be expected.</p> <p>If it should nevertheless be decided to grant NSAs the power to define soft thresholds for action at market level, meaningful limits could only be set after further conceptual work and the acquiring of experience of how relevant indicators (to be defined) indicate the development of macro-economic and financial stability variables, that are crisis relevant. Further crucial factors are:</p> <ul style="list-style-type: none"> • clear evidence of excessive asset concentration in the insurance industry substantially contributing to systemic risk; • full recognition of the principle-based approach of PPP; • proportionality, both regarding investments of the insurance industry as a whole and individual insurers' investments; • avoidance of pro-cyclical effects (e.g. by triggering disinvestments); • full consideration of asset-liability aspects; • adaptation to national specificities.
	Q11.3	<p>Insurers are already required to consider in the ORSA process all material risks that may have an impact on their ability to meet obligations to policyholders. Hence, for insurance companies to provide a holistic view, they must already take into account all observable systemic risks which could have a material impact on their business. Examples in this respect are credit cycles, severe market-price misalignments or reduced market liquidity.</p> <p>We are of the view that the harmonisation of the structure and content of ORSA reports and the mandatory consideration of systemic risks at request of the supervisory authority as laid out by EIOPA are in stark contrast with this fundamental principle of ORSA. ORSA should not become the place to deal with supervisory enquiries. Instead, it should remain an instrument tailored to the specific management of individual insurance groups and companies. Supervisory measures are permitted in the supervisory review process (Article 36 of the Solvency II Directive), taking into account proportionality (Article 29 (4) of the Solvency II Directive) and applying a risk-based approach (Article 29 (1) of the Solvency II Directive). The ORSA should remain an own risk and solvency assessment and not include a mandatory macroprudential perspective.</p> <p>Besides, we are of the view that the potential benefit of aggregating information from thousands of ORSA reports does not justify the large additional costs this would imply for both insurers and supervisors. Since ORSA reports are insurer-specific, a technical solution to aggregate these reports at reasonable costs cannot be expected in the near future. Moreover, this would also be prone to technical errors.</p> <p>As a result, we see a more proportionate and pragmatic approach in continuing to assess the ORSA on a standalone basis and to discuss any macroprudential implications in the context of the existing macroprudential surveillance framework (e.g. EIOPA's regular financial stability reports or EIOPA's and the ESRB's risk dashboards).</p>
	Q11.4	<p>Considering the rather limited systemic risk originating from or being amplified by the insurance industry, we feel that a parsimonious approach to systemic risk management planning (SRMP) would be sufficient both in terms of companies involved and risks analysed. Furthermore, proportionality aspects need to be considered. More reports and information requirements would produce significant administrative burdens and necessitate additional IT investments at the expense of insurers and, ultimately, policyholders. Prior to adopting any extensions to the SRMP, a comprehensive cost-benefit analysis is required recognising already existing macroprudential information</p>

		(like Quantitative Reporting Templates (QRT) and stress tests). As long as it is not clear how systemic risk is measured and which activities are considered systemically relevant, it is unclear what (re)insurers should actually address in their SRMP. It should be left to the insurer to decide which measures of the SRMP should be implemented.
	Q11.5	We do not agree that in general all undertakings within Solvency II should be required to draft LRMPs. In view of the limited liquidity risks from the insurance industry, expenses and benefits would be disproportionate. While we agree with EIOPA that liquidity risk can be relevant in specific circumstances, any additional requirements must balance the costs against the benefits. More reports and information requirements would produce significant administrative burdens and necessitate additional IT investments at the expense of insurers and, ultimately, policyholders. Prior to adopting any extensions to the liquidity risk management planning, a comprehensive cost-benefit analysis is required recognising already existing information. A large amount of data is already available to supervisors. Solvency II reporting templates (e.g. S.06.02, S.13.01, S.18.01) are already the basis for liquidity analyses, e.g. the "liquidity and funding risks" analysis in the EIOPA Risk Dashboard. In addition, the possibility of additional requests like EIOPA's request on long-term guarantees and illiquidity already exists today. These instruments ensure a sufficient supervision of insurers' (potential) liquidity risks, especially in view of the moderate liquidity risks in traditional insurance business. Therefore, only companies with demonstrably increased liquidity risks and systemic relevance should be obliged to draft LRMPs. But even those companies should not be required to provide extensive reporting (including additional theoretical concepts) but to build on their implemented liquidity (risk) management processes, methods and reporting. European provisions should not go beyond the IAIS framework.
	Q11.6	As far as individual companies are concerned an "exceptional circumstance" should not be considered before the SCR has been breached. Under the current framework supervisors are already able to intervene unilaterally after the SCR has been breached as part of the ladder of intervention. The application of this measure before a breach of the SCR should only be possible if specifically requested by the insurance company. With regard to market-wide crises, supervisory and/or management actions could be considered when faced with the manifestation of the (very low) risk of mass surrender as such actions would be very effective in controlling liquidity risk. However, such a strong tool has to be handled with great care in order to avoid undesirable side effects. Any extension of existing intervention rights has to be cautiously considered and designed. The mere possibility of a temporary freeze could already cause damage to the reputation of life insurers and policyholders' confidence in the reliability of their old-age provisions could decrease.
	Q12.1	There should be no requirement regarding pre-emptive recovery plans based on the very significant coverage of the market share of the national market. A national market share is not appropriate because the national markets are completely different (in terms of economic constitution, financial stability, relevance and interconnectedness of the insurance sector, capital resources etc.). A risk-based approach needs to consider the probability of a crisis of the individual undertaking or group and the potential impact of that crisis on the financial market. Insurers with a low probability of crisis (e.g. adequate solvency ratio, no complex risk profile) and whose failure or subsequent winding up is unlikely to have a material impact should not be obliged to draw up a pre-emptive recovery plan. However, undertakings with apparent weaknesses and a certain probability that the recovery may be needed in the medium term and with a tangible benefit in terms of reduction of material systemic risk at EU level should be covered. Substitutability is not a suitable criteria and its inclusion could be counterproductive. In particular, it might disincentivise product offerings in highly concentrated markets and could lead to a more restricted product range, e.g. in marine, aviation or export credit insurance. Finally, if any pre-emptive recovery plan is to be required, it should apply

		only at group level for groups.
	Q12.2	We agree with EIOPA that the scope for resolution planning would be smaller than that for pre-emptive recovery planning. We do not think that there is a benefit on developing a pre-emptive resolution plan for an apparently healthy insurance institution. The design of an appropriate resolution plan depends crucially on the kind of trouble the insurance entity is facing. Further the relevance of the insurer for the financial stability need to be considered. For healthy companies, it would make sense that resolution authorities develop a generic overview of resolution options with their pros and cons, in order to facilitate the assessment of the situation and the drafting of a recovery plan in case a company enters the trouble zone. See also our answer on question Q12.1.
	Q12.3	<p>We welcome that no new intervention level for recovery should be established. To avoid that early intervention powers result in a new pre-defined intervention level or an implicit new capital requirement it has to be clearly stated that supervisory intervention should not take place before the Solvency Capital Requirement is breached (or there is a risk of non-compliance within the next three months). We believe that no early intervention powers ahead of an SCR breach are necessary nor (legally) adequate for the following reasons:</p> <p>Solvency II is by design a risk-based and forward-looking framework. Consequently there is no need for early intervention as the framework implies sufficient time to react in case of an SCR breach. The existing supervisory ladder of intervention as defined by Solvency II is sufficient, in particular in view of Article 141 that grants comprehensive rights to NSAs in case of a deteriorating solvency position. It is not necessary to include further early intervention triggers in EU legislation, in particular if they are judgement based as proposed by EIOPA. Supervisory convergence in the area of ongoing supervision (i.e. before the breach of the SCR) can be achieved by guidelines. The trigger of entry into recovery is clearly the SCR breach.</p> <p>Triggers for the use of Early Intervention Powers by a NSA are not properly defined by EIOPA, which would lead to discretion and associated different / inconsistent application between NSAs. Regarding the very intrusive nature of such powers, we believe that unclear conditions are neither legally adequate nor justified.</p>
	Q12.4	<p>From our perspective the breach of the MCR should be the main intervention threshold for resolution and there should be no reasonable prospect of restoring the MCR documented by a negative or failed finance scheme. Potential indicators for a negative or failed finance scheme should be:</p> <ul style="list-style-type: none"> • failed implementation of recovery options; • withdrawal of granted bank / financing facilities; • failure to raise money on capital markets; • failure to honor insurance obligations.
		Comment
	General comments	<p>The German insurance industry welcomes the opportunity to provide its perspectives on EIOPA's draft proposals. We appreciate EIOPA's transparent consultation that fosters the exchange between stakeholders.</p> <p>We support the Solvency II regime – as it is – and believe it works well overall.</p>

Several policies of the European Union of high priority such as the Capital Markets Union and the Green Deal are currently pursued by the European Commission. The 2020 Review is an excellent opportunity to support these political objectives. It provides a unique chance to enhance Europe's international competitiveness by strengthening the insurance industry's role as long-term investor and provider of insurance cover and long-term guarantees.

We see a risk in EIOPA's current draft proposals contradicting these political objectives though. Some draft proposals have the potential to weaken the long-term character of the insurance industry, and to implement barriers to insurance and investments.

We have the impression that the consultation package in its entirety comprises elements that, on the one hand, build upon the fundament of Solvency II and, on the other hand, go well beyond Solvency II – such as Recovery and Resolution, macroprudential policy and Insurance Guarantee Schemes. EIOPA's draft proposals on Recovery and Resolution and risk-management provisions on LTG measures, for example, introduce new early intervention measures that might conflict with the confidence level of 99.5% as required by the current Directive: According to our rough estimations and based on certain assumptions such as a normal distribution, an early intervention such as draft proposal paragraph 2.762 would introduce a new confidence level of 99,995% – which means an event of once in 20,000 years – far beyond the existing confidence level. Further interdependencies such as

(a) an additional protection provided by an IGS and the protection provided by the current Solvency II regime,

(b) an additional protection provided by a Recovery and Resolution regime and the protection provided by the current Solvency II regime,

(c) an additional protection provided by an IGS and protection provided by a Solvency II regime according to the draft proposals,

(d) an additional protection provided by a Recovery and Resolution regime and the protection provided a Solvency II regime according to the draft proposals,

(e) an additional protection provided by an IGS and an additional protection provided by a Recovery and Resolution regime,

have not been analyzed yet either. We believe further answers should be given to such questions as: What is the overall desired design, which problems are supposed to be corrected and what impact would a multi-layer protection approach have? Would it be consistent in terms of confidence level and which confidence level would and should the overall design have? Which effect would it have on insurers' long-term liabilities and investments and the CMU objectives? From our viewpoint, preparing decisions on such changes requires a thorough step-by-step analysis of all these interlinked elements.

With a view to EIOPA's draft proposals on quantitative requirements, we would like to stress the following aspects with priority:

1) Extrapolation of risk-free interest rates: It should also be in the supervisory interest that the extrapolation start (LLP) remains to be determined on the basis of bond markets. Of EIOPA's five options, option 1 (no change) is the only one that is basically in line with our DLT analyses. Even an LLP of 15 can be justified due to ECB's impact on markets' liquidity.

2) Interest rate risk: Should the current approach be changed, a shifted approach is adequate. However, the risk factors should only be applied to the liquid part before the LLP. Then the usual extrapolation algorithm should be applied to extrapolate the illiquid part of the stressed curves from their liquid parts. Furthermore, a supplementary floor should reflect the different risk in the negative area. Any change to the interest rate risk should be introduced within a transitional period.

3) Volatility Adjustment: Any approach should better reflect the risk premiums insurers earn above risk free rates. Consequently, the VA level should not be decreased, but significantly increased – for example by deleting the current 65% cap. The dynamic VA should be

maintained in internal models without conditions and also be applied to the standard formula. The VA should be applied to all tenors of the interest rate term structure.

Further quantitative requirements that we would like to stress:

4.) Property risk: We encourage EIOPA to change the property risk factor as soon as the UK will have left the EU. The results should already be part of the 2020 review and not be postponed.

5.) Risk margin: The CoC rate of the risk margin should be set to a more realistic value significantly below 6%. Moreover, diversification between lines of business within a composite firm and legal entities within a group should be allowed for.

6.) Own funds at group level: We are very concerned about any new restrictions, limits and haircuts. Worrying examples are EIOPA's proposal regarding the benefit of transitional measures and remarks about the availability of EPIFP.

Other quantitative aspects concern the options on FX calculation concentration risk on participations in D&A insurers which we are opposed to. We welcome EIOPA's option on a proxy method for third-country (re)insurers but we disagree with the cap on own funds which is introduced thereby. The proposed amendment of Article 210 DR on the effective transfer of risk could exclude commonly used traditional risk mitigation techniques. Another issue that should be corrected in the review is the excessive calibration of mass lapse risk.

The holistic impact assessment that will cover the quantitative aspects should be based on the reference date 31 December 2019 and start in April 2020 to allow for meaningful analyses.

With a view to EIOPA's draft proposals on IGS, Recovery and Resolution and macroprudential policy, we would like to highlight the following aspects:

1) IGS: The status quo should be maintained. Minimum harmonization is not required; the focus should rather be on supervisory convergence.

2) Extension of supervisory measures, including Recovery and Resolution and Risk-management provisions on LTG measures: We are very concerned about EIOPA's draft proposals on extending supervisory measures and introducing shadow regimes. The SCR should remain the one and only intervention measure and early-warning indicator.

3) Macroprudential policy: Insurers' business activities depend crucially on financial stability. Therefore, we support an effective macroprudential policy. However, considering the limited systemic risk from the insurance industry and the macroprudential framework already in place we see little need for new macroprudential tools or measures. In our view, an additional capital add-on tool, extensions of ORSA and PPP or concentration limits are neither necessary nor suitable instruments. The freeze of redemption rights might be a useful instrument for extreme cases, but design and content are crucial. Liquidity risk management plans are only adequate for companies with demonstrably increased liquidity risks and systemic relevance.

With a view to EIOPA's draft proposals on group supervision, we would like to stress the following aspects:

1) Some options are not proportionate as they address very specific issues of individual groups. An example is the supervisory possibility to require amendments to the group structure. Other proposals are overly restrictive and amend Solvency II principles through the back-door, see above our examples on the benefit of transitional measures and the availability of EPIFP. Both items have been designed to be effective

		<p>on solo and group level and form part of the reconciliation reserve.</p> <p>2) The <u>proposal to introduce notional MCRs</u> for insurance holding companies and mixed financial holding companies and to consider them in the calculation of the minimum consolidated group SCR will aggravate existing weaknesses of the minimum consolidated group SCR and increase the risk of trigger inversion.</p> <p>3) Another issue which needs to be reconsidered are the proposed amendments regarding the <u>treatment of other financial sector (OFS) undertakings</u>. Especially the proposal to allocate own funds from OFS undertakings into Solvency II tiers and the proposed availability assessment for OFS own funds in excess of sectoral capital requirements are unnecessarily increasing the complexity of group requirements while adding only limited value.</p> <p>With a view to EIOPA’s draft proposals on reporting and proportionality / thresholds, we would like to stress the following aspects:</p> <p>1) <u>Reporting</u>: We strongly disagree with the draft proposals to introduce shadow regimes (see above) and even having to report about their results. The structure of the SFCR group should be similar to the solo SFCR. The split into a report to the policyholder and professional public is to be adopted. Otherwise, all solo changes will make no sense and will be meaningless.</p> <p>2) <u>Thresholds</u>: We appreciate the option to raise the current threshold. However, an exemption limit for private liability insurance should be introduced.</p> <p>3) <u>Proportionality</u>: Proportionality should be applicable to all insurance undertakings and go as far as the non-application of individual criteria. A toolbox should be introduced that should include a non-exhaustive list of facilitations.</p> <p>In addition, Article 186 Solvency II (cancellation period) should be amended in order to prevent misuse of the cancellation right: Article 186 does not provide for an absolute time limit of the customers’ cancellation right. Consequence of this is an “eternal cancellation right” in cases where the customer has not received proper information (see ECJ rulings C 209/12 – Endress; C-355/18 – Rust-Hackner et al). Any error in the customer information is a potential trigger for this unlimited cancellation right. A "claims industry" uses this possibility as a means to retrospectively avoid the contractually agreed costs. Article 186 is not in line with more recent legislation such as the Consumer Rights Directive, 2011/83/EU, which provides for a time limit of 12 months under any circumstances. Provisions should also be made to remedy the situation with respect to existing contracts. Similar amendments are required with regard to the Distance Marketing directive (2002/65/EC).</p>
	Comments on Executive Summary	
Chapter (enter 1, ..., 14 or A for Annexes)	Paragraph (enter only the second number, e.g. 11 for paragraph)	Comment

	3.11)	
		1. Introduction
1	2	Referring to methods, assumptions and standard parameters used when calculating the SCR standard formula, we consider it crucial always to apply data which is representative for the average European insurer, this refers for example to property risk and interest rate risk.
		2. LTG measures and measures on equity risk
		2.1. Introduction
2	3	<p>Insurers are fundamentally different from many other players in the financial markets who have a short-term perspective and often act procyclically. Since insurers' future cash flows can be reliably forecasted over long periods of time, insurers are not threatened by sudden liquidity shortages that would force them to involuntarily sell their assets. They can hold investments to maturity unaffected by market fluctuations and also invest in less liquid investments. Therefore, as long-term investors, insurers are an anchor of stability that makes a significant contribution to the long-term financing of the European economy which should be further encouraged, in particular to support the transition towards a low-carbon economy and sustainable growth solutions.</p> <p>Taking a long-term perspective is of course also the prerequisite for supplying consumers with long-term guarantees (LTG). Note, that ensuring that consumers will continue to be supplied with LTG products for their old-age provision was – rightly – the legislator's main concern.</p> <p>In order to preserve this in several respects beneficial long-term orientation, regulation must adequately reflect insurers' business model. In the 2020 Solvency II review undue or excessive restrictions should thus be resolved. For the LTG measures as well as for the standard formula and its financial market implications, the Directive explicitly provides for this review. Thereby, the LTG assessment shall be made in relation to the availability of long-term guarantees in insurance products, the behaviour of insurance and reinsurance undertakings as long-term investors and, more generally, financial stability (Article 77f (2)).</p> <p>In this context, EIOPA elsewhere aptly states: "<i>The LTG measures introduced in the Solvency II Directive aim to ensure the appropriate treatment of insurance products that include long-term guarantees in a market-consistent valuation framework. [...] LTG measures proved to be effective in the hypothetical scenarios tested in the EU-wide stress tests run by EIOPA, in which these measures seem to provide the financial stability cushion they were meant to give for this particular type of long-term insurance business. In the absence of the alleviating effect of the LTG and transitional measures, insurers may be induced into forced sales and de-risking, possibly pushing asset prices further down, adding to the market volatility and potentially affecting financial stability.</i>" [Cf. "Potential undue short-term pressure from financial markets on corporates: Investigation on European insurance and occupational pension sectors", EIOPA-BOS-19-537, 18 December 2019, p. 51–52].</p> <p>Hence, the review of the LTG measures should focus on the effectiveness of the individual measures to achieve the overarching policy objectives. By contrast, it should not be aimed at largely abolishing measures or even calling into question their given objectives.</p>
		2.2. Extrapolation of risk-free interest rates
2	14	We have an important concern which does not relate directly to the extrapolation method but to Article 44 (1) of the Delegated Regulation,

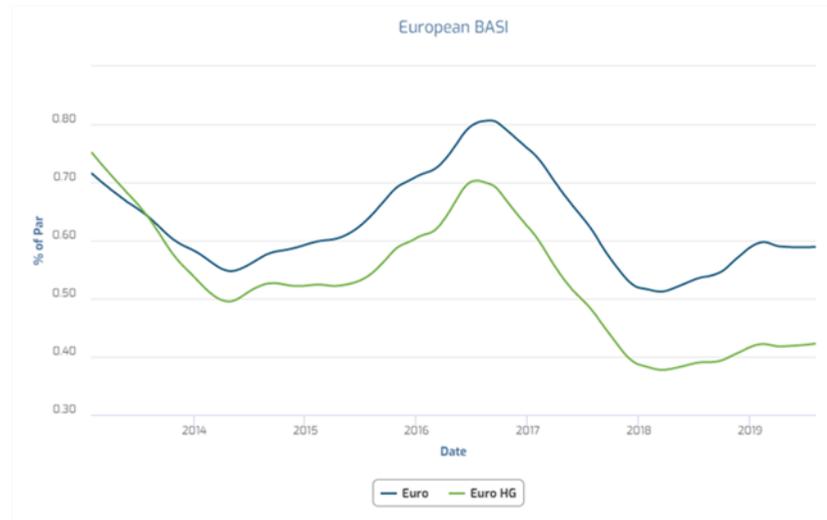
		which states that the basic risk-free interest rates have to be " <i>adjusted to take account of credit risk</i> ". Article 45 defines this credit risk adjustment, stipulating that " <i>the adjustment shall not be lower than 10 basis points and not higher than 35 basis points</i> ". In view of the transition to the new reference rate (€STR), which is, contrary to EURIBOR, a risk-free overnight rate, the lower bound should be reduced from 10 to 0 bp.
2	24	We agree that reliability and robustness of the term structure are important prerequisites to ensure a robust supervisory system. Therefore, the term structure must be based on reliable data and must not be too volatile. This indicates that extrapolation should not start too late.
2	28	<p>We agree that any implications of the LLP need to be considered jointly with the setting of the UFR.</p> <p>However:</p> <ul style="list-style-type: none"> • As well known (and also mentioned in paragraph 2.37), EIOPA intends to further reduce the UFR in the next years. This must be considered in a true holistic impact assessment. • In order to be a long-term equilibrium, the UFR must not neglect the term premium component of market interest rates. <p>The UFR is intended to represent a long-term equilibrium interest rate, but is currently calculated in a systematically distorted way.</p> <p>Normally, interest rates are higher for longer maturities than for shorter maturities. This typical observed interest rate structure can be explained by splitting the interest rates into their components. The fact that interest rates rise with maturity is due to uncertainty about future interest rate developments. The corresponding component is called the term premium.</p> <p>A long-term interest rate without a term premium cannot represent a state of equilibrium. In the calculation of the UFR, however, the term premium is missing, so that the UFR is systematically too low and the yield curve at the long end of the maturities is distorted in a one-sided manner. This violates the requirements of the Solvency II Directive on market consistency and leads to an unjustified reduction of the solvency ratios, which mainly affects the life insurers as providers of long-term guarantees. In order to remedy this situation, the term premium should no longer be excluded when determining the UFR. Only in this way the UFR can represent a real long-term interest rate. The UFR could then be calculated using the same method as before, but with another data record that implicitly contains a term premium (10-year interest rates). This would show that the target value for the UFR has so far been determined about one percentage point too low.</p>
2	33	It should be noted that the risk-free interest term structure does not reach the UFR. Only the respective forward rates are close to the UFR after the convergence period of 40 years. The term structure itself is far below the UFR for all relevant maturities.
2	34	<p>We do not agree that the fact that extrapolated rates are higher than swap rates would have the consequence that technical provisions are underestimated or that they are not sufficient in case of a transfer of liabilities.</p> <p>We question the significance of swap rates for very long maturities:</p> <ul style="list-style-type: none"> • The DLT assessment of the swap market conducted by EIOPA does not cover liquidity issues in the necessary depth. We urge EIOPA to assess the depth, liquidity and transparency of the swap market according to the same criteria as the depth, liquidity and transparency of the bond and of the government bond market. In particular the matching criterion should be applied. • The DLT assessment of the swap market conducted by EIOPA does not cover a representative time span. In particular no historic analysis

		<p>of possible market stresses has been carried out (see our comment on paragraph 2.68).</p> <p>The concern that technical provisions could not be sufficient in case of a transfer of liabilities should be remedied by EIOPA's own analysis of factual transfer values. EIOPA concludes that "there is no indication that technical provisions are systemically under or over estimated" (see paragraph 3.209).</p> <p>A general increase of technical provisions would result in a higher capital commitment at the expense of the consumer as well as the insurance undertaking.</p>
2	40	<p>The estimate is inappropriate (at least for the German life business) because it is based on deterministic cash flows that do not take into account the adjustments of the FDB in stochastic scenarios with falling interest rates. For this reason, as noted in previous consultations, deterministic cash flows should not be used in relation to interest rate sensitivity for surplus-eligible business.</p>
2	43	<p><u>We do not agree that it would be feasible for all insurers to match their risk reflected in the solvency risk balance sheet by derivatives:</u></p> <ul style="list-style-type: none"> • For many undertakings, hedging by means of derivatives is only possible to a limited extent because collateral must be provided which is no longer eligible for the security funds ("Sicherungsvermögen") prescribed by national law at least in Germany. Thus, most liability cash flows must be matched with bonds. Large scale hedging with derivatives is not feasible. • The regulatory guarantee and profit sharing requirements for life insurance with profit business are (at least) in Germany bound to investment returns under local gaap rules. These profit sharing mechanisms are a component of current life insurance contracts in force of German life insurers. Hence, besides the Solvency II requirements life insurers are required to also ensure that investment returns under local GAAP are sufficient to cover the guaranteed returns of the contract portfolio. This plays a crucial part within the asset management as well as the choice of investments of those companies. Within above mentioned local GAAP rules bonds are usually very well suited to cover economic as well as balance sheet risks. Receiver swaps are less suited for this, since swaps need to be depreciated directly under local GAAP rules when their market value decreases while under regulatory local gaap accounting standards the technical interest rate for evaluating insurance liabilities changes only slowly over time. This leads to volatile statutory profits. It is important to note, that the German legal quote (mandatory policyholder participation, "Mindestzuführungsverordnung") is based on statutory profits and a high volatility of those leads to policyholder participation levels which might be not sustainable and thus erode the safety of the guarantees for policyholders with long-term contracts. <p><u>Furthermore, replacing a significant part of insurers' bond investments with receiver swaps means that banks acting as counterparty will have to enter into huge amounts of payer swaps. It is not clear whether they are able to do this:</u></p> <ul style="list-style-type: none"> • Own analysis shows that the size of the swap market relative to the additional amount that would need to be hedged is small. For the German life insurance market alone, the sum of liabilities with maturities higher than 20 years is about € 963 billion. The swap notional required to hedge this is of the same magnitude. This notional amount has to be compared to the outstanding swap nominal. The gross notional amount of euro interest rate swaps with maturities from 20 to 30 years is about € 5 trillion. However, this gross amount consists for the most part of offsetting positions that neutralise each other. The net amount should be just a small fraction of this. Compared to this amount, the € 963 billion might be too high to trade easily, especially if all insurers replace their bonds by swaps at the same time.

		<p>Additionally, this might cause high transaction costs (in the form of bid-ask spreads and bank fees).</p> <p><u>Even if hedging with swaps was feasible on a large scale, it could lead to significant risks for both undertakings and financial stability:</u></p> <ul style="list-style-type: none"> • Even if banks were able to hedge most of this additional exposure, this would increase the interdependency between insurers and banks, thus creating an additional systemic risk. Most probably, only hedge funds will ultimately be available as counterparties. However, we are strongly convinced that the legislator does not want to make the stability of the European insurance market dependent on derivative markets and hedge funds instead of the sovereign Member States (as major bond issuer). • Also, market distortions may arise if many insurers replace their bonds by swaps at the same time (herd behaviour), which will create additional artificial volatility, making it harder to offer long-term guarantees. • Swaps introduce an additional liquidity risk: as EIOPA has stated in the December edition of their own biannual "Financial Stability Report", for insurers that have significant interest rate swap positions, sudden yield curve movements (especially strong upward movements over several days) can lead to a liquidity shortfall as a result of margin calls. This might then force insurers to liquidate assets on short notice ("fire sales"). • Hedging interest rate exposure using bonds offers more possibilities for spreading risks over numerous issuers, instead of concentrating them on the derivatives market (which is dominated by a relatively small amount of large players). • Insurers would generally need to enter into receiver swaps to hedge their liability exposure. The paying leg will then be a floating unsecured interbank lending rate. This would either create an additional variable interest rate exposure, or, if insurers decide to hedge this by purchasing instruments delivering this interbank rate, additional credit risk. • Pro-cyclical effects of derivative markets on insurers might lower financial stability. • If long-term liabilities are matched with corresponding long-term derivatives based on short-term instruments, there will be less possibility for long-term financing of the European economy and of national budgets. In addition, it becomes much more difficult to generate excess returns for the benefits of policy holders. <p>Thus, it is very important that general hedging with swaps is not de facto coerced. Therefore it is still indispensable that liabilities with maturities up to the LLP can be matched with bonds (matching criterion for the LLP).</p>
2	46	<p>With regard to ALM, life insurers have reported that the summer months of 2019 have shown what happens when an important parameter like the LLP is adjusted. The Dutch regulator DNB's adjustment to the pension fund yield curve put pressure on the ALM and in the wake of this other insurers in Europe followed suit as the negative impact on quotas was foreseeable. All in all, this had a pro-cyclical effect and was one of the decisive factors for the development of interest rates in August 2019.</p> <p>Furthermore, the scenario described under paragraph 2.46 is not comprehensible to us. Life insurers with rather long asset durations reported that they were able to observe in their movement analyses between the quarters that the long-maturity assets rather helped them, as they benefited from the decline in interest rates even after the LLP (and built up additional valuation reserves), while the increase in liabilities was dampened by the LLP (and the stable UFR).</p>
2	50	<p>We agree that such a procyclical investment behaviour can be the consequence of a late start of extrapolation (where liabilities cannot be matched with bonds). This must be avoided. See our comments on 2.43 and the following further reasoning:</p>

		<p>Life Insurance technical cashflows are not deterministic but stochastic. Because of profit participation and policyholders' early surrender options (with guaranteed surrender values in e.g. Germany) they depend materially on the future development of interest rates: sensitivity of life TP to a change in interest rates is highest when interest rates are already low. Uncertainty is biggest with respect to cashflows in the very distant future. So although bonds and swaps can in principle hedge interest rate sensitivity of TP infinitesimally, a life insurance company will have to increase asset duration after a substantial decline of interest rates (and vice versa) in order to retain that property. A regulation that forces to hedge against a parallel shift of interest rates will force insurers to buy additional protection against a further decline of long term interest rates when these interest rates are already low (and vice versa). This would create a procyclical effect that would be harmful to policyholders. We take the view that the "abnormally strong demand response of German insurance firms to a change in the price of long duration bonds" observed from 2009 to 2014 (see paragraph 2.51) already was the consequence of the imminent introduction of the market consistent Solvency II capital requirements (remember the preparatory study QIS4 was already conducted in 2008).</p> <p>While the punctual use of swaps for hedging purposes can be a legitimate risk management tool for some entities, forcing the complete insurance market to use more swaps for hedging their long-term guarantees by extending the LLP will materially increase systemic risks. Summing up, an increase of the LLP comprises the risk to increase pro-cyclical impacts in the insurance market significantly. The volatility which an increase of the LLP would cause in the evaluation of long term liabilities and therefore in own funds of life insurance companies would by far exceed the beneficial impact of other LTG instruments introduced within the Solvency II regime such as the volatility adjustment and the equity dampener. Those instruments would be insignificant compared to the effects of a higher LLP.</p>
2	51	The example only shows that procyclical investment behaviour can also occur in other regulatory environments. However, the example cannot disprove that procyclical investment behaviour can be fostered by a late start of extrapolation.
2	52	Providing consumers with long-term guarantees should not implicitly be called into question but supported by appropriate regulation. This was also the clear objective of the European legislator.
2	66	<p>The statement that the market is DLT for several maturities above the current LLP is only based on 2016 and 2017 data, whereas the Call for Advice stated that this evidence needs to be provided "<i>at the very least for 2016–2018</i>".</p> <p>The chosen threshold (50 M€ daily volume) also seems too low. It is stated that the same thresholds as those proposed by ESMA for assessing MiFiD 2 liquidity have been applied, but no justification is given why these thresholds also apply in this clearly different context here.</p> <p>Also, it does not seem plausible that the largest financial market (USD) in the interest rate swap market is or should be liquid only until year 30, while EUR and GBP are liquid until year 50. This should be examined or questioned and could be used as an argument that liquidity is not guaranteed in the long term and can change. The USD market was classified as liquid at least until year 50. Therefore, snapshots of derivatives markets should not be used.</p>
2	68	The DLT assessment of the swap market conducted by EIOPA does not cover a representative time span. The analysis concerning the DLT criteria was only conducted for the years 2016 and 2017 by EIOPA. The call for advice by the European Commission explicitly states: "This

		<p>evidence should be provided at the very least for the time period 2016-2018, and ideally several years further in the past, including to the extent possible periods of market stresses and increased interest rates, and be accompanied by a variation analysis of those parameters relevant for determining the last liquid point." EIOPA presents in chapter 2.2.4.4.1. only an analysis of the years 2016 and 2017 but not of the year 2018. In particular no historic analysis of possible market stresses has been carried out.</p> <p>We would appreciate an assessment by EIOPA with regard to the following questions:</p> <ul style="list-style-type: none"> • How does liquidity change in times of severe market stresses, as was observed in the years 2007 until 2009 while the interbank market was dried out not liquid. (Life) insurers were for the most part immune to liquidity issues do the fact that they act as long term buy- and-hold investors. • Which impact would have a reduction in liquidity on the interest rate structure? • Which impact would have a hedging of long term liabilities to a significant amount of the European life insurance and annuity business via financial derivatives have on financial contagion between banks and insurers and therefore on systemic risk overall? • Which entities ensure liquidity within the interest rate derivative market? How reliable and sustainable is their interest to ensure liquidity for very long time periods as life insurance liabilities mature over decades? • Are there sufficient derivatives to hedge the available amount of long term liabilities within the European insurance sector (matching criterion?)
2	71	<p>The DLT assessment of the swap market may in itself make sense. However, for insurers not the swap market, but the state of the bond market is crucial, as both bond and swap markets need to be liquid for the the maturity range that represents the interpolated part of the risk free term structure, and bond markets tend to be less liquid than swap markets for longer maturities. We therefore consider it problematic that for the euro bond markets no analysis has been presented.</p> <p>According to EIOPA, "For the euro and for non-EEA currencies comparable assessment have not been carried out because trade volume and trade frequency data for government bonds of those currencies are not available. With regard to the euro a particular obstacle to the assessment is that there are no consistent data across the euro area countries." It is unclear to us why this is the case. Analyses and reports on euro bond market liquidity exist, implying that data should be available.</p> <p>We have conducted a liquidity analysis ourselves. The results point towards a stable or decreased liquidity of European bond markets:</p> <ul style="list-style-type: none"> • Bid-ask spreads are a common indicator of liquidity. Lower bid-ask spreads indicate the presence of many competing market makers, thus allowing the purchase or sale of securities at low costs and without significantly impacting the price. We have analysed the development of the MarketAxess bid-ask spread index of high-grade European bonds (which contains both government and corporate bonds) since 2014. After an increase until July 2016, spreads fell again, and after a rebound in 2018 are currently close to their 2014 level. The overall index (which contains lower-grade bonds too) has behaved similarly and is currently above its 2014 value.



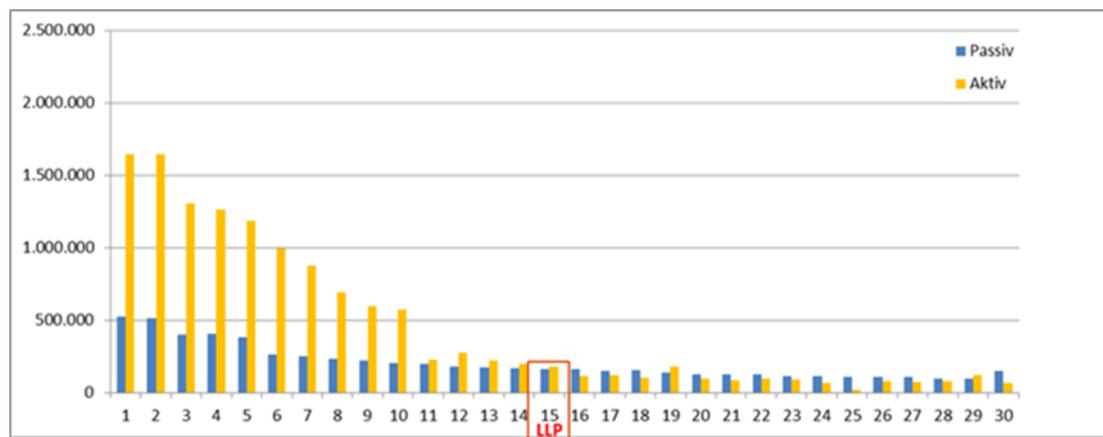
- Trading volumes are another indicator of liquidity. Higher trading volumes indicate that large blocks can be easily traded without impacting the market or execution speed. An analysis by AFME (Association for Financial Markets in Europe) shows that average trading volumes for both German and EU-28 sovereign bonds are close to their 2014 levels (source: <https://www.afme.eu/portals/0/globalassets/downloads/data/government-bonds/afme-pdb-govt-bond-data-report-q4-2017.pdf>).
- Furthermore, aggregated trading book inventories of the seven largest European investment banks have decreased by 31% between 2010 and 2016, and by around 15% between 2014 and 2016.

Our analysis of EIOPA's figures on the matching criterion clearly shows that this criterion results in an LLP of 15.

The bond cash flows used in the matching criterion analysis assume implicitly that all outstanding bonds could be purchased by insurers. However, in practice, insurers will not be able to purchase all outstanding bonds because of 1) the ECB's asset purchase programme (which has been restarted this year) and 2) competition from other market participants. From our point of view, at least a correction for the ECB's asset purchase programme is adequate, as those bonds are not available for purchase anymore. As detailed information on the maturity distribution of the ECB's holdings is not available, we have used the following method:

- We have calculated the total notional volume of the ECB's holdings (excluding asset-backed securities) using figures provided by the ECB;
- this value has been divided by the total nominal bond amount outstanding (based on the iBoxx EUR overall index);
- the bond cash flows (excluding UL/IL) for 2018 presented in annex 2.4, p. 775, of the consultation paper have then been reduced by this percentage (26%).

After applying the matching criterium with the corrected bond cash flows, liability cash flows will exceed bond cash flows from the year 16 onwards (with the exception of year 19), as can be seen in the following chart:



As the surplus in year 19 cannot be used to compensate earlier deficits, this would result in an LLP of 15 years, significantly lower than the value of 23 years resulting from EIOPA's analysis.

Additionally, current trends will put further pressure on the LLP resulting from an application of the matching criterium:

- The ECB's asset purchase programme will continue for an undetermined amount of time;
- technical provisions will increase as a result of demographic developments and the resulting increase in demand for private pensions;
- less (almost) risk-free bonds are available (see our comment on paragraph 2.77).

An analysis of the development of outstanding bond volume in relation to technical provisions shows that outstanding volume has slightly decreased between 2014 and 2019 whereas technical provisions have significantly increased:

	Outstanding volume, bn euro (A)	Technical provisions, bn euro (B)	A/B
2014	7,504	4,216	1.78
2019	7,343*	5,179	1.42

The conclusion from these figures is that hedging cash flows that are discounted with non-extrapolated interest rates has become more difficult.

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We think that EIOPA's application of the residual volume criterion that apparently results in a stable LLP for the euro is not sufficient. A more detailed view which also takes into account the worsening of credit quality and overall availability points towards a lower LLP:

		<ul style="list-style-type: none"> • As an outcome of the financial and euro crisis, the credit quality of sovereign and corporate debt has worsened. As a consequence, the proportion of long-term, high-quality bonds (which are generally insurers' preferred investments) to total notional volume has fallen significantly compared to 2019. This is mostly due to the ECB's asset purchase programme. Total nominal outstanding of AAA- and AA-rated bonds has fallen by 8% compared to 2014, and total nominal outstanding of AAA-rated bonds has fallen by 26% compared to 2014. • In consequence, the residual volume criterion would lead to a lower LLP when considering just investment-grade bonds net of ECB purchases: the proportion of investment-grade bonds with maturities of 20 years or higher has fallen from 6.4% to 5.2% between 2014 and 2019, leading to an LLP below 20 years. • A further restriction on credit quality shows that the availability of high-rated bonds has fallen disproportionately: the proportion of AAA- and AA-rated bonds with maturities of 20 years or higher has fallen from 4.3% to 3.5% between 2014 and 2019, and the proportion of AAA-rated bonds with maturities of 20 years or higher has fallen from 2.3% to 1.1% between 2014 and 2019. <p>Also, life insurers and pension funds hold long-term bonds to maturity to match liability cash flows. The longer the maturity, the higher the portion of buy-and-hold exposure. When rates fall, more and more investors start to chase the same few bonds that are still available. Put differently: liquidity diminishes in scenarios and maturities where it is most needed. The situation will even worsen significantly in times of rising risk aversion (e.g. during recessions or periods of high political uncertainty), when "flight to quality" leads to a situation in which even investors with shorter investment horizons start to purchase long-term high-quality bonds. As a consequence the risk of escalated market volatility and hence volatility in solvency ratios has increased, which again puts at risk the overall stability of financial markets.</p>
2	82	<p>In all options except option 4 (LLP of 50 years) a sensitivity analysis to a 50 year LLP is considered that should be disclosed in SFCR and RSR, as well as a right for supervisors to disallow dividend payments/other capital distributions if under the 50 year LLP the SCR was breached. We strongly reject this, should this be proposed, as it would effectively introduce the 50 year LLP as the default.</p> <p>This possible proposal would constitute an early intervention power of the NSA additional to EIOPA's considerations for proposals regarding Recovery & Resolution (see paragraph 12.91) which we would also strongly object.</p>
2	86	It is essential to keep the bond criterion. If only swaps were considered in the determination of the LLP, this could force insurers to hedge their interest rate exposure with swaps for maturities where not enough bonds are available, which will have multiple negative effects (see our comment on paragraph 2.43).
2	87	See our comment on paragraph 2.82.
2	88	See our comment on paragraph 2.86.
2	92	See our comment on paragraph 2.86.
2	93	See our comment on paragraph 2.82.
2	111	The graph shows that extrapolation has a stabilising effect, as higher values are used in the low-interest environment (from 2015 onwards) compared with the market, but lower values could also be observed in the relative "high-interest phase" around 2000.
2	127	We would not see the arguments of swap compared to LLP as a pro, because swap is not the right reference for matching.
		2.3 Matching adjustment
		2.4 Volatility adjustment
2	261	We support the three objectives attributed to the VA. For a better fulfilment of these we identified the following three main areas for

		<p>improvement:</p> <ul style="list-style-type: none"> • the level of the VA needs to be increased, in particular the risk correction should not be excessive and the 65% general application ratio, which is (no longer) justified as general precautionary deduction, should be deleted; • the VA should be fully applied on all maturities because predictability of liability cash flows allows to realize an "illiquidity premium" permanently; • the VA should be applied dynamically in internal models and the standard formula to deliver an appropriate assessment of the spread risk of bonds. <p>This approach would positively impact the objectives of European projects such as the capital markets union and the green deal.</p>
2	262	We welcome that EIOPA concedes that the VA may not only overshoot but also undershoot (deficiency 1). However, the following analysis relates nearly exclusively to overshooting. The important issue of undershooting (e.g. caused by excessive deductions in the calculation) is missing. This should be added.
2	267	The objective of the VA to mitigate "exaggeration of bond spreads" requires a reference point to measure "exaggeration" in the context of the insurance business model. Assets backing insurance portfolios that result in stable cash outflows are not subject to forced selling and therefore all components of the spread, except for the spread relating to expected defaults, can be earned by the insurer in such cases. The asset loss compensation resulting from the VA for such portfolios should therefore include all spread components except the default component. Unexpected default losses should be covered by capital requirements (in the spread risk module).
2	271	The table proves that in some jurisdictions undershooting of the VA is an important issue: In Germany, only 42% of the losses due to credit spread changes are compensated (Spain: even just 33%).
2	278	We agree that predictability of the liability cash flows allows to invest in illiquid assets and to realize an illiquidity premium.
2	279	The current VA does <u>not</u> account for this additional return because there are too many / too large deductions in the calculation. Hence, the issue is <u>not</u> that undertakings with hardly illiquid cash flows may benefit too much from the VA (presented as deficiency 2) but instead that undertakings with clearly illiquid cash flows do not benefit to a sufficient extent (undershooting).
2	283	<p>We agree that cliff effects of the country-specific VA are an issue.</p> <p>However, we do not understand why the application of the country-specific VA depends on the undertaking's legal domicile in the country in question and not on the composition of its liability structure and capital investments (i.e. the undertaking's actual exposure to bonds from that country) which are decisive for its vulnerability.</p> <p>A key aspect of the VA is that it contributes to a deepening of the capital markets union which also needs to be considered in this context.</p>
2	288	We agree that the insensitivity of the risk-correction to credit spread changes is an issue (deficiency 4). However, that holds not only in times of high market spreads but especially in times of very low spreads where the current absolute risk-corrections is overshooting.
2	296	We do not agree to the point presented as deficiency 5. The illiquidity of (in particular: life) insurance liability cash flows allows to invest in illiquid assets and to realize an illiquidity premium. This holds even in times of very low spreads and should be reflected in an appropriate VA. The occurrence of VA values close to zero confers that the current VA calculation has too many / too large deductions and should be adjusted. Negative VA values would be completely inappropriate and have to be avoided.

2	297	<p>We agree that the underlying assumptions of the current VA are unclear (deficiency 6). In our view, the VA should meet two superior objectives:</p> <ul style="list-style-type: none"> • considering the predictability of underwriting cash flows in their valuation (in the sense of an illiquidity premium) to promote insurers' role as long-term investors and their provision of long-term guarantees; • mitigating the effects of short-term exaggerations in bond spreads (in the sense of a crisis instrument). This prevents frantic pro-cyclical reactions and thus contributes to financial stability.
2	299	<p>We agree that discounting insurance liabilities with a risk free curve is based on the assumption that the insurance liabilities can be replicated with risk free assets with otherwise similar characteristics.</p> <p>However, the important point of this statement is "similar characteristics". Insurance liabilities cash flows are often very illiquid (stable, well predictable in the long term). This special characteristic of the liabilities allows insurers a special investment behaviour. As long-term investors which are not exposed to the risk of forced sales, insurers are able to hold their fixed income assets to maturity and to achieve with less liquid assets sustainable higher returns than the risk free interest rate. However, the market values on the asset side of the balance sheet follow all short-term market fluctuations which do not necessarily affect insurers in terms of real cash flows. Moreover, the lower valuations of illiquid assets at the market are adopted, too. In order to provide an accurate picture of the solvency situation, these asset side effects must be balanced out by a corresponding valuation on the liabilities side.</p> <p>Therefore, the assumed replication with assets with similar characteristics could often only mean to replicate the liabilities with risk free assets which 1) are illiquid and 2) have low volatility.</p>
2	300	<p>We do not agree that risk free interest rates with the VA would not be market consistent (presented as deficiency 7) or that the existence of two Solvency II term structures (with and without VA) would be contradictory with market consistency. As a result of the reasoning given in our comment on paragraph 2.299, for many/most insurers discounting with a risk free term structure that includes an appropriate VA is the right way to market consistent valuation.</p>
2	316	<p>We agree that in case of approach 1 (VA based on undertaking's own assets), a macro-economic VA is not necessary.</p>
2	317	<p>We agree that in case of approach 2 (currency wide VA), a macro-economic VA should supplement the permanent VA.</p>
2	318	<p>In the case that an approach based on undertaking's own assets would be chosen, option 1 seems to be sensible on the whole.</p>
2	332	<p>The SFCR should not be unnecessarily expanded. Hence, we oppose the additional explanation in the SFCR proposed in option 1.</p>
2	347	<p>We agree with EIOPA not to follow up on the middle bucket approach (option 2) any longer.</p>
2	351	<p>We think that an asset driven approach (option 3) would be possible in principle, in particular for a macro-economic VA. Such an approach might tackle on the asset side the issue of over- and undershooting. However, it would be a completely different concept than the current VA as a pure liabilities side instrument.</p>
2	362	<p>In principle, it seems sensible to replace the current reduction of the VA according to the fixed income share in the representative portfolio by a calculation as in option 4. The calculation rightly accounts for the different effects of a marginal spread widening and a marginal VA increase on market values. This would solve the issue of overshooting to a large extent. However, in order to solve the issue of undershooting, too, the maximization on 1 would have to be dropped. Moreover, the calculation which each undertaking would have to carry out on its own, is burdensome.</p>

2	364	<p>In German life business the volatility adjustment has not only an impact on the expected value of guarantees but also on the future discretionary benefits. Under some market circumstances in combination with the modelling of a steady return on equity, an increasing volatility adjustment leads to higher best estimate liabilities (i.e. a negative PVBP(BEL) in the proposed approaches) due to an overcompensating effect of the future discretionary benefits. Nevertheless, the volatility adjustment may eventually stabilize the Solvency II ratio due to the increased loss-absorbing capacity of technical provisions.</p> <p>As a consequence the currently proposed methodology of calculating the application ratio of option 4 does not consider adequately such cases with a negative PVBP(BEL). Given a positive PVBP(MV), the technical maximization with zero causes a jump discontinuity for the PVBP(BEL) at 0. For example a PVBP(BEL) of -1 EUR leads to an application ration of 0 whereat a PVBP(BEL) of +1 EUR leads to an application ratio of 1.</p> <p>Such a methodological discontinuity can lead to an artificial volatility which should be avoided in the Solvency II context and is contrary to the intention of the volatility adjustment. In particular that methodology would penalize those companies with a high participation ratio of policyholders..</p> <p>A reasonable methodological fix should be considered. For example, setting the application ratio to 1, if PVBP(BEL) is smaller than zero.</p>
2	371	We do not agree that the ratio is capped at 1. This means that is an asymmetric approach which on the one hand prevents overshooting but on the other hand explicitly builds the problem of undershooting into the formula instead of solving it.
2	379	We agree only partly with the pros and cons. The issue of undershooting is not solved because of the needless maximization on 1. The con of increased complexity and costs of application and supervision should be given special attention.
2	381	We agree that an illiquidity premium which explicitly recognises the predictability of insurance liabilities could eliminate the current valuation mismatch between illiquid investmenst and "illiquid" liabilities.
2	383	Predictability of insurance liabilities is key for both 1) immunity against spread exaggerations and 2) possibility to earn higher returns with illiquid investments (which is not considered in the current VA that is too low in this respect). Therefore, in principle, it is sensible to make the full VA application dependent on the actual illiquidity of liabilities We think that the requirements for the application of the VA already guarantee that this is sufficiently checked. However, if the approach in option 5 should be further pursued, an adequate calibration of the application factor and practicability aspects are important. A corresponding plausibility check / calculation should not be too complex and burdensome.
2	385	We think that an assessment of "illiquidity" could in principle be based on stressed cash flows as presented in approach A. However, the calculation should be kept as simple as possible and sufficient time must be available (e.g. calculation with data from previous periods).
2	413	We agree that there is not sufficient evidence for a meaningful relationship between cancellation/surrender disincentives (which are the base for the bucketing approach B) and actual cancellation/surrender rates (which are crucial for the predictability of liabilities). Therefore, we strongly support to discard approach B.
2	417	We agree that approach A (analysis of stressed cash flows) is more informative than approach B (buckets based on cancellation/surrender rights and disincentives). If there is an application factor concerning the "illiquidity" of cashflows, it should be continued to work for a pragmatic solution on the basis of approach A.

2	418	<p>We do not agree that FDB could be excluded because they were dependent on the evolution of financial markets. In contrary, FDB make a significant contribution to ensuring 1) that life insurers are not exposed to the risk of forced assets sales and 2) that they can invest in illiquid assets.</p> <p>If the return on capital in the future turns out to be lower than expected, the FDB will be reduced accordingly. By adjusting the liability side to developments on the asset side, the FDB therefore acts as a buffer that prevents liquidity bottlenecks from arising and, thus, capital investments from having to be sold prematurely.</p>
2	420	The SFCR should not be unnecessarily expanded by reporting possible liquidity buffer.
2	422	We agree that this option could be combined with the allowance of a dynamic VA in the SCR standard formula. We welcome in particular that EIOPA states that a dynamic VA in the SCR standard formula would ensure consistency between the risk measurement in the SCR and in the derivation of technical provisions.
2	423	We cannot comprehend why disadvantages (which?) of a dynamic VA in the standard formula should "clearly outweigh" its advantages.
2	424	<p>Regarding the idea of a reduced spread risk charge, see our comment on paragraph 2.579.</p> <p>We do not agree that recalculating the VA (for a dynamic VA) should be seen as burdensome. VA / risk corrected spread values for the spread risk scenario should be published by EIOPA together with the other monthly technical informations. In case of with-profit life insurance, the mentioned recalculation of technical provisions for the spread risk has to be done anyway (because of changing FDB). Complexity of the standard formula is not increased at all by a dynamic VA.</p> <p>Apart from that, there should be by no means an additional scenario in the SCR standard formula for the risk of an illiquidity mismatch between assets and liabilities. The proposed "illiquidity" measurement based on stressed cash flows renders such an additional scenario unnecessary. It would only lead to a pointless increase of complexity in the standard formula.</p> <p>Furthermore, we do not agree that the recognition of the VA in economic scenario generators could lead to distortions. In contrary, only the risk free term structure with VA is an appropriate basis for the generation of capital market paths for a stochastic valuation.</p>
2	440	<p>In the analyses for the calibration of the risk-correction as a percentage of the spread (option 6), we do not agree with the assumption that the risk correction should conceptually extend to the credit risk premium for unexpected losses.</p> <p>The VA is part of the best estimate valuation. Thus, only expected losses justify a reduction from the spreads. Unexpected losses are deviations (positive or negative) from the best estimate of losses. These deviations are risky and, of course, relevant for risk measurement but <u>not</u> for best estimate valuation. In contrast, the premium for the risk of such deviations is <u>not risky</u> itself, i.e. the premium (the price of risk for a risk averse investor) can be received in any case. Therefore, there is no reason to deduct this premium from the spreads.</p>
2	477	<p>The graphs confer that the current risk-correction of credit spread changes is not only too low in in times of high market spreads but also too high in times of very low spreads.</p> <p>We do not agree that the inclusion of unexpected losses (UEL) in the risk-correction is a pro. In fact, it is a con (see our comment on</p>

		paragraph 2.440).
2	479	We agree with the presented aims of an amended trigger and calculation of the country-specific VA (option 7).
2	489	We agree that it is sensible to have a clearer split of the VA between its function as a crisis and a permanent tool (option 8). However, the actual design of both instruments is crucial.
2	527	In our view, the proposed approach 1 does not sufficiently increase the effectiveness of the VA (or even may reduce its effectiveness). There are still too many / too large deductions in the calculation. Thus, proposal 1 should be further improved. In general, the VA should meet two objectives: <ul style="list-style-type: none"> • Considering the predictability of underwriting cash flows in their valuation (in the sense of an illiquidity premium) to promote insurers' role as long-term investors and their provision of long-term guarantees. • Mitigating the effects of short-term exaggerations in bond spreads (in the sense of a crisis instrument). This prevents frantic pro-cyclical reactions and thus contributes to financial stability.
2	535	In our view, the proposed approach 2 does not sufficiently increase the effectiveness of the VA (or even may reduce its effectiveness). There are still too many / too large deductions in the calculation. Thus, proposal 2 should be further improved. Regarding the general objectives of the VA see our comment on paragraph 2.527.
2	548	The impact analysis in the table shows that approach 1 does not solve the problem of the VA being too low but rather worsens the situation even more. Instead of this, excessive deductions in the calculation should be corrected in order to get a more effective instrument.
2	550	The impact analysis in the table shows that approach 2 does not solve the problem of the VA being too low but rather worsens the situation even more (except for undertakings in Greece and Italy). Instead of this, excessive deductions in the calculation should be corrected in order to get a more effective instrument for undertakings not only in a few Member States.
2	569	We do not agree. The general application ratio (GAR) should be set to 100% (option 2). A GAR of 65% is an unjustified deduction in the calculation and unnecessarily impairs the effectiveness of the VA (see our answer to question Q2.8).
2	579	We believe that there should be a dynamic VA in the standard formula at best. If this is not the case, however, the outlined indirect approach of an accordingly reduced spread risk charge for VA users could be a possible fall-back solution which should be further worked out.
2	590	We do not agree. A dynamic VA should be introduced in the standard formula. The VA applied in the spread risk scenario has to be consistent with this scenario (dynamic VA). This holds for both internal models and the standard formula. Moreover, the introduction of a dynamic VA in the standard formula would lead to a level playing field versus internal model users. For a more detailed reasoning see our answer to question Q2.9.
2	599	We agree that the question whether the use of the VA should be subject to supervisory approval should be answered in the same way for all Member States.
2	600	We agree that the question whether the VA should be subject to supervisory approval depends on the design of the VA.
		2.5 Dynamic volatility adjustment in internal models
2	671	The dynamic volatility adjustment (DVA) in internal models should be maintained without conditions instead of "could be maintained, if ..." (see our answer to question Q2.9).

2.6 Transitionals measures on the risk-free interest rates and on technical provisions		
2	692	The current framework needs to remain stable and reliable for long-term Insurance business. It is essential that the scheduled reduction of the TTP measures remains unchanged. The transition to the new regime does take time especially in life insurance where the contracts are long-term. A faster or even abrupt transition could turn out to be very disadvantageous, especially for customers, e.g. in terms of profit sharing.
2	696	<p>An intervention in the SCR ratio with TTP measures in the form of a determination of ratio with TTP measures = $\max(\text{Quote without TTP measures}, \min(\text{Quote with TTP measures}, 100\%))$ should be rejected. This formula would lead to statistical accumulation effects, which could make market-wide impact analyses considerably more difficult. In addition, the "100%" are virtually arbitrary and not principle-oriented.</p> <p>The argument that the TTP measures led to a distortion of the solvency ratios will resolve by the gradual reduction of the solvency ratios. The argumentation based on the results of the 2017 LTG report is questionable in view of the changed market conditions, e.g. long phase of low interest rates. Furthermore, German life undertakings in particular have to hedge themselves against model-immanent volatility with a ratio well above 100%. Therefore, a SCR ratio above 100% does not mean that an undertaking does not "need" the transitional.</p>
2	718	<p>The impact of the transitionals on the solvency position are already provided. Additional reporting does not necessarily mean enhanced information and safety. This does not contribute to the proposal by EIOPA to enhance transparency and relevance of the SFCR (cp. discussions on reporting and disclosure). For example:</p> <ul style="list-style-type: none"> • The supervisory authority receives information from separate reports (e.g. phasing-in plans, progress reports) on capital requirements. A justification of using the transitional is not very purposeful since an SCR-compliance without transitional usually originates from the high volatility of the SCR-compliance (e.g. shift in interest rates). This can lead to misinterpretations. • Projections regarding the reduction of the dependence on transitionals rely on various assumptions, expert judgement, thus a deep understanding of the business model. Similar reasoning holds true for the reason to apply the transitional.
2	719	We support the maintenance of the current legal provisions on transitional measures on the risk-free interest rates and on technical provisions for companies to newly apply for the transitional measures. This ensures legal certainty and a level playing field between undertakings that currently use transitional measures and undertakings that do not. Furthermore, EIOPA acknowledges the macroprudential role of transitionals, which can mitigate "systemic risk" (paragraph 11.26). This means that the possibility to newly apply for the transitional could also be helpful in crisis situations. There is no reason to limit such an effect to existing applicants.
2	720	An additional capital add-on is not an appropriate instrument in case where the phasing-in plan provided by undertakings is not feasible anymore. In contrast, it would usually be rather counterproductive. Thus, we reject this draft proposal.
2.7 Risk-management provisions on LTG measures		
2	758	In line with the IAIS requirements (ICP 16.9), we see the need for a liquidity risk management plan only in cases of increased liquidity risks (see our comment on paragraph 11.144). This is not per se the case for VA users.
2	759	We agree to change the reference point of the sensitivities analysis from "VA assumptions" to "economic situations". We also agree to continue the requirement to submit the outcome of the analysis as part of the RSR. For the avoidance of doubt, this must be a yearly not quarterly exercise and submission.
2	760	We support a deletion of the requirement.

2	761	We support this clarification which is in line with current practice.
2	762	We strongly oppose this draft proposal. It would introduce a new "shadow indicator" based on assumptions which differ significantly from those Solvency II is based on. The suggested addition of a supervisory intervention point for NSA, who should receive the power to deny dividend payments and other capital reductions, where a simultaneous non-application of the VA and the transitionals in combination with a LLP of 50 years and a reduction of UFR by 100 bps results in a non-compliance with the SCR, is undermining the role of Pillar 1 as the measurement tool of the current solvency position. As long as Pillar 1 indicates that the SCR is covered, the undertaking is considered solvent under the existing Solvency II framework and should be free to adjust its capital. There is no need for the introduction of further constraints that compromise the clear Solvency measurement objective of Pillar 1. Furthermore it introduces effectively a 50 year LLP combined with a 100bp lower UFR as the Solvency measurement parameters that are the binding constraint for risk management, since risk management can not assume that supervisors can be "convinced" by any demonstrations of the undertaking that capital measures "do not put at risk the protection of policyholders...", given that this is a subjective assessment for which EIOPA has not outlined any further criteria. As such, we disagree with EIOPA's proposal, which blurs the boundaries between Pillar 1 and 2 of Solvency II, and thereby takes away a significant amount of legal certainty. The advice appears legally and practically infeasible.
2.8 Disclosure on LTG measures		
2	795	The SFCR should not be unnecessarily expanded. In the policyholder section in particular, care should be taken to ensure that only the information is included, which an average policyholder requires in the decision-making process. Reporting on the impact of LTG-measures is an example of content that is inappropriate for policyholders and can lead to misinterpretation. Furthermore, excessive information would only add to complexity and burden. This is not adequate, in particular against the background that SFCRs are hardly ever read (in particular not by policyholders). In addition, we see strong inconsistencies with the proposal from the first wave of consultation. It is impossible to provide the SFCR for policyholder as a two pager.
2	797	Sensitivities are already factored in and explained in the Own Risk and Solvency Assessments (ORSA). The report is intended for internal purposes and is also submitted to the supervisory authority. There is no added value in adding this information to the SFCR. We disagree that disclosing in the SFCR more quantitative information than SCR and MCR ratios will help the readers of the SFCR to better understand the risk profile. Given the very small number of readers, we deem this requirement to be too excessive.
2.9 Long-term and strategic equity investments		
2	798	Regarding long-term investments, we believe that the requirements for long-term equity (LTE)-investments should be simplified substantially and that a new criterion requiring portfolio diversification for long-term equity is not needed. As long-term investors, we welcome the approach of a special treatment of long-term equity investments. However, the very restrictive conditions of Article 171 a (1), are hardly to fulfill in practice. In particular the requirement, that the sub-set of equity investment has to be included within a portfolio of assets which is assigned to cover the best estimate of a portfolio of insurance obligations corresponding to clearly identified businesses is difficult to implement, as well as the requirement to separate the assigned portfolio of assets from the other activities of the undertaking (and especially resulting losses therefrom). In traditional insurance business, liabilities are generally covered by a cover pool of investments, with no allocation of individual investments to individual liabilities. The new proposal, that only those LTE portfolios that are diversified benefit from the reduced capital requirement of 22% will further exacerbate the existing high requirements

		and make it even less likely to meet them. Moreover, the requirement that only EEA equities are eligible for inclusion in LTE Portfolios significantly limits the investment universe, making it even more difficult to implement an explicit diversification requirement. To enable the implementation in praxis we suggest to simplify the requirements for LTE-portfolios substantially. This would also help to ensure a level playing field.
2	946	<p>We believe that EIOPA's advice is overstating the issue at hand. (Re)insurers and NSAs must agree on a reasonable scope of application for the strategic equity risk charge such as not to arbitrarily avoid the application of the 49% / 39% charges. However, requiring more quantitative data on the volatility of the value of such participations misses the point that what makes these participations strategic is not their own business, but the subjective purpose of the participating undertaking. The latter deliberately decides that it will not give up the participation in case of stress, which justifies to depart from the one year holding period. Hence, we believe that quantitative methods won't help to shed a light on this issue.</p> <p>Rather, legislation must ensure that the declaration of a participation as strategic means a commitment from the participating undertaking, which needs to be based on actions. One qualitative criterion could be the level of integration in the participating undertaking's business, a potential indicator could be the implementation of the group-wide governance system in a strategic participation.</p>
2	948	We agree that the application of the strategic equity risk charge should be limited to participations in related undertakings, whether they are (re)insurers or not, and that this should be made more explicit.
2	951	As pointed out in our comment on paragraph 2.946, the decisive element for the lower volatility of the participation is not the participation (related undertaking) itself, but the participating undertaking's subjective aim or plan. Hence, the correlation of the performance with the value is not relevant.
2	961	We agree to exclude strategic participations from the scope of long-term equity.
		2.10 Symmetric adjustment to the equity risk charge
		2.11 Transitional measure on equity risk
		2.12 Extension of the recovery period
		3. Technical provisions
		3.1 Best estimate
3	51	The mentioned exception in Article 18 (3) is of significant importance for German health insurers. The current wording of this provision has proven succesful in practice. Thus, we prefer option 1 (no change).
3	59	In general it should be noted that the calculation of EPIFP is already very burdensome especially for life insurers. The resulting figures are hard to interpret and do not really provide additional insight in the overall Solvency II framework. Before discussing options it would be very helpful if EIOPA could clarify the objective which is connected with this figure: In which respect could it be helpful and support supervisors? We strongly doubt that without a clear view on the objective it is possible to design a result which makes sense.
3	62	The benefits are not logically consistent. At least in nonlife business corporate management is not based upon EPIFP but on completely different key figures. So EPIFP is computed solely for supervisory purposes. We don't see any benefits for the industry when changing the calculation of EPIFP. If there were any benefits in a more detailed calculation of EPIFP, the industry would already do so and aggregate appropriately for current reporting requirements.
3	70	Clarification of Article 18(3) might be helpful to understand the Article correctly.

3	71	Article 18(3) is amended to clarify that the calculation on contract level is not an obligation. This clarification is positive.
3	73	<p>To adequately assess the effects of future premiums on technical provisions or own funds it is strictly necessary to be able to separate liabilities with respect to accrued vs. future premiums. Article 260 (2) specifies that future premiums shall not be taken into account "regardless of the legal or contractual rights of the policyholder to discontinue the policy". If the policyholder has no such legal or contractual right the change in benefits related to the discontinuance of premium payments is not well defined. We hence propose to restrict the requirements to legal or contractual rights of the policyholder.</p> <p>Up to this consultation (see paragraph 4.130) we have interpreted Article 260 of the Delegated Regulation such that expected profits in total may be positive or negative. It may be noted that there is no validation rule regarding the sign of EPIFP in the QRT template S.23.01. With the interpretation of paragraph 4.130 EPIFP may well be greater than the overall reconciliation reserve.</p> <p>In paragraph 3.61 it is stated that it seems reasonable to expect that the concept of EPIFP considers the whole impact on own funds of future premiums, and not only part of it. A different treatment of positive and negative EPIFP would contradict this concept.</p> <p>The expected exercising of policyholder options is already reflected in the technical provisions. In addition to the best-estimate assumptions there are specific risk submodules to account for possible changes in lapse rates.</p> <p>Overall the SCR of the standard formula does take into account changes in basic own funds due to changes in EPIFP. We believe the own funds have to be seen in relation to the SCR. Thus the notion of EPIFP in our view does not provide any additional insights as no SCR calculation generally excluding EPIFP is intended.</p>
3	74	It is unclear why it is proposed that netting is only permitted within a HRG. This approach contradicts a holistic view of an insurance undertaking. Would the proposed approach lead to more than "one EPIFP" (profit/ loss) that means two figures? If so, what significance does this have for an undertaking or supervisor? Additionally, the already costly calculations for EPIFP should not be expanded. The benefits bear no relation to the costs just to disclose an "of which"-position in the balance sheet. Therefore we suggest to delete this amendment. See also our answer to question Q3.1.
3	75	<p>This amendment should be dismissed. It is completely unclear which objective this analysis should have.</p> <p>For non-life insurance the impact of reinsurance on the gross expected profit or loss included in future premiums are usually negligible due to the expected combined ratio close to 100%. That means that gross and net EPIFP are almost identical. For most life insurance companies reinsurance has no important role. Against that background the effort for the calculation is disproportionate high, i.e. doubling of calculation and implementation.</p> <p>Furthermore EPIFP are only calculated because of supervisory requirements and are not considered for anything. Also for internal control the EPIFP are not used, there are completely different numbers relevant.</p> <p>A calculation with and without reinsurance leads to unnecessary effort.</p>

3	76	This amendment should be dismissed. It is completely unclear which objective this analysis should have. An analysis of future cash flows stemming from management fees from funds seems completely arbitrary. Apart from this, the term "profits or losses from servicing and management of funds" is not clearly defined. What special risk is connected to this figure? The amendment to perform this additional calculation should be rejected due to the time consuming requirements already in existence. It is unclear which information should be gained from this requirement.
3	83	Best Estimate valuation in life insurance with a stochastic model includes various management actions. These are necessary components of these models. We agree that their implementation in these models must not be linked to business plans.
3	85	This amendment seems not critical. It could be a sensible clarification.
3	102	It is our current understanding that the going-concern principle in the Delegated Regulation means "business as usual". Therefore, we welcome the clarification which reflects economic reality.
3	103	This clarification is welcomed.
3	120	Modelling dynamic lapses is the default in German life insurance. The models are widely accepted unless it is indeed hard to calibrate them on historic data. Their calibration relies mostly on expert judgement. However, further guidance from EIOPA is not necessary since EIOPA themselves do not seem to feature better evidence on policyholder behaviour than the undertakings. We agree with the option chosen.
3.2 Risk margin		
3	156	We agree with EIOPA that the analysis has significant limitations due to lack of information and data interpretation. Since analysed data are not homogeneous, it is difficult to quantify the real cost of the transaction, i.e. the cost of capital based on the difference between the assets transferred and the technical provisions.
3	157	<p>We appreciate the analysis EIOPA conducted on the calibration of technical provisions. However, it seems not to be appropriate to draw conclusions on the risk margin from this result because</p> <ul style="list-style-type: none"> • the technical provisions are usually dominated by the best estimate and • the sample size seems to be too small to draw conclusions on the smaller component of the technical provisions (the risk margin). <p>This means that already small, inevitable uncertainties of the best estimate of the liabilities conceal a bad calibration of the risk margin – as it is currently the case due to its significantly overestimated Cost-of-Capital (CoC) rate.</p> <p>Nevertheless, the presented analysis should substantially reduce the supervisory concern on a potential underestimation of liabilities due to the risk free interest rate term structure as discussed in section 2.2.4.</p>
3	189	We advise not to propose changes regarding the application of the VA.
3	204	We believe that the low interest rate phase is determinant for calculating an evidence-based Cost-of-Capital rate. Ignoring the current situation leads to an overestimation of the risk margin.
3	208	<p>In the course of the 2018 review EIOPA came to the conclusion that the original 6% value was still appropriate. However, we draw a different conclusion because EIOPA applied in the calculation an overestimated connection ("beta") between insurers' share prices and the general equity market. Actually, the Cost-of-Capital (CoC) rate of 6% is clearly too high and has to be lowered.</p> <p>EIOPA's analysis was based on the Capital Asset Pricing Model (CAPM). The calculation depends not only on the equity risk premium but also on the assumed beta factor. There is strong evidence that the beta of 1.2 applied by EIOPA is too high:</p>

		<p>First of all, the CoC rate is used for discounting future capital requirements mainly for underwriting risks. Thus, when using the CAPM the beta factor should reflect the low dependence between insurance risk and general equity risk. Ideally the covariance of pure insurance risks with market returns should be used for the calculation. To apply a beta factor which refers to equity prices of listed insurers seems to be already a conservative estimation because insurers' equity prices are not only driven by insurance risk but also by their assets.</p> <p>Even if one follows EIOPA's approach to calculate beta from the co-movement between the share prices of European insurers and the general equity market, the calculated beta is too high. The reason for this was a massive overweighting (using their market capitalisation) of a few big companies which belong to major equity indices. Because of the increasing dissemination of passive investments which simply replicate an index and, in addition, the close following of many actively managed funds, index members automatically exhibit some increased co-movement with the reference index. However, this artificial effect tells nothing about the underlying risk of these companies and their business. Accordingly, current data proves that smaller companies exhibit a significantly lower co-movement with the index. Thus, if the few big companies are not over-weighted, the connection between listed insurers and the general equity market is much lower: If the insurance companies in the sample are equally weighted the – more representative – result for beta is only 0.75 instead of 1.2 (weekly data 2006–2016; when applying daily data, beta was even lower). The smaller beta results in a substantially lower Cost-of-Capital rate of about 4%. Besides, it should be noted that this value is probably still conservative as listed insurers are not a representative sample of the European insurance market.</p> <p>Moreover, if beta is calculated in this way, a deleverage adjustment is needed. Otherwise the result is incompatible with EIOPA's 100% equity funding assumption for the reference undertaking. This further lowers the CoC rate to a value of about 3%.</p> <p>An additional plausibility check for the order of magnitude and illustration of the effect of deleverage is given by US data. Concerning other parts of the calculation EIOPA argued repeatedly with results from Aswath Damodaran. On his homepage there are also results for beta by industry sector available (http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/Betas.html). As of January 2019 the values are:</p> <ul style="list-style-type: none"> • Insurance (General): raw beta = 0.87; unlevered beta = 0.64 • Insurance (Life): raw beta = 1.11; unlevered beta = 0.62 • Insurance (Prop/Cas.): raw beta = 0.74; unlevered beta = 0.62
3	209	<p>We would propose a significant change in the Cost-of-Capital (CoC) rate. Some aspects need to be mentioned with this regard:</p> <ul style="list-style-type: none"> • In the preparation of Solvency II, more than ten years before the Directive entered into force, this parameter was set to 6%. Later on, this value was passed to the Delegated Regulation. • Empirical evidence from the industry and many stakeholders shows that the current rate of 6% is too high. A CoC rate of 3% would be more appropriate due to the miscalibration of the beta factor in the calculation of the risk margin. • The current 6% CoC does neither reflect the evolution of the financial markets in recent years nor the current low interest rates conditions. • Especially, the market of NatCat Bonds shows a declining trend in yields. Since these bonds directly transfer non-hedgeable underwriting risks, these developments should be considered. • The calculation of the cost of transferring liabilities to a third party is not clear.

		<ul style="list-style-type: none"> The current risk margin does not take into account the dependence of risk over time. This is crucial in the case of certain products, for instance annuities.
3	210	<p>The CoC rate of the risk margin has to be set to a more realistic value significantly below 6%. The current risk margin methodology, scope and design lead to excessive capital requirements and create artificial balance sheet volatility.</p> <p>Furthermore, the diversification effects should be taken into consideration for the group risk margin. The current Solvency II framework allows insurers to restructure their organisations in order to enable appropriate diversification and overcome artificial constraints. However, the current risk margin approach does not give sufficient allowance for diversification between risks within an insurance company. Changes in this regard should be taken to amend this fact. The risk margin should include diversification effects between the Lines of Business (LoBs) and within the Group.</p>
4. Own funds		
4	8	<p>Avoidance of unintended consequences is a key concern here: the interaction between the Principal Loss Absorbency Mechanism (PLAM) and the minimum consolidated group SCR ("Group MCR") must be appropriately reflected to avoid that RT1 PLAM can lead to an acceleration of a crisis. If the rules around the Group MCR remain unchanged as considered by EIOPA, the option for NSAs to grant a PLAM waiver must be extended to all potential trigger breaches. Please see our related comment on paragraph 9.400.</p> <p>As acknowledged by EIOPA, the PLAM can reduce eligible own funds and thus the SCR ratio(s) and/or MCR ratio(s) in the middle of a crisis. We think that the potential for PLAM to be "crisis accelerating" is a clear sign that the concept of PLAM is flawed. While a limited PLAM waiver has been introduced to reduce this risk, we cannot understand why this waiver option is limited in that NSAs must not grant a PLAM waiver in two of the possible three trigger breach scenarios (see Article 71 (10) (b) of the Delegated Regulation). It cannot make sense to enforce a further reduction of the SCR (or MCR) ratio(s) in the middle of a severe crisis (trigger breach), unless where these ratios no longer matter since the (re-)insurer is wound-up or liquidated (gone concern).</p> <p>This concern is particularly relevant in view of EIOPAs recommendation to leave the minimum consolidated group SCR ("Group MCR") unchanged (see paragraph 9.400). The current group MCR concept allows for trigger inversion on a group basis (see paragraph 9.387), i.e. a situation where the Group MCR ratio is lower than the Group SCR ratio. It is possible that the group MCR ratio can fall to below 100% (PLAM trigger is breached) even though the group SCR ratio is still above 100%.</p> <p>Where "only" the Group MCR trigger is breached, and where the group SCR ratio is still above 100%, it is difficult to argue that the insurer (group) is a gone concern. And yet, in case of a Group MCR breach, Article 71 (5a)(c) of the Delegated Regulation requires a write-down or conversion in full (100% of the nominal), and Article 71 (10) (b) would prohibit the NSA to grant a waiver. We think that a PLAM would be unintended in such a scenario: Article 71 (8) specifies that PLAM should be triggered by a "significant non-compliance with the Solvency Capital Requirement", and yet in case of trigger inversion, PLAM would be triggered even though the Group SCR is not breached at all, with no ability for the NSA to waive the PLAM. In addition, the extent by which the SCR and or MCR ratio can be reduced by PLAM depends on the write-down or conversion amount – which means that the obligation to write-down or convert the instrument in full in case of a Group MCR breach implies that the potential damage from PLAM is maximized. A PLAM waiver option for the NSA to avoid this would be very sensible in our eyes.</p>

		We find EIOPAs draft proposal to leave the Group MCR concept unchanged regrettable. In order to avoid unintended consequences of this decision, the PLAM waiver should be available as an option of the relevant NSDSA in all potential trigger breach cases.
4	22	We note that the proportion of T1 in total own funds of banks is roughly equal to the proportion of T1 that insurers hold. This is because the market-based nature of Solvency II requires insurers to hold a significantly higher buffer than the regulatory minimum than is the case for banks. Since insurance T2/T3 is limited to 50% of the SCR, a target ratio of 150% requires a T1 ratio of 100%, which in turn requires a proportion of T1 in total own funds of at least 66%. As observed, the average proportion of T1 in total own funds of the large insurance groups is usually even higher than the capital T1 requirement for a G-SIB which is roughly 75%. While we expect insurers on average to hold more non-T1 capital than banks, the difference is much less meaningful than commonly expected.
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4	32	Note, that the allocation of DTA to Tier 3 reduces the headroom for other Tier 3 and for Tier 2 own funds items because of the caps of 15% respective 50% of the SCR.
4	34	We agree that the current treatment is inconsistent. However, the consequence should be that net DTA are no longer artificially deducted from the excess of assets over liabilities, i.e. DTA should be recognized as Tier 1 and not be reallocated to Tier 3. In this context, note – even if the regulation of the two sectors is of course not directly transferable – that deferred tax assets are common equity Tier 1 (CET1) in the banking sector.
4	36	We fully agree that the anticyclical effect of net DTA is very valuable.
4	39	We do not agree. DTA should be recognized as Tier 1 instead of Tier 3.
4	40	We fully agree that DTA should be recognized in any case as own funds item.
4	42	DTA should be recognized as unrestricted Tier 1 (UT1). This is the only way to avoid that a crisis-driven increase of DTA cannibalizes the headroom for sub debt (T2 and – unless prohibited – sub debt T3) – or does not act as a counter-cyclical tool if the T2/T3 headroom was already fully utilized before the crisis-driven increase of DTA. A dedicated limit (e.g. 15% of SCR) could apply. Again, changes to the limit system – while sensible in general – would require a proper analysis of the details (e.g. maximum total headroom for sub debt RT1, T2 and(unless prohibited) T3) and their impact.
4	67	We agree with EIOPA's assessment that there are large differences in the business model between banks and insurance companies. Therefore, regulatory requirements cannot be aligned 1:1. It is right and important that industry-specific characteristics are taken into account.
4	83	The statement is incorrect in our eyes. PLAM increases UT1 by the post-tax write-down or conversion amount. In the current regime, RT1 is limited to 25% of UT1 (or 20% of Total T1). If, prior to write-down, the issuer had both excess RT1 and T2 (i.e. available RT1 and T2 exceeds the maximum limits), PLAM will increase the total amount of eligible capital. In fact, PLAM can only lead to an increase of the SCR ratio because of the current tiering limit system, and only because it helps to reverse generally unwanted procyclical effects.

		Therefore, changing the regime will affect the impact of PLAM.
4	91	See our comment on paragraph 4.42. The undue and unnecessary volatility that is caused by the current limit system that foresees a combined 50% headroom limit for T2, T3 (sub debt) and T3 (DTA) needs to be taken into account. Grouping these own funds item into a single headroom limit can lead to unnecessary volatility since the existing sub debt T2/T3 may cannibalize the limit headroom for DTA (T3) in crisis and vice versa.
4	93	We welcome EIOPA's clarification that the RT1 limit will remain unchanged.
4	103	<p>In our comment on paragraph 4.122 we explain why we strongly oppose the introduction of a double leverage ratio.</p> <p>In addition, the double leverage ratio concept as outlined here is not well defined and gives raise to many questions, which is explained below:</p> <p>First, if the parent is an unregulated holding, it does not formally hold any "T1" own funds. Are unregulated HoldCo's therefore exempt from the obligation of a double leverage ratio? If a double leverage ratio concept were to be introduced, we would see no justification for why a parent (re-insurance) should be required to calculate it, whereas an unregulated HoldCo parent would not. In fact, we understand that the main motivation of the double leverage ratio may have been private equity buyers located outside the EEA who acquire one or more EEA based (re-)insurers, and finance their acquisitions with significant amounts of debt. If so, this should be made clear, and the double leverage ratio should only apply to such cases.</p> <p>Second, if the parent holds an equity stake in an unregulated HoldCo, and that HoldCo in turn holds an equity stake in a regulated (re-)insurance subsidiary, does the parent's stake in its direct subsidiary (unregulated HoldCo) count as C220a relevant "T1 own funds investment" of the parent, or not? If it does count as a "T1 own funds investment", does the entire participation in the unregulated HoldCo count, or only that proportion of this participation value that relates to the HoldCo's own "T1 own funds investments" in regulated subsidiaries?</p> <p>Third, where some of the parent's (re-)insurance subsidiaries themselves hold stakes in one or more (re-)insurance subsidiaries, will there be a need to calculate double leverage ratios both for the ultimate parent as well as for each of those subsidiary (re-)insurers that own stakes in other (re-)insurers?</p> <p>Please see our comment on paragraph 4.112 which explains why the maximum double leverage ratio must not be capped at 100% since that would effectively disallow the group diversification benefit. This comment also explains the unintended consequences of the double leverage ratio.</p>
4	160	We welcome EIOPA's clarification that EPIFP will continue to be assigned to the Tier 1 limit. The clarification is appropriate and correct.
		5. Solvency Capital Requirement standard formula
		5.1 Interest rate risk
5	13	We do not agree. The backtesting results for the up-shocks in Table B are not in line with the expectations according to a 99.5 percentile

		<p>shock (as presented in Table A). The number of breaches in the non-extrapolated part of the term structure is far too low for all currencies (often there are no breaches at all).</p> <p>In the extrapolated area, there is no point in simple backtesting. On the one hand, shocked interest rates should not be tested against historical risk-free spot rates from markets which are not DLT. Instead, they would have to be tested against extrapolated historical risk-free interest rate term structures. On the other hand, the only correct procedure for interest rate risk in the extrapolation area is: first stress of the liquid part with DLT market data, then extrapolation of the resulting curve (see our comment on paragraph 2.16). As a result, backtesting is limited to the non-extrapolated area.</p>
5	15	We do not agree. The backtesting results show that the calibration of the up-shock is overshooting (see our comment on paragraph 2.13).
5	16	We do not agree. The risk factors shall only be applied to the liquid part before the LLP (which is currency dependent). Then the usual extrapolation algorithm shall be applied to extrapolate the illiquid part of the stressed curves from their liquid parts. This is the only way to derive consistent, risk-sensitive and economically sound stressed risk-free curves in the illiquid part of the term structure and the only way to compute the true loss in basic own funds. Complexity is not at all increased by this. For further details see our comment on paragraph 5.27.
5	18	The shift-vector for the downward risk should have been calibrated with euro data, too (instead of Swiss franc).
5	26	We agree that negative interest rates should also be reflected in the standard formula. However, if capital requirements for interest rate risk are changed, it is of great importance to avoid any exaggerations in order not to endanger financial stability and the important role of life insurers not only in the supply of long-term guarantees but also in the long-term financing of the European economy. Given the expected large impact, affected (re)insurers should thus be granted a phasing-in or transitional phase.
5	27	<p>If the capital requirement for interest rate risk is to be changed, the relative shifted approach is a good starting point. However, in order to correctly assess interest rate risk in the Solvency II setting, two important modifications are required:</p> <ul style="list-style-type: none"> • the stressed curves have to be extrapolated properly and • the downward risk curve has to be completed with a supplementary floor. <p>Such a shifted approach with proper extrapolation and supplementary stopping line would have a less extreme impact on solvency ratios than EIOPA's proposal which significantly overestimates risk. Nevertheless, it should be noted that even such an improved approach would imply materially negative rates and, thus, lead to a significant increase of capital requirements and decrease of solvency ratios. It should be borne in mind that also with regard to interest rate risk, excessive requirements must be avoided in order not to endanger financial stability and the important role of life insurers not only in the supply of long-term guarantees but also in the long-term financing of the European economy. In particular, for any change of the interest risk model a phasing-in or transitional phase should be granted.</p> <p>Proper extrapolation</p> <p>The risk factors shall only be applied to the liquid part before the LLP (which is currency dependent). Then the usual extrapolation algorithm shall be applied to extrapolate the illiquid part of the stressed curves from their liquid parts. This is the only way to derive consistent, risk-sensitive and economically sound stressed risk-free curves in the illiquid part of the term structure and the only way to compute the true</p>

loss in basic own funds. Complexity is not at all increased by this.

The logical correct order (first stress of market data, then extrapolation based on the results) also avoids the false shock of the UFR associate with EIOPA's draft proposal. Note, that even according to EIOPA's planned reduction of the UFR, the annual change of the UFR is restricted to just three possibilities: +15 bp, +/-0 bp or -15 bp . Moreover, the direction of a possible UFR change is known in advance. If the UFR changes in the next year at all, then – depending on the data – either a change of +15 bp or a change of -15 bp may be conceivable, but never both at the same time. This has to be properly reflected in the design of the interest rate risk module.

Stressing and extrapolating in the logical correct order also has the important advantage that the interest rate risk module fits automatically to all different values of the LLP. Thus, there is no need for different proposals depending on the LLP. There should be a single calibration of risk factors. For the euro, it is applied up to the euro LLP (currently 20 years), for currencies with other LLPs just up to their specific LLP. Then, in each case, extrapolation sets in. This avoids the disadvantage of EIOPA's draft proposal which applies risk factors of the “wrong category” (either based on market data or tailored for the extrapolation area) to non-euro currencies with a different LLP than the euro LLP.

Supplementary floor

In addition, we do not believe that experiences with interest rates changes in times of positive rates can be transferred unlimitedly into phases with substantially negatives rates. If interest rates would fall too deep and/or too long in the negative area, insurers would have to retreat from fixed income investments and switch to a combination of investing more in real assets and hoarding large amounts of cash. Therefore, supposing excessive downward interest rate risk in the negative area does not make sense.

If interest rates are negative, holding bonds or other interest-bearing securities in fact destroys capital. If there is a risk-free alternative that is less negative, bonds are no longer a sensible investment. Hoarding of banknotes is a legal and safe alternative with only a slightly negative return which is caused by the costs of transport, storage and insurance. (Some of these costs are incurred regardless of the duration of the hoarding process, so it is only worthwhile to start holding cash if negative market interest rates are expected for a longer period of time.) Thus, for long-term investors, market interest rates in negative territory lose their relevance. In addition to an increased switch to real values, the previous investment in risk-free bonds can be replaced by risk-free cash holdings. The slightly negative return resulting from the associated costs then represents the relevant best possible risk-free interest rate for long-term investors like insurers are.

To avoid misunderstandings: Obviously, interest rates at the market can become significantly more negative as long as there are speculative traders betting on a further decline. However, this no longer a market relevant for real long-term investors – insurers are not gamblers but need reliable income. Out of responsibility towards their customers, insurers have to take a long-term perspective and to avoid the guaranteed losses caused by negative interest rates.

Moreover, the recent interest rate observations were massively distorted by ECB's interventions that cannot be repeated to the same extent in the prevailing legal situation. Calibrating interest rate risk with data since 2015 automatically means to incorporate the effect of ECB's interventions and, thus, to calculate the SCR on base of a threatening repetition. This is clearly inappropriate.

		<p>Thus, at already very low rates, a supplementary stopping line has to be introduced in the interest rate risk module. For this a pragmatic solution is required. Against this background, we propose to complete the shift approach with a subsequent floor for the downward risk. A simple and transparent approach could be that the curve for downward risk, which has been calculated with the risk factors in the first step, in a second step is capped [x] bp below the lowest curve ever observed at the end of a month (see also our comment on paragraph 5.31).</p> <p><u>Reasoning w.r.t to the effect of the ECB interventions:</u></p> <p>A large proportion of recent interest rate declines were only caused by ECB's interventions.</p> <p>This is confirmed by ECB's chief economist Lane [Cf. "The yield curve and monetary policy", speech by Philip R. Lane, Member of the Executive Board of the ECB, at University College London, 25. November 2019, https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp191125~b0ecc8e6f0.en.html):</p> <ul style="list-style-type: none"> • <i>“Overall, taking the APP, negative rates and rate forward guidance together, ten-year sovereign bond yields would have been almost 1.4 percentage points higher in 2018 without those measures.”</i> [below Chart 10] • <i>“Second, the flattening of the curve is to some extent driven by our own asset purchases conducted for the purpose of stimulating the economy. As is shown in Chart 12, one observes that the current slope would be around 70 basis points higher in the absence of the APP and thus much closer to the historical average.”</i> (The effect on the slope of the OIS curve is about two-thirds of the effect on the sovereign bond curve reported before.) [below Chart 12] • <i>„Our non-standard measures of negative interest rate policy and asset purchases brought down the overall level of the yield curve to a region that is, by definition, unreachable under a zero lower bound and contributed to a considerable flattening of the term structure.”</i> [in the conclusion] <p>Theoretically, with "unconventional measures", a central bank would have unlimited possibilities to influence bond prices and interest rates on the market. (Then, however, it was impossible to quantify the risk of potentially even more far-reaching market interventions on the basis of historical data or other sources. Thus, being not a quantifiable risk, possibly unlimited central bank's interventions were not to be considered in the SCR.)</p> <p>Actually, according to the current legal situation, ECB's possibilities are not unlimited. In particular, the prohibition of monetary financing and the resulting limits per emission by no means allow repeating the volume of asset purchases made so far: At the low interest rate level achieved by the previous interventions, no further reduction of a similar magnitude is possible under the current legal situation. (Note, that the impact of possible changes of the legal situation is theoretically unlimited, too, and also not to be considered in the SCR.)</p>
5	31	<p>In general, we support EIOPA's calibration of risk factors for the liquid part of the yield curve. However, we propose to apply an appropriate floor for the downward risk. This floor should reflect historical lows and should therefore be based on the lowest euro risk-free yield curve by end of the month observed in the past. In order to take into account possible further fluctuations, an additional shock should be added. The magnitude of this additional shock could be derived from observed volatility when yields are at a low level. Our own analysis indicates</p>

		<p>an additional shock of [x] bp.</p> <p>Together with an adequate treatment of the extrapolated part of the curve (see our comment on paragraph 5.33), such an improved shifted approach would have a less extreme impact on solvency ratios than EIOPA's proposal which significantly overestimates risk. Nevertheless, it should be noted that even such an improved approach would imply materially negative rates and, thus, lead to a significant increase of capital requirements and decrease of solvency ratios.</p> <p>It is of great importance that any exaggeration in the capital requirement for interest rate risk is avoided in order not to endanger financial stability and the important role of life insurers not only in the supply of long-term guarantees but also in the long-term financing of the European economy.</p> <p>Moreover, if interest rates would fall too deep and/or too long in the negative area, insurers would have to retreat from fixed income investments and switch to a combination of real assets and hoarding large amounts of cash. Therefore, an excessive calibration of interest rate risk does not make sense.</p>
5	33	We do not agree with the proposal for maturities beyond the LLP. The illiquid part of the term structure has to be extrapolated from the stressed liquid part. This is the only way to derive consistent and economically sound stressed curves needed to calculate the possible loss in basic own funds. Complexity is not at all increased by this. For further details see our comment on paragraph 5.16.
5	37	In the proposal for interest rate risk in case of a LLP of 50 years, it is not comprehensible to us why the stress for the individual maturities decreases first, then increases, decreases and increases again, leading to strange stressed yield curves.
		5.2 Spread risk
5	60	We do not agree with option 1 not to change the existing spread risk module. Instead, a dynamic VA should be introduced in the standard formula.
5	61	<p>We do not agree with option 2 for the treatment of long-term investments in bonds and loans as the very restrictive criteria effectively prevent an application for most undertakings /entire national markets (in this context see also our comment on paragraph 2.798). Moreover, the resulting spread risk charges would be inconsistent with the 99.5% VaR of next year's market consistent valuation.</p> <p>Of course, undertakings that can hold their assets until maturity in reality are not affected by short-term fluctuations of bonds' market values which are not associated with true default risks. Thus, the current spread risk charge is too high. However, this effect has to be equally and consistently considered in both valuation and risk measurement which is clearly not the case in this option. Instead, a dynamic VA should be introduced in the standard formula.</p>
5	67	We do not agree with option 3 for the treatment of long-term investments in bonds and loans for the same reasons as for the very similar option 2.
5	70	We strongly support option 4. Applying a dynamic VA in the spread risk sub-module for bonds and loans would ensure an appropriate and consistent risk measurement for bonds (see also our answer to question Q2.9 and our comment on paragraph 2.579).
5	73	We do not agree not to change the existing spread risk module (option 1). Only applying a dynamic VA in the spread risk sub-module for

bonds and loans would ensure an appropriate and consistent risk measurement for bonds. We therefore strongly support option 4.

Option 2 and 3 should be discarded because, on the one hand, they link a spread reduction to prohibitively high hurdles, and on the other hand, they do not provide for any connection to the application of VA. Both errors lead to a systematic inconsistency between the SCR calculation (uniform spread risk reduction only for partial holdings of very few undertakings) and the possible valuation one year later (dampening effect of applying different VA values by many undertakings).

Apart from that, the following issue relating to the scope of the spread risk module should also be improved in the course of the review:

Mortgage loans

Mortgage loans to retail customers (consumer loans) that meet all of the requirements of Article 191 of the Delegated Regulation – except the threshold of euro 1 million – should fall under the counter party default risk module and not under the spread risk module. Alternatively the threshold of euro 1 million should at least be increased. Whether a loan is granted for euro 900.000 or for e. g. euro 1.2m does not change the general risk or the risk management of the loan. In both cases the same requirements apply to the credit assessment (especially the requirements of the value assessment of the Directive 2014/17/EU) and to the assessment of the property. Also the covenants and the credit hierarchy do not differ (all of these mortgage loans are generally senior loans). Therefore it is justified to delete the threshold of euro 1 million (Article 191(4)) as a characteristic for the classification in the counter party default risk module or the spread risk module. Alternatively the threshold of euro 1 million should at least be increased. Prices for real estate have been constantly rising over time. This leads especially in cases of loans to consumers in agglomeration areas (urban centres) to a different treatment of these loans compared to rural areas. Furthermore, there is an unequal treatment of similar consumer loans (as far as the borrower is financing for example two objects that in sum exceed the threshold of euro 1 million). We therefore consider a rigid threshold for the classification under the spread risk module as not appropriate. Further, the requirement of Article 191 (7) (the risk of the borrower may not materially depend upon the performance of the underlying property) is already met for all consumer mortgage loans due to the requirement of the Directive 2014/17/EU. Furthermore the criteria and methodologies outlined below for mortgage loans to retail customers (consumer loans), justify a classification in the counterparty default risk module:

Financial state of the debtor

- Comprehensive credit worthiness assessment according to Directive 2014/17/EU.
 - Loan allocation according to the loan-to-value. The lower the loan-to-value, the more secure is the mortgage loan.
 - The determination of the market value (or the loan to value) by specially trained employees who are not involved in the credit process.
- Furthermore in case of a loan of more than euro 1 million the valuation of the property (including an inspection) will be carried out by an independent expert.

Features of instruments (particular covenants and position in credit hierarchy)

- The foreclosure covers the entire property. Accordingly, the loan is not only collateralized with the financed property or other explicitly taken collateral, such as a third party guarantee. The borrower is liable with all of his property and assets.

	<ul style="list-style-type: none"> • Mortgage loans are generally senior loans. <p><u>Transparency</u></p> <ul style="list-style-type: none"> • Full transparency to lenders is given, as the borrower must disclose all his income and liabilities in the context of the credit worthiness assessment. <p><u>Mortgage loans to communal and cooperative housing societies</u> should also fall under the counter party default risk module and not under the spread risk module. The statutory purpose of communal or cooperative housing societies acting solely on a local basis is to supply the local population / members of the cooperative with reasonably priced housing. The policy is aimed to receive a sustainable yield and not on short term profit maximation. Profits to a large extent are used for maintenance, construction of new buildings or restoration of portfolio buildings. As a consequence, such buildings are usually in a very good condition. Moreover buildings of these housing societies have a solely residential purpose. According to the residential purpose and the fundamental characteristics it is therefore justified to treat loans to communal and cooperative housing societies as residential property occupied or let by the owner.</p> <p>The risk performance of these housing societies is generally very good. According to information from credit agencies (e. g. Creditreform) communal and cooperative housing societies have generally a very strong credit worthiness. This is also the general outcome of the review of the audit reports. Housing societies even possess partially "eligibility for central bank credit" which is awarded by the Deutsche Bundesbank. Credit defaults have not occurred so far. As professional holders of residential building portfolios housing societies pursue a stable and conservative business model. Lenders examine thoroughly the documents concerning the object and the credit worthiness. Loan approval is based on analyses of the annual reports and expert opinions of the financed objects. Regarding the credit risk the business with communal and cooperative housing societies can be classified as secure and low risk. It is therefore justified to classify loans to communal and cooperative housing societies under the counterparty default risk module rather than the spread risk module. Furthermore the criteria and methods outlined below for mortgage loans to communal and cooperative or housing societies justify a classification in the counterparty default risk module.</p> <p><u>Financial state of the debtor</u></p> <ul style="list-style-type: none"> • Credit worthiness assessment as "Pillar 1" of the credit decision: Analysis of the annual report of the housing societies, especially analysis of the balance sheet and the income statement including identification of key indicators. • Partially classified with "eligibility for central bank credit" which is awarded by the Deutsche Bundesbank. <p><u>Features of instrument (particular covenants and position in credit hierarchy)</u></p> <ul style="list-style-type: none"> • Loans are generally senior loans. • Declaration of subjection to immediate enforcement proceeding against the entire property. Partially a narrow declaration of purpose may be set forth. • In part, it may be that a close statement of the purpose is agreed (enforcement only in the mortgaged property): • Requests for information • Review and inspection of the property as "Pillar 2" of the credit decision: Inspection reports as a basis for the determination of the market
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		value. <u>Transparency</u> • Disclosure and examination of the certified test reports as well as documentation on property to be financed.
		5.3 Property risk
5	74	<p>We encourage EIOPA to adjust the property risk factor standard formula from 25% to a level of 15% at most based on an in-depth analysis by MSCI / INREV that examines pan-European real estate markets instead of UK commercial property only.</p> <p>The property risk factor should be adjusted as soon as possible as the UK will leave the EU. Even if EIOPA still wants to continue its analyses, the results should already be part of the 2020 review and not be postponed to a uncertain later date.</p> <p>In order to meet their long-term obligations, insurers mainly invest in long-term assets with predictable cash flows. Real estate investments are therefore attractive investment targets offering diversification benefits and potentially higher yields. In addition, insurers are an important refinancing source for the real estate industry. In line with the European Commission's goal of completing the capital markets union this win-win situation must not be impaired unnecessarily by excessive capital requirements.</p> <p>However, the current standard formula property risk factor is solely based on data from the UK commercial property market which is exceptionally volatile and by no means representative for a typical European insurer's real estate investment. Hence, the risk factor of 25% is clearly too high. A MSCI / INREV report published in March 2017 showed that an appropriate risk factor for the entire European property market would be 15% at most. For an European composite excluding the UK the risk factor should not exceed 12%.</p> <p>We consider the available data for the pan-European real estate market sufficient for recalibrating the standard formula property risk factor. It shall be set to a value of 15% at most which is based on a European real estate portfolio (instead of UK commercial property only).</p>
		5.4 Correlation matrices
5	153	<p>In general, we agree to keep the current two-stage correlation structure in the standard formula.</p> <p>However, the dependency of the correlation parameter on the interest rates (Article 164 (3) of the Delegated Regulation) can lead to cliff effects. In order to avoid it, we would ask EIOPA considering a simplification and fixing the correlation parameter.</p>
5	154	We agree with the advice to keep the correlations in the underwriting risk modules and between the main risk modules.
5	155	The correlation between interest rate down risk and spread risk should be reduced. The presented evidence does not justify a two-sided correlation.
		5.5 Counterparty default risk
5	183	Option 1 is to be refused. Option 3 is clearly preferred over option 2. We agree with EIOPA that option 3 is the correct assessment of the risk mitigation effect. Thus, it clearly should be chosen. Additionally, other options are more costly. The identification of the largest risk concentration can be a huge effort for small and medium sized undertakings. It is possibly based on expert judgement. There is no reason why the assessment of the largest exposure should be done twice. The same base can be used for the computation of the SCR in the cat

		module and for the risk mitigation effect in the CDR module. This assessment would be consistent. It is questionable why EIOPA demands the extra amount of work for option 2, which leads to a less correct result.
5	196	We support the additional optional simplified calculation of the risk-mitigating effect of derivatives, reinsurance arrangement, special purpose vehicles and insurance securitisations.
5	199	Option 3 is preferred over option 2, i.e. the calculation based on a net of reinsurance for both the SCR and hypothetical SCR and choice of the largest exposure does not change. We believe that the fire, marine and aviation risk scenarios within the Cat Risk should be derived from the net of reinsurance (i.e. after deduction of the reinsurance recovery). We also believe that the selection of the fire, marine and aviation risk scenarios for the risk mitigation purposes within the counterparty default risk should be also driven from the net of reinsurance as this interprets the consistent risk mitigation effect for the total SCR which is driven from the net of reinsurance basis. Otherwise, there might be an inconsistency between the risk mitigation effect in the counterparty default risk and risk mitigation effect in the Cat Risk module if the gross basis implies different scenarios than the net basis.
5	200	We disagree to move forborne and default loans from the spread risk module to the counterparty default risk module. This would be inconsistent with the system. Rather, where deemed necessary, EIOPA should introduce a new spread category. However, instead of this, mortgage loans to retail customers (consumer loans) that meet all requirements of Article 191 of the Delegated Regulation except for the threshold of 1 million euro and mortgage loans to communal and cooperative housing societies should both fall under the counter party default risk module and not under the spread risk module (for more details see our comment on paragraph 5.73).
5.6 Calibration of underwriting risk		
5	213	We agree that substantial analysis and data are needed, in order to change the factors. This is the case for life lapse risk. Besides, for the life lapse risk scenarios we see that changes in the design are necessary, too. The change in option exercise rates should apply to all contracts. In addition, the mass lapse risk factors for life and SLT health should be lowered or at least be replaceable by USP. Option exercise in life lapse risk Currently, the risks of lapse decrease, lapse increase and mass lapse in life insurance are only selectively applied to those contracts for which the increased or reduced lapse increases the obligations for the insurance company, i.e. for which a higher reserve would have to be set aside if the risk materialised. In practice, however, it can be observed that the movements in lapse rates and decreases are largely homogeneous across all portfolios. Article 142 of the Delegated Regulation should therefore be adapted in such a way that the lapse changes simultaneously affect all insurance contracts, irrespective of whether this increases the technical provisions or not. Risk factors in life and SLT health mass lapse risk The risk factors for the life and health mass lapse scenarios appear to be unreasonably high from a German perspective. In the past, even in

		<p>extreme situations of individual life insurers, lapse waves of 40% or 70% did not occur by far. In health insurance, the statistics of the German health insurers (PKV), which make up a large part of the European market, speak for a risk factor of 25%.</p> <p>The risk factors for mass lapse scenarios in life and health should therefore be significantly reduced in each case. As an alternative, the unnecessarily restrictive provision in Article 218 (1) of the Delegated Regulation, which almost completely eliminates the possibility of undertaking-specific parameters (USP) in the life and SLT health underwriting risk modules provided for in Article 104 (7) of the Directive, should be abolished.</p>
		5.7 Catastrophe risk
5	217	Greater transparency about the data and assumptions for calibrating the natural hazards of storms, hail, floods and earthquakes is necessary. This is a condition for being able to examine the modelling of natural catastrophe risk in a first step, and in a second, for discussing concrete adjustments to the standard formula in order to model the risks more appropriately.
5	218	The risk factors of the catastrophe risk module should be subject to regular examination with the aim of an adequate calibration.
5	221	We would appreciate to get to know more about the members and work of the Technical Expert Network on Catastrophe Risks established by EIOPA in early 2019. We would welcome greater transparency. There are some undertakings that are particularly exposed to natural hazards and have very long-standing expertise in this area. It would be desirable if (more) representatives of these undertakings could become a member of this network in order to ensure the flow of information for the undertakings and provide expert advice.
5	223	We ask EIOPA to publish the results taken from the template. The market average conditions of the policy conditions (contractual lower and upper limits) can be useful information for undertakings. The data enables an assessment for each undertaking whether it deviates from the market average conditions.
5	225	The results from the template should be considered carefully because some changes of the template have taken place since its initial publication. The change of "% of average TSI" to "% of TSI" has an impact on the outcome as well as the adjustment of the lower and upper ends to be interpreted as the 1st and 3rd quartile, respectively. The answer in form of the Q&A is only published on 26/11/2019 and is most likely not seen by many undertakings.
		5.8 Risk mitigation techniques
5	231	<p>Risk mitigation techniques are an efficient and meaningful tool to reduce the solvency capital requirements.</p> <p>With respect to the recognition of reinsurance we would like to emphasize three key points:</p> <ul style="list-style-type: none"> • First, the proposed amendment of Article 210 of the Delegated Regulation on the effective transfer of risk is very critical. The existing regulatory framework offers sufficient instruments and measures to address issues mentioned by EIOPA. The amendment causes the risk to exclude commonly used traditional risk mitigation techniques. • Second, the recognition of finite reinsurance to reduce the SCR should be made possible determined by the extent of risk transfer. • Third, the current lump-sum recognition of non-proportional reinsurance covers in the standard formula should be maintained as an option if further recognition of non-proportional reinsurance is introduced. <p>Netting of derivatives</p>

		<p>In the context of financial risk-mitigation techniques, the implications of the Solvency II Directive for netting agreements have to be considered in particular. This is unfortunately missing in the consultation paper and should be added.</p> <p>Netting of derivatives is standard as a recognised risk mitigation technique for financial transactions in Europe, and netting agreements are privileged in the European CRR and EMIR regulations in particular because of their risk mitigating effect. Insurers also use netting to reduce risk and protect their liquidity. Unfortunately, Article 275 (1a) of the Solvency II Directive makes it more difficult to conclude netting agreements for the guarantee assets. Article 275 (1a) stipulates that the claims of the insured have priority over all other claims. This absolute priority over claims by third parties, which was implemented at national level by an absolute ban on offsetting, is contrary to the conclusion of netting agreements. Against this background, an exception to the absolute priority in Article 275 (1a) is required for netting agreements.</p> <p>Article 275 (1a) should be supplemented to the extent that absolute priority does not apply with regard to netting agreements and a corresponding exception at national level does not violate the Directive. This addition could be worded as follows: "The order of absolute precedence under subparagraph (a) of this provision shall not preclude the set-off of claims in the context of netting in derivatives and securities lending transactions."</p>
5	250	<p>There was an extensive discussion about the most relevant risk measure to calibrate the Solvency Capital Requirement when Solvency II was established. This discussion has been reflected in Article 101, which states, that the SCR should be measured always based on the Value at Risk with 99.5% confidence level. The standard formula for assessing the assumed risk is based on this paradigm. To our understanding it would be illegitimate to introduce different rules for the recognition of risk mitigating techniques.</p> <p>We emphasize the importance of keeping an adequate level of complexity and risk sensitivity in the standard formula. EIOPA should consider any amendments carefully as Pillar II (ORSA) already provides for adequate measures to address specific limitations of the standard formula.</p>
5	258	<p>We agree that small and medium-sized undertakings benefit from the simple design of the premium and reserve risk module. Therefore, the current lump-sum recognition of non-proportional reinsurance covers in the standard formula should be maintained as an option if further recognition of non-proportional reinsurance is introduced.</p>
5	281	<p>See our comment on paragraph 5.250.</p>
5	284	<p>The current lump-sum recognition of non-proportional reinsurance covers in the standard formula should be maintained. However, we support the introduction of other options (as mentioned in paragraph 252–254) for better recognition of non-proportional reinsurance.</p> <p>Since 2019 the new USP Method is in place for the Stop Loss reinsurance covers. Undertakings can benefit from this USP in the premium and reserve risk module as a risk mitigation tool. Therefore, we believe no further action is needed.</p>
5	285	<p>The concept of finite reinsurance has been introduced in 2005 to delimit a special category of reinsurance, which may require special monitoring due to a limited risk transfer. In order to avoid an abuse of such forms of reinsurance, the European regulation required insurers to take special measures in risk management and the controlling of corresponding contracts, and introduced special additional reporting requirements to supervisors</p>

		<p>Examples of "critical contracts" have been in the past, e.g.,</p> <ul style="list-style-type: none"> • non-Life reinsurance with limited liability due to e.g. claims dependent additional premiums (so-called spread loss reinsurance contracts); • transfer of undiscounted claim reserves with a predefined repayment schedule (so-called time and distance reinsurance contracts); • reinsurance contracts with loan character due to payback clauses. <p>Under Solvency II such constructions are no longer possible:</p> <ul style="list-style-type: none"> • In general, the recognition of risk mitigation of reinsurance contracts is subject to the proof of an effective risk transfer (Article 210 of the Delegated Regulation). • There is no need for special rules for reinsurance contracts, under which discounted cash-flows, e.g. an "explicit and material consideration of the time value of money" is relevant, since all reserves under Solvency II are to be discounted in any case. This includes the concept of "Reinsurance Recoverables", as it requires an economically correct valuation of all payments under a reinsurance contract, taking full account of any interest payments. • The improvement of solvency ratios through reinsurance with a loan character (financings) is not possible under Solvency II, as all payments to the reinsurer are to be recognized on the basis of the "best estimate" in the solvency balance sheet. In addition, contracts with unconditional repayment obligations must also be accounted for and recognized as a future cash outflow. <p>Since most of these critical forms of finite reinsurance have already no effect in the solvency balance sheet due to the contract boundary concept and the consideration of the time value of money a revision of the Solvency II rules may be reasonable in order to allow for a more target oriented regulatory framework. This refers to</p> <ul style="list-style-type: none"> • the definition of finite reinsurance (Article 210 of the Directive) and • the recognition of finite reinsurance in the SCR standard formula (Article 208 of the Delegated Regulation). <p>To reflect the fact that under Solvency II the discounting effects are already considered appropriately, the reference to timing risk and the time value of money should be deleted from the definition of "finite reinsurance". Article 210 (3) of the Directive could be adjusted as follows:</p> <p>"For the purposes of paragraph 1 and 2 finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, exceeds the premium over the lifetime of the contract by a limited but significant amount, and there exist contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer."</p> <p>Article 208(2) of the Delegated Regulation could be adjusted as well in order to better reflect the risk mitigating effect of finite reinsurance contracts.</p> <p>Regarding the question on the recognition of finite reinsurance in the SCR standard formula we understand the concerns of EIOPA that the recognition of some finite reinsurance contracts under the standard formula can result in a higher SCR relief compared to the risks transferred to the reinsurer. This is especially the case for proportional reinsurance with result dependent conditions. In view of the large</p>
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		<p>range of finite reinsurance contracts, where some of them still transfer significant risk to the reinsurer, we think that a simple calculation method can take account of this fact. The objective is to receive partial solvency relief for finite reinsurance depending on the insurance risks transferred.</p> <p>We think that for proportional reinsurance an approach based on the following properties could be developed:</p> <ul style="list-style-type: none"> • the ratio between the situation with and without loss mitigating features of result dependent conditions in an extreme loss scenario compared to the expected loss is measured; • the extreme scenario is the 200-year-event which could be approximated by the expected loss plus three times the standard deviation of losses; • the numerator depicts the difference in reinsurance result between the expected loss scenario and the extreme loss scenario; • the denominator depicts the difference in reinsurance results as before, but without loss mitigating features. <p>This defines the Allowance Ratio, which could be the basis for calculation of the solvency relief of a proportional reinsurance contract in the premium and reserve risk module of the SCR standard formula.</p>
5	290	<p>The existing regulatory framework offers sufficient instruments and measures to address issues as mentioned in paragraph 5.280. The ORSA is one measure to do so. Another instrument is the actuarial function. The actuarial function expresses an opinion on the adequacy of reinsurance arrangements. The risk of medium to large stresses that are less severe than the 1:200 event of the standard formula is captured. The requirement of additional evidence of the effective risk mitigation brings the calculation close to an internal model. This is not the intention of the standard formula. EIOPA should look for approximations instead. Further, this amendment of the DR could unintentionally lead to less recognition of traditional risk mitigation techniques. The amendment of Article 210 leads to the risk of undesirable effects.</p>
5	293	<p>We do not support the idea that the guidelines should become a legal requirement in the form of the Delegated Regulation. These topics require a case-by case view and need flexibility to ensure that the approach taken is approximation to risk.</p>
5	278	<p>Contingent convertible bonds are – under specific circumstances – recognized as additional Tier 1 instruments respectively Tier 2 items under the European CRR regulation. We are of the opinion that insurance regulation should be on a level-playing-field with banking regulation. Therefore and to further improve resilience of the insurance sector, contingent convertible bonds should be recognized as financial instruments reducing the SCR. This holds true for contingent capital.</p>
<p>5.9 Reducing reliance on external ratings</p>		
5	294	<p>We support EIOPA’s draft proposal not to make a change at this stage. Experience with the new methods from the SCR review should be gained first before introducing new methods. It should be taken into account that an insurance company cannot assess ratings more thoroughly than an external rating agency, that draws on multiple internal and external data. We strongly support the view that a duplication of rating activities and the concurrence of an external and internal rating is not helpful. A critical internal view on the sum of all external rating-type information should suffice.</p>
5	321	<p>We agree with EIOPA that it does not appear appropriate to extend the internal assessment approach introduced in Article 176a of the Delegated Regulation to rated debt. However, in order to reduce the reliance on external ratings we are of the opinion that internal ratings that are considered by a (re)insurer as part of its approved internal model should in general be eligible for use in the standard formula</p>

		calculations of entities that belong to the same insurance group (irrespective whether the exposures are externally rated or unrated).
5	322	<p>We agree with EIOPA that it makes sense to</p> <ul style="list-style-type: none"> • analyze the implementation of the provisions introduced in the Delegated Regulation that allow alternative credit assessments and • perform an impact assessment of future potential new methods for rated bonds. <p>In addition, we propose to perform an impact assessment for an approach that allows to use internal ratings that are considered by a (re)insurer as part of its approved internal model in the standard formula calculations of entities that belong to the same insurance group.</p>
		5.10 Transitional on government bonds
		6. Minimum Capital Requirement
6	22	We agree with the position to keep the corridor for the MCR calculation unchanged.
6	34	We see no need to clarify Article 139 (1) . According to Article 139 (1) "insurance and reinsurance undertakings shall inform the supervisory authority immediately where they observe that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months." Immediate reporting does clearly state not to wait until regular reporting is due. And the phrase "where there is a risk of non-compliance in the following three months" also indicates that it is not necessary to assess the exact level of non-compliance. From our perspective the existing provision is clear. If national supervisors choose different approaches contrary to the legislation EIOPA could search harmonisation through guidelines or provisions in the supervisory handbook. It will be especially decisive to define "observation of non-compliance" to provide for legal certainty in this area. Other than the term "observe" suggests, this is not a passive occurrence, but rather requires active doing on the part of the (re)insurer, e.g. projections or sensitivity analyses. And it will be important to only rely on sufficiently official "observations" so as not to report any technical or working level analysis to the NSA. Hence, only such reporting within the (re)insurer can constitute an "observation", which is being reported to the whole AMSB. The harmonised approach should comply with existing regulation.
6	43	We agree with EIOPA that no changes to Article 139 (1) are needed.
6	52	We do not agree with EIOPA's draft proposal that an amendment is necessary. We consider the legal wording in Article 139 (2) ("from the observation of non-compliance with the Minimum Capital Requirement") is correct and intended. We disagree with the proposal to apply the same legal consequences to a possible MCR breach as to a real one. Article 138 (5) already provides for sufficient supervisory powers in case of an SCR breach with a deteriorating financial situation. Non-compliance of the MCR coverage must be observable and therefore a breach should have been occurred. In contrast to Article 139 (1), this is not about a risk of non-compliance in the following three months. We are concerned that EIOPA, under the guise of harmonisation or clarification, will seek to shift the intervention threshold forward. We reject this. If national supervisors choose different approaches contrary to the legislation EIOPA could search for harmonisation through guidelines or provisions in the supervisory handbook. The harmonised approach should comply with existing regulation.
6	58	We see no need to clarify Article 139 (3). In our view, the draft proposal would not primarily lead to harmonisation, but would set the supervisory authority a tight deadline for the one specific intervention measure of restriction or prohibition of the free disposal of the assets of the insurance or reinsurance undertaking, hereby unnecessarily depriving it of flexibility. This does not seem advantageous in view of the completely different course and causes of crises, the severity of the intervention and the diversity and interaction of different supervisory measures. In our view, EIOPA should not attempt to impose harmonised measures at fixed deadlines on the diversity of crises. We prefer that regulation should leave the national supervisors adequate professional judgement.

6	70	We welcome the draft proposed amendment of Article 144 (1) that the deadline for the withdrawal of the authorisation could be extended in a specific situation. This ensures needed flexibility for the completely different course and causes of crises and the diversity and interaction of different supervisory measures.
		7. Reporting and disclosure
		7.1 Introduction
7	1	<p>We welcome EIOPA's efforts to revise the Solvency II reporting requirements.</p> <p>As the consultation has been divided into two waves, it is difficult to see all the changes in the overall picture. In addition to our comments on the first waves, we would like to highlight the following <u>key points</u>:</p> <ul style="list-style-type: none"> • Group SFCR should be revised in line with the first wave changes (only a Group SFCR to professional public); • no obligatory audit requirements / no minimum requirements; • streamlining of RSR and SFCR / avoiding duplication / focus on information relevant to the reader → public or regulatory; • consistent change of templates / deletions at solo level must be adopted for group reporting.
		7.2 Regular supervisory reporting
7	21	We welcome risk-oriented reporting and consideration of the individual situation of the company. This should also be reflected in the frequency of RSR reporting. We therefore welcome the introduction of tools that enable supervisors better to require the RSR only every three year. National solo attempts or deviations should be avoided.
7	25	<p>Although there is a comment included here on the RSR language ("<i>... many international companies prepare the reports in English and translate them into the local language for submission to the NSA. This creates additional expense and effort as all reports are prepared twice.</i>") advice is provided only on the structure and content of the RSR but not on its language. In the wave 1 consultation EIOPA proposes to prepare the SFCR part addressed to the professional public in English and only a two-pager document in local language addressing the policy holder. Given that the SFCR and RSR are complementing documents preparing them in different languages would unnecessarily complicate the process of compilation. International companies (as pointed out in the cited comment) prepare the RSR first in English and get it translated after or parallel to the compilation process of the English report, which is a very time-consuming and expensive exercise. We propose to amend the Delegated Regulation and determine English as the language requirement for Solo but at least for the Group RSR as one option. An internal undertaking should be able to choose if they want to submit the RSR only in english.</p>
7	27	It should be clarified what is meant by a machine-readable format of the RSR.
7	29	<p>We welcome EIOPA's intention to revise the structure and content of the RSR. Nevertheless, we propose that the required contents of the RSR be fundamentally reviewed. So far, the RSR has only been extended. This concerns the content that was removed from the SFCR during the first wave of consultations.</p> <p>The simplifications for solo undertakings, e.g. regarding S.08.01 and S.08.02 and S.05.01 (deletion from SFCR), were not transferred on group proposals. It is no substantial simplification if requirements are not needed for solos, but they are still required for groups.</p> <p>We are of the opinion that the RSR reporting requirements are already very extensive and the proposals of the current consultation even adds to this reporting burden by requesting further details.</p>

		We see the proposal of providing additional information especially in the area of remuneration as critical (e.g. remuneration entitlements of members of the AMSB and key function holders), given the extremely sensitive nature of the data. To avoid the potential risk of confidential information being spread or even getting public in the reporting process, which involves a multitude of people, at least the option of a separate reporting of these data to the national supervisor (i.e. outside of the RSR) must be provided. Furthermore, the proposed minimum requirements need to be clarified in some cases (e.g. Article 308 (3)(a)) as the current wording is not explicit enough.
		7.3 Group reporting and disclosure
7	42	We expressly welcome the EIOPA draft proposal. Now, it should be ensured that a practicable procedure is defined in order to exempt the groups viable over the long term.
7	46	The simplifications for solo undertakings, e.g. regarding S.08.01 and S.08.02 and S.05.01 (deletion from SFCR), were not transferred on group proposals. It is no substantial simplification if requirements are not needed for solos, but they are still required for groups.
7	53	<p>We support EIOPA's draft proposal to delete QRT S.05.01 from Group-scope, as – for international groups – especially the shift from statutory GAAP (HGB) on Solo-level to IFRS on group-level the reporting leads to confusion from addressee's perspective. It seems not clear how in group RSR/SFCR the information in the chapter Business and performance should be reported without template S.05.01 where these figures are based on. According to Annex 7.1 more detailed information is expected but without this template the information will be copied from financial statements only where there is no connection to Solvency II (e.g. no LOB structure). Clarification is needed.</p> <p>Template S.05.01 has implications for the Group SFCR and RSR requirements as well that have not been fully considered here: Article 293 (2) of the Delegated Regulation for the SFCR and 307 2 (a) and (c) for the RSR respectively stipulate the following: "<i>The solvency and financial condition report shall include qualitative and quantitative information on the insurance or reinsurance undertaking's underwriting performance, at an aggregate level and by material line of business and material geographical areas where it carries out business over the reporting period, together with a comparison of the information with that reported on the previous reporting period, as shown in the undertaking's financial statements.</i>" "<i>The regular supervisory report shall include all of the following qualitative and quantitative information regarding the underwriting performance of the insurance or reinsurance undertaking, as shown in the undertaking's financial statements: a) information on the undertaking's underwriting income and expenses by material line of business and material geographical areas where it writes business during the reporting period, a comparison of the information with that reported on the previous reporting period and the reasons for any material changes. c) information on the undertaking's underwriting performance by line of business during the reporting period against projections, and significant factors affecting deviations from these projections.</i>" EIOPA-BoS-15/109 2.4. states furthermore: "<i>When referring to section A.2 of the SFCR undertakings are expected to always refer to Solvency II lines of business, in line with the content of template S.05.01.as defined in ITS on the templates for the submission of information to the supervisory authorities.</i>" Based on the latter our local regulator requires us to report under A.2 of both the SFCR and RSR using the Solvency II lines of business. As a consequence, also Level 2 and 3 should be amended and state clearly that reporting under A.2 of the Group SFCR and RSR is not based on the SII lines of business as respective data collection is not required on Group level. Instead, the lines of business used in the financial statements can be used.</p>
7	58	EIOPA proposes for Solo-entities to merge all QRTs containing cross-border information within one new QRT-format, while deleting the former ones. On Solo-level QRT S.05.02 will therefore be deleted from scope. It should be made sure, that this QRT is not going to be required on group-level.

7	65	The current version of the template is already very detailed and very challenging to populate. The proposed additions would put a very large burden on undertakings. The supervisory purpose of the additional items is not clear. In general, any additional reporting burden should be avoided.
7	95	The current version of the template is already very detailed and very challenging to populate. The proposed additions would put a very large burden on undertakings. The supervisory purpose of the additional items is not clear. In general, any additional reporting burden should be avoided.
7	114	We generally welcome the clarification of instructions and the scope. Since the draft proposal is not finalised yet a further assessment is not possible at this stage.
7	120	We take a critical view of the present draft proposal. In addition, we see strong inconsistencies with the proposal from the first wave of consultations. We do not understand why the proposal of splitting the SFCR into two parts from the first wave is not continued here. This inconsistency would mean that the proposals for splitting the SFCR into two parts at solo level (policyholder and professional public) would be unusable. We therefore propose that the proposals be transferred from solo level to group level and groups are only required to report the part to the professional public . A policyholder only have a direct connection to a solo insurance company and not to a parent company or any group structure. Therefore the SFCR should be limited to the part to the professional public.
7	121	We take a critical view of the present proposal. In addition, we see strong inconsistencies with the proposal from the first wave of consultations. We do not understand why the proposal of splitting the SFCR into two parts from the first wave is not continued here. This inconsistency would mean that the proposals for splitting the SFCR into two parts at solo level (policyholder and professional public) would be unusable. We therefore propose that the proposals be transferred from solo level to group level and groups are only required to report the part to the professional public. A policyholder only have a direct connection to a solo insurance company and not to a parent company or any group structure. Therefore the SFCR should be limited to the part to the professional public.
7	137	We oppose the introduction of a minimum requirement. Because this draft proposal does not ensure that a uniform Europe-wide procedure is defined. On the contrary, EIOPA calls on the NSA to extend the regulation at national level. Against this background, the question arises as to the sense and purpose of a minimum standard. This additional requirement is not possible within the time limits laid down. A corresponding extension of the deadline is therefore necessary.
7	138	EIOPA should not call on NSA to start national solo efforts. EIOPA, on the other hand, should call on NSAs to support a uniform Europe-wide scheme.
7	143	The language requirements for the Group SFCR based on Article 360 of the Delegated Regulation are not in line with the draft proposal laid out under the first bullet i.e. " <i>the summary must be available in national language and more detailed information could be provided in English. Regarding the SFCR for group, English seems to be the most relevant language. Only the executive summary should be translated in the national languages</i> ". Article 360 stipulates that "(1) participating insurance and reinsurance undertakings, insurance holding companies or mixed financial holding companies shall disclose their group solvency and financial condition report in the language or languages determined by the group supervisor. (2) Where the college of supervisors comprises supervisory authorities from more than one Member State, the group supervisor may, after consultation with the other supervisory authorities concerned and the group itself, require participating insurance and reinsurance undertaking, insurance holding company or mixed financial holding company to also disclose the

		<p>report referred to in paragraph 1 in another language most commonly understood by the other supervisory authorities concerned, as agreed in the college of supervisors." Based on the latter our member undertakings are currently preparing the Group SFCR both in local language and English – as determined by the Group supervisor. As pointed out in our comment on paragraph 7.25 for the RSR already, preparing the Solvency II reports in multiple languages is a very costly and labor-intensive requirement due to the volume of the required information in the SFCR and RSR. Therefore, we suggest that the Delegated Regulation is amended to reflect the proposal that only the executive summary of the Group SFCR should be in local language (as a part to be addressed to the policy holder). We mentioned already during wave 1 of this consultation that language requirements for the Solo SFCR also have to be made clearer: "There is an uncertainty regarding the language in which the information is to be made available to the policyholder: While on p. 28/61 the national language is mentioned ("...to require for the SFCR part addressing policyholders that information should be in simple language and in the language of the respective Member State...") the language of the policyholder that is required on p. 4/61, can be much more complex ("The SFCR part addressing policy holders should comply with the following: [...] Information should be in simple language and in the language of the policyholder."). This should be clarified and should be made clear how solo entities and groups have to apply this requirement. Also the language requirement for the part addressing the professional public should have clear guidance for solo and group entities.</p>
7	146	We welcome the draft proposal of deleting Article 360 (3) of the Delegated Regulation given that this requirement had in our view only very little added value that could not justify the additional costs.
7	151	EIOPA's advice to keep the templates that are currently disclosed is inconsistent to paragraph 7.53 where EIOPA proposes to delete template S.05.01. A detailed clarification would be welcomed.
7	157	<p>We fully support the idea to extend the deadlines for submission for two weeks.</p> <p>We welcome the clarification on the Single SFCR. This regulation makes the Single SFCR more attractive for companies. The splitting into a part for policyholders and a part for policyholders also seems sensible here.</p>
		8. Proportionality
		8.1 Thresholds for exclusion from Solvency II
8	3	<p>We very much welcome the fact that proportionality is also applied where it has not been explicitly mentioned.</p> <p>We propose that, in future, the risk situation of a company should be assessed using defined criteria. On this basis, it will then be necessary to examine what simplification a company can make use of (e.g. alternative calculation methods and/or exemptions from certain reporting templates). That can be automatically applied by companies when some predefined and risk-based criteria are met.</p> <p>The following criteria could be used for this purpose:</p> <ul style="list-style-type: none"> • volatility of the SCR; • volatility of the SCR/annual premium ratio; • volatility of own funds; • systemic relevance; • solvency ratio.

		Once the defined criteria have been reviewed and an assessment of the company has been made, a list of possible simplifications should be drawn up. We have listed examples of this in the Pillar I section.
8	7	<ul style="list-style-type: none"> • Proportionality should be applicable to all insurance undertakings and go as far as the non-application of individual criteria (proportional "whether"). • Proportionality should be applied in all three Pillars. • Supervision should be obliged to promote proportional solutions. • The application of proportionality should be dependent on the risk situation, not on the size of the undertaking. • A "toolbox" shall be introduced, which shall include a non-exhaustive list of facilitations. • EIOPA aims to define criteria that will lead to an automatic application of the toolbox early, the supervisor can then not object to it. • Companies that do not meet these criteria can still use the toolbox. However, they must document why an application is justified for them. The supervisor should then give his opinion within a short fixed period of time.
8	44	<p>We welcome the draft proposals and support a national maximum application.</p> <p>We welcome EIOPA's advice to raise the technical premium thresholds to €50m. However, the premium income threshold should allow a Member State option between €10m and €25m.</p> <p>We propose that the exclusion criteria pursuant to Article 4 (1) d should be revised as follows: the business of the undertaking does not exceed 1 million euro of gross written premiums of insurance or reinsurance activities covering liability (The threshold for technical provisions should be set accordingly).</p>
8	45	paragraph 8.46–57 are missing in the consultation paper.
8.2 Proportionality in Pillar 1		
8	58	We welcome that EIOPA is open for proposals to improve proportionality with respect to the calculations of the technical provisions.
8	79	We suggest that the possibility must be given to introduce other facilitations beyond a certain set of facilitations mentioned in the consultation under proportionality in the future.
8	82	This might be a helpful simplification.
8	85	We agree that the application of outwards reinsurance in the context of non-life catastrophe risks can be very burdensome. However, it seems to be very conservative to determine the SCR in the cat module without considering reinsurance.
8	100	An idea of proportionality is an adequate assessment and handling of risks. To fulfil this idea, the qualitative assessment should not cause more effort for the undertaking than the simplified calculations lower the costs.
8	108	Concerning the question, whether method 1 or 2 of option 3 should be chosen, we suggest to introduce both methods. Depending on the risk it might be more appropriate to use method 1 or 2. If the immaterial risk is assumed to develop similarly to the BSCR, it is advisable to apply method 1 in the application phase. If the risk does not correlate with the BSCR and is independent in the development, it might be better to derive the immaterial risk from using method 2. It should be left to the undertaking which of the methods is more appropriate to reflect the immaterial risk. Thus, both methods should be introduced.
8	110	Both draft proposals by EIOPA are not mutually exclusive. Simplified calculations do already exist in the Delegated Regulation. It makes sense to introduce new simplified calculations of capital requirements where appropriate. And it is just as appropriate to introduce an integrated simplified calculation for immaterial risks. Option 2 and 3 should be implemented.

Guardrails for the application of proportional facilities in the area of Pillar 1:

- application possible in all areas of Pillar 1;
- application company-specific and not size-dependent;
- application decision based on immaterial share of total SCR or alternatively immaterial share of the solvency balance sheet / relative to own funds.

Independent on the risk profile of the undertaking, simplified calculations should generally be allowed across the full scope of Pillar 1 without further evidence if the simplifications:

- represent conservative estimates or updates during the year;
- balance sheet items in total of less than [5%] of own funds and capital requirements of less than [10%] of the SCR. (VALUES ARE FIRST SUGGESTIONS).

Proposals for the application for proportional "whether" in Pillar 1:

In Pillar 1, the elimination of requirements and the possibility of simplification are often not clearly distinguishable. Generally, the non-application of a specific calculation rule does not mean that a particular quantity would not have to be determined at all, but only that it can instead be determined in another way. In some cases and / or at certain times calculations can be completely omitted. Examples of proportional "whether":

- omission of additional verification calculations such as sensitivities, etc.;
- omission of the quarterly fund look-through, instead an annual look-through review with an update during the year is sufficient;
- complete omission of fund review for companies with very low unit-linked investment volume.

Proposals for the application of (proportional) simplifications in Pillar 1:

Options for simplification only make sense if the total effort required to meet the application requirements and the calculations is noticeably lower than without the simplification. In addition, simplified calculations should generally not be too conservative in order to actually be used. The more insignificant the position is the more conservative estimates are acceptable. The question on which exact point simplified calculations are possible with respect to the risk and at the same time meaningful from the company's point of view can only be answered on a company-by-company basis on the basis of the concrete case. In addition to the general facilities for all companies, simplification should be allowed at given areas if a simple risk profile is present, even if they are not necessarily a conservative estimate (and not a continuation). In the following examples are given.

Overall:

- Quarterly calculations: Simplified calculation compared to the annual calculation;
- granularity of technical cash flows: allow greater aggregation;
- models for valuation of life technical provisions (e.g. the "Branchensimulationsmodell" for German life insurance): By default, management rules need to update only every x years if there is no significant change;
- models for valuation of life technical provisions (e.g. the "Branchensimulationsmodell" for German life insurance): In general, allow for a

standard calibration without individual justification for the Economic Scenario Generator (ESG);

- the documentation of immaterial risks or balance sheet positions and qualitative requirements like validation of technical provisions or verification of the assumptions underlying the SCR require a disproportionate amount of work in relation to the size of the risk. We think that proportionality should also be applied to these qualitative requirements and not be restricted to simplifying approaches in the calculation of risks or balance sheet positions. This really would reduce the amount of work and costs as often this requires more time and effort as the actual calculation.

An example from a large German insurance company for this is: There are some LoBs with only a few thousand euro of premiums, claims, technical provisions and so on which is negligible compared to billions of euro total business. In this case the calculation of technical provisions can be done in a simplified way following proportionality. But qualitative requirements for example related to validation (Article 264 Delegated Regulation) or to documentation (Article 265 Delegated Regulation) are the same as for the important LoBs. We don't think this is reasonable and proportionality should also be applied here in order to reduce the amount of work for validation and documentation to a minimum. The same is true for all the other qualitative requirements on technical provisions and for all the qualitative requirements on SCR and so on. The time that can be saved by reducing these requirements to a minimum for negligible risks, LoBs and so on is better used in the calculation, validation and documentation of the important LoBs or risks.

Calculation of own funds (solvency overview):

- Amounts recoverable from reinsurance: No adjustment for the expected default of the reinsurer. The corrections for the expected default generally are only a tiny proportion compared to the amounts recoverable;
- deferred Taxes: Possibility to use the IFRS approach if IFRS is available;
- deferred Taxes: For quarterly calculations in particular, simplifications should be explicitly allowed, since a tax balance sheet possibly may not be created quarterly (for technical provisions, simplified methods under EIOPA-BoS-14/166, Guideline 50 are also explicitly allowed during the year).

Calculation of the SCR:

- Lapse risk (only for P&C and life, not health insurance): The best option should generally be to apply the shock factors to the total portfolio without a selective application. In the alternative, this should at least be provided as a simplification option.
- Market risks: looking through the funds not at individual stock level, but based on overriding criteria (eg mainly euro denominations, EEA issuers, average rating xy). If the above-mentioned criteria are met, the fund should be fully eligible for the according category and not necessarily equity type 2, although no detailed look-through has been provided.
- Spread risk: For interest rates with early termination possibility (callables), the spread risk must be determined on the basis of an expected termination date. Instead of an interest-rate-based valuation, a flat-rate regulation such as considering the next possible termination date would make sense.
- Counterparty default risk: For the calculation of the default risk type 1, it is necessary for passive reinsurance to include among other things the risk-mitigating effect per reinsurer. To do so, it is first necessary to determine the "normal" SCR for the underwriting risks, then for each reinsurer further "fictitious" SCR values based on the assumption that the contracts with this reinsurer do not exist. A simultaneous determination is not possible (repeated runs of the BSM required). Instead, the best would be to generally do without considering the risk-mitigating effect, as the counterparty default risk is only of secondary importance anyway. In the alternative, the consideration of the risk-

		<p>mitigating effect should at least be possible through a flat-rate factor.</p> <ul style="list-style-type: none"> • Market Risk Concentrations: Possibility to treat real estate funds without look-through as a single property (funds that do not account for more than 10% of the total investment are risk-free, as otherwise would apply to each property). • Counterparty default risk: allow the use of a benchmark rating in the absence of a single stock or issuer rating • Counterparty default risk: Mortgage loans are subject to either spread or counterparty default risk, depending on criteria that are costly to review. Here, a simple assignment to the default risk is desirable. • Risk mitigation techniques: Simplified use of derivatives in each risk. • Loss-absorbing capacity of deferred taxes: Specify flat-rate tax rate that may be used without justification as an alternative to the individual rate determined from corporation tax and business tax.
		8.3 Proportionality in Pillar 2
8	174	<p>Key functions: We generally welcome the admittance of the combination of key functions, of key functions and operational functions and of key functions with the condition of member of the AMSB. However, from our point of view it would be even more proportionate to generally admit any of the combinations mentioned and to exclude them only on a case-by-case basis (exceptional-law-principle).</p> <p>In addition, we request EIOPA to complement its draft advice by allowing undertakings to split the responsibilities of a key function between two persons. The EIOPA peer review on key functions observed a corresponding practise in some Member States and didn't raise legal objections.</p>
8	180	<p>Remuneration policy: We welcome the addition of more flexibility with respect to the frequency written policies should be reviewed. However, the addition of the remuneration guideline to the company's mandatory guidelines is not proportionate, as it raises the issue to a level with, among other things, risk management. This seems inappropriate because the legal basis for the remuneration guideline is not even regulated in the guideline (but in Article 258 Delegated Regulation).</p>
8	182	<p>AMSB: We see no connection between proportionality and the requirement to review the composition of the AMSB for efficiency. This draft advice seems to be somehow dislocated. Furthermore the Solvency II Directive does not contain any provisions on the composition of the AMSB for what the criteria to review the composition are unclear. In German stock corporation law the supervisory board is in function of controlling the management and not supervisory authorities.</p>
8	184	<p>Remuneration (deferral of the variable component): The draft proposal for a threshold in Article 275 (2) (c) of the Delegated Regulation (deferral of the variable component) is to be welcomed. But it is also true that the threshold in the banking framework must be adapted to the characteristics of the insurance market. The reference to the mentioned opinion, however, is at least irritating.</p>
		8.4 Proportionality in Pillar 3
8	186	<p>We would like to reiterate at this point that we welcome the introduction of template-specific thresholds. However, it must be ensured that practical implementation and application on the part of the companies is possible.</p> <p>It should be possible to determine at the highest level (overview templates) whether a template can be used.</p>
		9. Group supervision
9	1	<p>Amendments to group supervision should be carefully weighed. On the one hand, consistency with the regulatory framework for financial conglomerates has to be ensured and on the other hand effects of amendments on solo level need to be considered. This creates a complex</p>

		<p>setting for amendments to group supervision. For this reason, we consider the draft proposals regarding the availability of certain items within the reconciliation reserve and the draft proposal regarding the minimum consolidated group SCR as highly critical. Especially the latter draft proposal is concerning as it comprises the introduction of notional MCRs for insurance holding companies and mixed financial holding companies and to consider them in the calculation of the minimum consolidated group SCR. This will aggravate existing weaknesses of the minimum consolidated group SCR and increase the risk of trigger inversion. EIOPA's draft proposal to assume the benefit of transitional measures on technical provisions and interest rate is unavailable by default is also seen critical as it runs counter the basic idea of the transitional measures to allow undertakings and groups to gradually adapt to Solvency II. EIOPA also questions whether EPIFP can be made available within 9 months to absorb losses within the group and thus can be assumed to be available. As there are several ways to monetize EPIFP, we see no reason to assume that EPIFP are unavailable.</p> <p>Furthermore, group structures are highly individual, Therefore, regulation on group supervision should not aim at covering each specificity. In contrast, it is very important to give supervisors sufficient flexibility to individually assess different situations and supervise groups accordingly. The draft proposals made often seem to address theoretical questions or highly individual issues of supervisors and groups. We would recommend not to introduce new regulation concerning this issues as it is firstly not necessary and secondly contradicts with Recital 2 of the Solvency II Directive. According to this recital "<i>it is necessary to eliminate the most serious differences between the laws of the Member States as regards the rules to which insurance and reinsurance undertakings are subject.</i>" Hence, it should not be the aim of regulation to clarify each and every theoretical or individual issue. Therefore, especially the draft proposals regarding additional supervisory powers to require amendments to the group structure and the draft proposals regarding the treatment of other financial sector (OFS) undertakings are seen critical.</p>
9	27	It is unclear how relevant those situations are in practice. As mentioned above, it should be avoided to introduce new regulations for very specific cases.
9	46	We agree that definitions should be clear enough to allow undertakings in advance to assess the consequences of business decisions. At the same time definitions should be as consistent as possible with other European regulations, in this context for example with the European Accounting Directive. Article 212 (1) (c) (ii) of the Solvency II Directive gives supervisory authorities the needed flexibility as it defines "group" as a group of undertakings based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings. Any change to the existing groups would result in tremendous effort. As it remains unclear, how relevant the issue addressed is in practice, this seems to be disproportionate. Therefore, we do not see the need for further clarification. Further, the scope of the existing groups has been extensively discussed with relevant national supervisors. The national supervisors have detailed knowledge about existing group structures and their specificities. Therefore, decisions made by national supervisors in the past shall remain valid if new requirements are established.
9	47	See our comment on paragraph 9.46.
9	48	In our view, a specific definition of "centralised coordination" is not necessary. Article 212 (1) (c) (ii) gives supervisory authorities the needed flexibility as it defines "group" as a group of undertakings based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings. Hence, supervisory authorities can exercise group supervision in these cases with the current regulation. Furthermore, it is questionable whether defined criteria can cover each and every situation that could occur.
9	49	The structuring of groups should remain a management decision. In general, supervisory authorities should not be empowered to force

		groups to restructure themselves for the sole purpose of supervision. This applies all the more since there is no benefit for policy holders evident from such a reorganisation. Only extreme situations could justify significant interventions, such as the restructuring of a group. In these cases other legal framework conditions such as the company law must be taken into consideration by the supervisory authorities. Therefore, we propose to delete this paragraph. If, after all, supervisory authorities shall be given the powers to require supervised undertakings to structure in a certain way, conditions should be attached to this powers. This would be in line with the possibility allowed in Article 262 which only can be used in these cases. Furthermore, legal process must be suitably open to the supervised undertakings which is especially important for groups with undertakings in several jurisdictions.
9	50	The definitions should be as consistent as possible with other European regulations, in this context for example with the European Accounting Directive. We do not see the need for further clarification. In contrast, in our view it is important to keep some flexibility. As stated above, it seems impossible to cover each and every situation with specific regulation. Therefore, we propose to keep flexibility in order to allow undertakings to consider the specificities of each group.
9	55	It remains unclear if there were any problems arising from the existing regulation which would have been avoided if there was a definition of "mainly or widely".
9	67	The criteria for the determination of an IHC must be easily measurable. Hence the 50% ratio must apply to quantitative financial data such as balance sheet total, or value of participations (but not no. of employees). In general, the definitions should be clear enough to allow undertakings in advance to assess the consequences of business decisions. The definitions should be as consistent as possible with other European regulations, in this context for example with the European Accounting Directive. As it remains unclear if there were any problems arising from the existing regulation which would not have occurred if there was a definition of "mainly or widely", we propose not to change the existing regulation.
9	68	The structuring of groups should remain a management decision. In general, supervisory authorities should not be empowered to force groups to restructure themselves for the purpose of supervision, see our comment on paragraph 9.49.
9	69	The measures available to the supervisory authorities should only be used in gradual stages. Significant interventions, such as suspending the exercise of voting rights, should only be allowed in extreme situations. Therefore, the proposed enforcement measures and powers listed are not proportionate for the issue describes. In any case, other legal framework conditions such as the company law must be taken into consideration by the supervisory authorities. The legal process must be suitably open to the supervised undertakings which is especially important for groups with undertakings in several jurisdictions.
9	72	The issue described does not require additional regulation and should be solved in dialogue between supervisory authorities and EIOPA.
9	78	It is unclear if any problems arise from this situation and why this needs to be solved by regulation.
9	89	In general, Solvency II should take a more practical approach to the integration of third-country (re)insurers. In some cases, especially for large international groups, it is simply neither feasible nor adequate to subject each and every immaterial participation to SII calculations. Hence, we fully support that the concept of "exclusion" be further enhanced and detailed to provide for uniform conditions. Nevertheless, we also concur with EIOPA that exclusion must not lead to the absence of group supervision. However, in our opinion there should be no need for supervisory authorities to consult EIOPA before a waiver from group supervision is granted. The concerned supervisory authority should have the ultimate responsibility. If necessary, it could contact other relevant supervisory authorities or EIOPA.

		Therefore, we see no need to introduce the proposed principle.
9	90	See our comment on paragraph 9.89.
9	91	<p>We agree that the definition of “negligible interest” should be clear enough to allow undertakings in advance to assess the consequences of business decisions concerning the group formation. The definition also should be as consistent as possible with other European regulations, in this context for example with the European Accounting Directive. To ensure consistency, undertakings should be free to consider existing criteria, e.g. criteria which are used for accounting purposes.</p> <p>In general, Solvency II should allow for a more simplified treatment of third-country (re)insurers, which are immaterial (or of "negligible interest") for the (EU) group, but which are burdensome and costly to integrate. We believe that Solvency II must be more pragmatic as well as proportionate, and not ignorant to the reality of large group's (multitude of relatively small participations in non-equivalent third-country (re)insurers). The instruments for such simplified treatment are "exclusion" – which would apply to all 3 Pillars of Group supervision – or a mere simplified approach to the Pillar 1 calculation (see below). EIOPA should note that currently, exclusion is the only systematic solution provided by the legislation to avoid an Solvency II calculation for a third-country (re)insurer, but it extends to Pillars 2 and 3.</p> <p>Currently, the only systematic relief regarding the solvency calculation is the book value deduction (Article 229) which results in a penalty for the participating undertaking (loss of investment). A more fair and risk-sensitive approach would be to continue the treatment at solo level (i.e. equity method and equity risk charge). We believe that this corresponds to EIOPA's draft proposal in paragraph 9.184 (notwithstanding the concept of a cap and the choice of the adjusted equity method, which we oppose).</p> <p>When approving not to calculate the contribution of a third-country (re)insurer to the group solvency (exclusion, book value deduction or equity risk charge), the group supervisor should take into account the potential impact on the solvency as measured with proxy indicators such as e.g. IFRS reserves. The impact cannot be measured in terms of Solvency II solvency as this calculation is to be avoided. We believe that all excluded third-country (re)insurers must not account for more than 10% of the Group's reserves and GWP.</p>
9	96	The „Consultation on technical standards on the reporting of intra-group transactions and risk concentration for Financial Conglomerates“ ended in August. Drifting apart of the requirements of FICOD and Solvency II Directive should be avoided.
9	101	Existing reporting and disclosure requirements seem to be sufficient to provide all the information needed for IGT supervision. However, we understand that there might be cases where the national supervisor deems further information necessary. In these cases, it would be an appropriate approach to consult the group concerned and directly request the needed information. By doing so, the supervisory authority could gain better insight faster, easier and in a much more proportionate way than by means of amended requirements for the whole industry.
9	104	The situation described can be handled by the supervisory authorities themselves. We do not see any need for additional regulation.
9	108	The thresholds are determined based on the risk profile and circumstances of the relevant group. This flexibility should be preserved. If there was a harmonised threshold, it would not be appropriate in any given situation. Hence, we do not see any added benefit from a EU-wide threshold.
9	118	The draft proposal to define separate thresholds for different kinds of transactions would cause significant implementation effort.
9	123	Reporting any transactions of this kind could lead to an unduly overload of information for larger groups without meaningful relevance.

		Recital 109 of the Solvency II Directive allows for supervisory measures " <i>at the level of the insurance or reinsurance undertaking where its solvency is being or may be jeopardised</i> ". Supervisory measures for IGT between non-insurance undertakings go beyond this. Group supervision is not an aim in itself, but supports the solo supervision by providing a better picture of an (EU) (re)insurer in the context of the group. Therefore, we believe that only such IGT are relevant, to which an EU (re)insurer is a party. It is not the task of an EU NSA to take care of IGT affecting third-country (re)insurers. Therefore, we propose not to amend the existing regulation. However, if amendments are desired, as a minimum, it should be possible to exclude defined transactions from the outset in consultation with the group supervisor. For example, the joint administration of human resources for all undertakings in the group should be important only in rare cases.
9	124	The draft proposal to include IGT with banks in the group supervision further blurs the boundaries between sectoral and cross-sectoral (FICOD) supervision. If banks were to be included in the supervision of IGT within insurance group supervision, this must lead to a cessation of the duality of Solvency II and FICOD group supervision, i.e. FICOD must cease to apply to insurance groups. There is no room for FICOD supervision anyway as the insurance group solvency fully covers all banking entities in scope of FICOD, and even goes beyond this (pension funds). However, if FICOD continues to apply, then the reporting requirements for groups which are insurance groups and financial conglomerates must be aligned as closely as possible, also regarding thresholds.
9	125	In the interest of legal certainty and consistency between various groups, we believe that additional criteria, if any, must be easily measurable, i.e. quantitative. We therefore oppose to qualitative criteria. The existing definitions and criteria for thresholds are sufficient. If additional criteria are deemed necessary, they should be quantitative and relate to the risks induced by possible risk concentration.
9	145	We agree with EIOPA that supervisory authorities shall document the rationale for the choice of one or several methods.
9	146	The possibility to require the establishment of an EEA holding company should be subject to certain conditions and should one be considered if any other methods do not allow it to achieve the objectives of Solvency II group supervision.
9	147	We welcome the clarification that it is the EEA group supervisor that applies "other methods" to ensure appropriate supervision of EEA entities belonging to a wider international group.
9	168	We do not support the draft proposal to request for a notional SCR to be calculated. Therefore, we recommend the introduction of option 2, i.e. a notional SCR equal to zero. However, if a notional SCR for IHC and MFHC is requested, it is of vital importance that intra-group transactions are eliminated in the determination of Solo-SCRs to avoid double-counting of risks of insurance subsidiaries. In the consolidated group SCR (method 1) any IHC/MFHC is only to be reflected on a consolidated basis. This means that no notional solo ("stand-alone") SCR is to be added, as this would lead to double- or even "multiple"-counting regarding the IHC/MFHC's participations in related undertakings, which themselves calculate their contribution to the group SCR. If the notional SCR of an IHC/MFHC was not net of risks from intragroup participations (in particular equity risk), then the mere fact of having a structure with several IHC/MFHC would heavily increase the group SCR of one insurance group compared to a second one with the exact same business but fewer IHC/MFHC. The existence of IHC/MFHC must not lead to a group SCR relief by transferring risks from a (re)insurer to such holding (this is avoided by the mean of consolidation). However, there is equally no reason for a group SCR penalty or increase.
9	169	See our comment on 9.168. We believe that no changes to the Delegated Regulation are necessary.
9	184	We fully share the view that for reasons of proportionality, exceptions to the requirement to calculate an Solvency II solvency contribution for third-country (re)insurers must be granted. We would also favour the equity method as an alternative to the book value deduction under conditions similar to those of "exclusion" (see our comment on paragraph 9.91).

		<p>However, we object in two regards:</p> <ul style="list-style-type: none"> • First, the right method is not the adjusted equity method (Article 13 (3) Delegated Regulation), as it requires a Solvency II compliant balance sheet valuation, but the equity method (Article 13 (5) Delegated Regulation) based on IFRS shareholders' equity less goodwill and intangibles. The adjusted equity method wouldn't solve any of the issues at stake. • Second, we oppose to the idea of a cap on own funds (as mentioned but not defined by EIOPA), at least to the extent it applies to related third-country (re)insurers. There is no justification for a cap, which results in a penalty. Rather, the method should be seen as a use case of the proportionality principle, which serves to integrate third-country (re)insurers of negligible interest in a lean and adequate way. Furthermore, as the application is subject to approval and conditions, an abuse is not possible. Finally, EIOPA should see the advantage of this approach over "exclusion", which is that the related undertakings remains subject to Pillar 2 and 3 requirements (in particular the group-wide risk management).
9	185	See our comment on paragraph 9.184.
9	204	<p>Article 328 of the Delegated Regulation already provides for specific elements to be considered within the choice of the method. Therefore, we do not see any need for further specifications. Additional regulation could result in undertakings having to change their calculation methods.</p> <p>If a notional SCR for IHC and MFHC is required, it must be net of risk charges for participations in related undertakings.</p>
9	229	We agree that Article 239 Delegated Regulation cannot be applied mutatis mutandis at group level, and that an alternative integration technique is necessary for a partial group-internal model. Such technique must allow for the diversification effects which exist between the "internal model" and the "standard formula" entities.
9	230	See our comment to paragraph 9.229.
9	261	<p>We share EIOPA's view that double counting should be avoided, and that the D&A method applies entity by entity, as also confirmed by EIOPA in paragraph 9.282.</p> <p>We furthermore share the view that the application of the D&A method should not lead to the underestimation of risks compared to the consolidation method. To this extent, it makes sense in principle to include FX and concentration risks (not: equity risk) on top of the related undertaking's solo SCR to the extent this would be required under consolidation (Article 337, 188 Delegated Regulation). However, this turns out to be very difficult in practice. As also mentioned by EIOPA, it would be inconsistent to calculate the FX risk for the equity participation, as the equity risk from the latter is fully covered through the solo SCR. On the other hand, it clearly does not make sense to apply FX risk to individual balance sheet items, as there is no consolidation in the D&A method and hence no Solvency II compliant values to be shocked for a (re)insurer from an equivalent third-country. As a calculation turns out to be impossible, it should be reminded that the D&A method already includes a "conservatism buffer" by not recognizing diversification effects. We believe that such buffer should, in the interest of practical feasibility, be sufficient.</p>
9	282	We do not see any need for clarification.
9	283	See our comment on paragraph 9.282.
9	289	Notwithstanding Article 331(3) Delegated Regulation, an own funds item of a participating (re-)insurer does not need to foresee group triggers in order to qualify as group own funds for group capital purposes. The clarification in Article 331 (3) Delegated Regulation requires

		<p>that own funds items issued by related (re-) insurers must contain two solo triggers in order to qualify as group own funds, namely (i) a solo trigger referring to the related (re-insurer) – i.e. itself, (ii) and a solo-trigger referring to the participating (re-insurer) – i.e. its parent. In addition, Article 331 (2) Delegated Regulation requires a group trigger. If EIOPA or the European Commission want to stipulate that own funds items (in particular subordinated debt and preference shares) can only qualify as group capital if the terms include group triggers, this should be made explicit.</p> <p>Unintended consequence of Article 331 Delegated Regulation: If EEA insurer (A) acquires an EEA insurer (B), the own funds qualifying subordinated debt instruments of insurer B typically cannot qualify as own funds for A-group purposes since the triggers of B's sub debt would only apply to B's group, and not A's group. This strict application of Article 331 Delegated Regulation does artificially increase the cost of an acquisition. We do not think this is intended and suggest explicit grandfathering rules for such cases.</p>
9	291	<p>It is inconsistent to allow for equivalence, but to disallow own funds of related (re-)insurers in equivalent jurisdictions that meet all local requirements as group own funds unless they also include Solvency II related group triggers. This obligation for additional triggers that are not customary for competitors (i.e. other insurers in the equivalent jurisdiction that are not subsidiaries of EEA based (re-)insurers) represents a competitive disadvantage. Also, in case an EEA insurer acquires a (re-)insurer located in an equivalent regime, the subordinated debt of the target would typically not qualify as capital for the group of the EEA (re-)insurer due to the absence of Solvency II related group triggers. Therefore, Article 332 Delegated Regulation should be amended so as to exclude (re)insurers from equivalent third-countries which are included with the D&A method.</p>
9	296	<p>It remains unclear if there were any problems arising from the existing regulation in practice.</p>
9	301	<p>We do not see any need for clarification. If the group has to comply with the solo requirements and Recital 127 clarifies the solo treatment, this is also included in the group assessment.</p>
9	308	<p>In our view, there is no need for additional requirements. The existing regulation is sufficiently clear.</p>
9	309	<p>We agree with EIOPA: own funds, which do not meet the Tiering criteria of Article 332 Delegated Regulation in combination with Article 71 (T1), Article 73 (T2) and Article 77 (T3) Delegated Regulation cannot qualify as group own funds at all, and hence there is no need to test them for "availability on a group-wide basis".</p>
9	310	<p>See our comment on paragraph 9.309. However, where newly acquired (re)insurers formally cannot qualify as own funds for the acquiring group for lack of triggers that extend to the acquirer's, should be implemented.</p>
9	311	<p>See our answer to questions Q9.3 and Q9.4.</p>
9	312	<p>We agree with EIOPA that supervisory authorities shall have the possibility to waive the suspension of redemption or redemption in exceptional cases.</p>
9	313	<p>See our comment on paragraph 9.289.</p>
9	314	<p>See our comment on paragraph 9.291.</p>
9	325	<p>The given example illustrates a very specific case. In our view, based on this example one cannot conclude there is a general issue which needs to be solved by means of new regulation. To a certain extent the existing methodology to determine the solo contribution to group SCR and its coverage contains simplifications. Therefore, potential weaknesses are unavoidable. However, this potential weaknesses should not be addressed by new requirements upfront as additional requirements would contradict the idea of a "simple" approach. Furthermore, if tiering on solo level has to be considered in the availability assessment, this would result in additional tiering restrictions, as the tiering on</p>

		group level would build up on this tiering on solo level. As we do not see a general issue, we would recommend not to amend the existing requirements. If a weakness is identified in a specific case, this should be discussed between the concerned group, undertakings and supervisors.
9	347	It remains unclear whether this is a theoretical issue or a practical one.
9	356	In our view the discussed availability assessment of EPIFP for group own funds is a very critical issue. We disagree with the idea that EPIFP shall be assumed unavailable at group level. The EPIFP form a part of the expected overall profits of the corresponding portfolio. Therefore, it is not a separate item of the reconciliation reserve. The expected overall profits of the corresponding portfolio are usually called Present Value of Future Profits (PVFP). The PVFP are deemed to be unconditionally distributable and available at group level without any restriction for the purpose of group consolidation. This also applies for EPIFP which form part of the PVFP in terms of the underlying amount. Therefore, in our view the treatment of EPIFP in the determination of group own funds shall remain unchanged. The argument that usually it will not be possible to provide own funds from one undertaking of the group to another within 9 months cannot be supported. It is possible to make own funds available within 9 month from one undertaking to another (see our answer on question Q 9.6). Concluding from the above, it would be very negative if EPIFP were treated as a non-available own-fund item by default and if an individual availability assessment was required as this presumption does not correspond to the market reality. In this context it also needs to be acknowledged that even the possibility that EPIFP cannot actually be realised is already captured in the lapse risk. Therefore, we see no reason to consider EPIFP as unavailable at group level and we welcome that EIOPA did not give a corresponding advice.
9	357	We welcome EIOPA's advice not to introduce changes regarding the availability assessment under Article 330 (5) of the Delegated Regulation.
9	358	We believe that Article 222 of the Directive and Article 330 of the Delegated Regulation are sufficiently clear regarding the scope of undertakings. In scope are any related insurance or reinsurance undertaking, third country insurance or reinsurance undertaking, insurance holding company or mixed financial holding company. However, it should be clarified that no separate SCR has to be determined for ancillary services undertakings. It is also important to note that the scope is restricted to related undertakings, and does not include the participating undertaking.
9	359	<p>In our view, this is a critical amendment. We disagree with EIOPA; there should be no requirement to look through the reconciliation reserve and to do a separate availability assessment of its elements. Firstly, to declare benefits from transitionals as unavailable would not be a "clarification", but a change in law. Secondly, we do not see a justification for such change in law. The transitional measures were introduced to allow undertakings to gradually adapt to Solvency II. Thereby, transitional measures were designed to be effective on solo level as well as on group level. We do not see any reason to change this implicitly by considering non-availability at group level and thereby differentiating the treatment of solo undertakings and groups.</p> <p>Besides this, similar to EPIFP (see our answer to question 9.6) there are several ways to monetize the effects of transitional measures and transfer them within the group, e.g. reinsurance agreements or subordinated loans. Therefore, we believe the effects from transitional measures shall not be deemed to be unavailable in the meaning of Article 330 (3) of the Delegated Regulation.</p>
9	380	There are already specific guidelines on the treatment of minority interests.
9	381	We agree with EIOPA that the calculation of minority interests could be further clarified. We believe that the calculation should be based on Solvency II values (case 1). Among case 1, we favor the alternative case 1c. We think that internal subordinated debt as proposed by case

		1a, must not be subject to deductions. However, it depends on the legal structure, which of the described cases would be most suitable to reflect the risk, see our answer on question Q9.7.
9	386	<p>A cap of the “minimum group SCR” would be contradictory in view of its original purpose: On solo basis, the SCR is derived from the internal model or standard formula, whereas the MCR is calculated with a Solvency I style factor based method. solo SCR and solo MCR are calculated differently and independently from each other, and it is possible to cap the solo MCR at 45% of the solo SCR. On group level, the primary purpose of the “minimum consolidated group SCR” – or “group MCR” – is to act as a floor for the “consolidated group SCR” – hence the “minimum” in its formal name. As such it would be contradictory to set a cap for the “minimum consolidated group SCR” at 45% of the “consolidated group SCR”. We are not aware of any other sensible approach to cap the “minimum consolidated group SCR” and therefore believe that a cap for the group MCR does not make sense.</p> <p>The absence of a cap for the group MCR is sufficient to allow for trigger inversion on a group basis. The more conservative tiering limits for the group MCR compared to the group SCR limits add to this risk. In addition, the difference in perimeter between the group SCR (IM/SM, plus D&A and OFS) and group MCR (IM/SM only) further increases the risk of trigger inversion.</p> <p>The consequence of the difference in perimeter means that a shock that only affects one part of the group (IM/SM) – but less so the other parts of group (D&A, OFS) may well surprise investors by a trigger breach that leaves the overall group adequately capitalized.</p> <p>A breach of the group MCR ratio is almost exclusively relevant for the issuers of sub debt – given the absence of defined regulatory consequence other than sub debt triggers. We do not believe that this was the intention of the concept. Trigger inversion is possible and meaningful, and can well create unintended consequences. Therefore, if a proper group MCR ratio concept is too complex to introduce, we suggest to limit the use of the group MCR to its original purpose.</p>
9	387	<p>We do not think there is any evidence that a high diversification benefit is increasing the risk of trigger inversion (i.e. a situation where the group SCR ratio is lower than the minimum consolidated group (or “group MCR”) Ratio).</p> <p>We also would like to point out that trigger inversion especially affects more complex groups which comprise many undertakings – irrespective of the use of diversification benefits – as well as groups with large contributions from D&A (equivalent insurers) and OFS (Other Financial Sectors) entities. Where a shock only impacts the IM/SM part of the group, but not the D&A and OFS component, the group SCR may be well covered, but the group MCR may be breached. We think that these potential consequences were not intended. More importantly, it is questionable whether a non-risk based, Solvency I metric such as the factor-based group MCR should meaningfully influence decision makers of Solvency II regulated insurers. Therefore, if a proper group MCR ratio concept is too complex to introduce, we suggest to limit the use of the group MCR to its original purpose.</p>
9	388	See our comment on paragraph 9.387. Trigger inversion can have many reasons, the suggested inclusion of some additional entities does certainly not prevent trigger inversion with certainty.
	389	As explained in our comment on paragraph 9.386, we think a corridor would not make sense for the group MCR's original purpose, namely to act as a floor for the SCR (IM/SM).
9	390	As EIOPA writes, it is not clear whether there is a systemic underestimation of the minimum consolidated group SCR. Therefore, we do not

		see a need to amend the existing regulation.
9	393	For groups with large D&A and OFS parts, there will always be a significant difference in scope between the group SCR (IM/SM, D&A, OFS) and the group MCR. Considering its original and primary purpose as a cap of the diversification, this difference in scope is justified (no diversification benefit from D&A and OFS). For any other purposes of the group MCR – in particular the group triggers in subordinated debt instruments - the difference in scope cannot be justified in our eyes. Therefore, if a proper group MCR ratio concept is too complex to introduce, we suggest to limit the use of the group MCR to its original purpose.
9	394	We cannot agree. It is not justifiable that a non-risk based, Solvency I metric such as the factor-based group MCR should meaningfully influence decision makers of Solvency II regulated insurers. Irrespective of any complexities to replace the current concept with a risk-based alternative, it must be the aim of Solvency II that all regulatory metrics that influence decision making must be risk- and market based. The current group MCR concept is not fit for this purpose and where the group MCR is binding, it effectively means that Solvency I supersedes Solvency II through the backdoor.
9	396	We disagree. Intra-group transactions are netted in the context of consolidation and therefore cannot increase own funds eligible to cover the SCR (IM/SM), nor own funds eligible to cover the group MCR. Consolidation ensures the netting of intra-group transactions.
9	398	We disagree. In order to be meaningful, the group MCR must also be relevant in cases other than trigger inversion. When the group MCR is a binding constraint, it forces decision makers to consider it in their decision making. However, it is not justifiable that a non-risk based, Solvency I metric such as the factor-based group MCR should meaningfully influence decision makers of Solvency II regulated insurers. Irrespective of any complexities to replace the current concept with a risk-based alternative, it must be the aim of Solvency II that all regulatory metrics that influence decision making must be risk- and market based. The current group MCR concept is not fit for this purpose and wherever the group MCR is binding, it effectively means that Solvency I supersedes Solvency II through the backdoor.
9	399	<p>We welcome EIOPA's intention to clarify which entities should be included in the scope of minimum consolidated group SCR and we can agree to the inclusion of EIOPA guideline 21 b) of the Guidelines on group solvency calculation into legislation. However, we do not see any systematic underestimation of the current minimum consolidated group SCR. In contrast, the current approach of adding the MCRs of all insurance undertakings leads to an overestimated MCR for cascade structures with parent and grand parent undertakings. As EIOPA mentions, there are cases when the minimum consolidated group SCR is higher than the SCR. If IHC and MFHC are included in the calculation of the minimum consolidated group SCR, this shortcoming becomes even more relevant.</p> <p>While we understand EIOPA's rationale to not only include insurance and reinsurance undertakings, we are very concerned that EIOPA both recommends to (i) add holding companies to the calculation of the group MCR (paragraph 9.399) and to (ii) leave the calculation of the group MCR unchanged (paragraph 9.400). It is worrying that EIOPA is aware of the fact that the recommendation in paragraph 9.400 means that the possibility of a breach of Group MCR ahead of the Group SCR ratio (trigger inversion) will not only remain, but will be significantly accelerated in case the recommendation in paragraph 9.399 is implemented. There is no justification for EIOPA to greatly increase the risk of trigger inversion by requiring the multiple counting of risk implied by paragraph 9.399.</p> <p>For all the above mentioned reasons, the draft proposal to add notional MCRs for IHC and MFHC is seen critical and we cannot agree. If notional MCRs for IHC and MFHC should be included nonetheless, it should at least be explicitly clarified that there should be no double counting due to affiliations and sub-structures, i.e. the methodology for calculating the minimum consolidated group SCR needs to be</p>

		adjusted.
9	400	<p>As EIOPA states, the current calculation method for the minimum consolidated group SCR can result in an minimum consolidated group SCR being higher than the group SCR. If, as foreseen in the draft proposal by EIOPA in paragraph 9.399, notional MCRs for IHC and MFHC are to be included in the calculation for the minimum consolidated group SCR, this will be aggravated. Therefore, we do not agree with EIOPA's opinion. We see fundamental issues with the concept of the group MCR as far as the function to define an adequate own funds composition is concerned. As acknowledged by EIOPA, the mutatis mutandis application of the solo concept at group level raises issues as the group MCR does not have the same fixed distance to the group SCR as is the case at solo level.</p> <p>Also, EIOPA should note that a breach of the group MCR does not, and cannot, have the same consequences it has at solo level. The group as such has no license to be withdrawn, while the group supervisor may impose all other measures already upon a group SCR breach. We hence believe that the concept of the group MCR is not worth the complexity and issues caused by the possibility of a trigger inversion. It should only be maintained for flooring the consolidated group SCR (see our comment on paragraph 9.386). But if EIOPA really wants to keep the second function of the group MCR, it should note that obviously the advice to enlarge the perimeter of the group MCR does not solve the issue of trigger inversion, but rather worsens it as the group MCR (even if no multiple-counting of participation risks occurs) will increase and thus the distance to group SCR will decrease.</p> <p>In addition, unintended consequences from the interaction between the Principal Loss Absorbency Mechanism ("PLAM") and the minimum consolidated group SCR ("Group MCR") must be appropriately reflected to avoid that RT1 PLAM can lead to an acceleration of a crisis. If the rules around the Group MCR remain unchanged as proposed by EIOPA, the option for NSAs to grant a PLAM waiver must be extended to all potential trigger breaches.</p>
9	418	It remains unclear why an impact on quantitative requirements is not seen.
9	440	<p>In general we believe that the treatment of OFS has become too complex. Firstly, we don't see the need for the FICOD where an insurance group owns OFS entities. Solvency II group supervision is sufficiently broad and can fully replace FICOD. FICOD should be waived for insurance groups. Secondly, it does not make sense to differentiate different methods for the inclusion of OFS entities. At group level, they are all the same as no real consolidation can occur. The only difference is the treatment of participations in OFS entities at solo (!) level (Article 68 (3) of the Delegated Regulation). We believe that only one method should be provided at group level, and that no book value deduction should occur at solo level.</p> <p>Furthermore, according to recital 77 of Directive (EU) 2016/2341 "<i>no quantitative capital requirements, such as Solvency II [...] should therefore be developed at the Union level with regard to IORPs...</i>". IORPs are often included in insurance groups as OFS undertakings. The draft proposals would require IORPs to develop and enhance solvency models and therefore contradicts with the provisions of IORP II Directive that sets own capital requirements for IORPs. In our view it is of utmost importance that the level playing field between IORPs is not threatened by further requirements for OFS undertakings. Therefore, we strongly propose not to introduce any new requirements for the treatment of OFS undertakings within a group.</p>
9	441	In paragraph 9.413 EIOPA states that the contribution of OFS-undertakings to the group solvency is the same, regardless which calculation method has been used. Further, it remains unclear, whether the question addressed by this draft proposal has occurred in practice. In our

		view it is obvious that Article 329 of the Delegated Regulation is applicable regardless of the method used. Therefore, we do not see any need for the suggested clarification.
9	442	We cannot agree to this draft advice. It seems to require reclassifying own funds items of OFS entities according to Solvency II. This would lead to wrong results, as own funds items of a bank would be treated differently depending on whether it belongs to an insurance group or not. Hence, for clarification, own fund items of OFS entities must be shown in the insurance group solvency with the tiering assigned by the sectoral rules. Solvency II regulations should not be forced onto the sectoral rules. Besides the above mentioned effect that it would lead to wrong results, benefits would be very limited as it can be very misleading if some own fund items are allocated into relevant Solvency II tiers while others are not.
9	443	Please see our fundamental concerns with the concept of availability in our answer to question Q 9.5. We are therefore hesitant to further extend this flawed concept to OFS entities, although we acknowledge that FICOD contains a similar requirement. Even when assuming that excess own funds needed to be legally transferred to another entity, we do not see why additional obstacles should exist with regards to OFS entities. Furthermore we do not see why a "close cooperation with the relevant supervisors of OFS" would help; this is neither required with regard to third-country (re)insurers. Therefore, we disagree with the draft proposal. However, if this flawed concept was extended to OFS entities it should at least be limited to a closed list of own funds items like for (re)insurers: DTA, subordinated debt.
9	444	We agree with the treatment which equals Article 330 of the Delegated Regulation, to our understanding.
9	447	We agree with EIOPA that unintended spill overs on the interaction between the legislation for other sectors with the existing Solvency II framework should be avoided.
9	464	We agree that credit institutions, investment firms or financial institutions should be included in accordance with sectoral rules in the group solvency calculation.
9	465	We understand the need to ensure a harmonised approach. However, the need for a harmonised approach has to be balanced with the need for a workable solution.
9	466	It should be borne in mind that a harmonised application, as included in the draft proposal, could be an excessive reporting burden for the undertakings concerned. For example, a credit institution included in an insurance group could have to perform calculations that deviate from methods 1 or 2 of Solvency II for legal reasons. In consultation with the group supervisor, it should be possible to alternatively include these calculation results if the deviations from the results of a calculation according to methods 1 or 2 can be neglected. As the effects of this amendment could be very far-reaching, further in-depth analysis would be necessary if EIOPA wants to pursue such an amendment.
9	469	In order to be able to comply with Article 41–50, indirectly Article 40 has to be applied as well. Therefore, it remains unclear whether there has been any supervisory issue in practice.
9	483	We do not see a conflict of interest in cumulating KF at ultimate parent level. Quite the contrary, there are no legal restrictions to outsource any KF of any group entity to one person. This would not impede, but even contribute to a group wide system of governance
9	484	EIOPA implies that fit & proper-requirements of the AMSB and KFHs at ultimate parent level must be based on a broader assessment with regard to their group responsibilities. Hence, the persons affected would be subject to solo and group assessments assessments at the same time. We strongly disagree with this assumption.
9	499	In our view it is on the one hand difficult to implement group guidelines on non-regulated entities and on the other hand there is no advantage and no need of doing so from a risk perspective. Most of the non-regulated entities only have supportive functions.
9	500	At a first glance EIOPA's draft proposal to hold the group's ultimate parent accountable for group supervisions seems to be reasonable.

		However, we would also like to bring to EIOPA's attention that the current approach is not a mistake, but a consistent concept. Departing from this would require further changes, e.g. the entire differentiation of diverse cases of insurance groups in Article 213 (2) becomes obsolete. We disagree that the group supervisor should be granted power to designate a different company of the group or a specific company in the case of horizontal group (where the parent company is not clearly identifiable). It should rest with the capacity of the group to designate – subject to the consent of the group supervisor – the group undertaking responsible to implement a group-wide system of governance. In any case, from our perspective it is important that EIOPA actively involves the respective group.
9	501	We see no difficulties in setting up a group-wide governance based on a mutatis mutandis application of solo requirements. Implementing a separate definition would create the inadequate impression that group governance is different from solo governance. The questions raised in paragraph 476–494 do not require legislative interventions, but should be addressed in the course of ongoing supervision, granting supervisors and undertakings the flexibility to find suitable and proportionate solutions.
		10. Freedom to provide services and freedom of establishment
10	6	Articles 162–171 do not address the market access of third country (re-) insurance undertakings which exclusively conduct reinsurance activities. This leads to a fragmented and inconsistent regulatory landscape, as some Member States impose a local presence requirement on such undertakings while others don't. As a result, insurance and reinsurance undertakings are confronted with an unlevel playing field if they consider ceding (re-) insurance risks to undertakings located outside the European Union on a cross-border basis. Therefore, the market access of third country (re-) insurers which only operate reinsurance business should be harmonized in accordance with international standards. Insurance Core Principle 13.4 of the International Association of Insurance Supervisors (IAIS) emphasizes the cross-border nature of reinsurance transactions and the market sophistication of the parties involved. This should be translated into a regulation which requires Member States to grant market access if the third country (re-) insurer is authorized to conduct reinsurance business in its jurisdiction and national competent authorities deem the supervision performed by and the cooperation with their third country counterparts as adequate. Such an approach would also be in line with the equivalence concept for third country reinsurers pursued by Article 172 as it applies to the treatment of reinsurance contracts for solvency purposes only. However, Article 172 should be adapted to Articles 227 and 260. These provide not only for an “equivalence decision” but also for the possibility of an “equivalence assessment” by the national supervisory authorities, which results in both being equal.
10	20	We agree with EIOPA's view that information about failed authorizations in other Member States or third countries should be submitted by the applying undertaking.
10	29	In general, objectives are not raised. Nevertheless, it remains unclear what a “material change” contains and which requirements must be fulfilled in order to trigger the information obligation. A clarification of that term is desirable.
10	38	We take a critical view of the expanded competencies for EIOPA. The “shame and blame”-mechanism would weaken the supervisory authority of the home Member State. Moreover, we note that this draft proposal was already on the table and finally rejected in the ESA review trilogue just six months ago. We do not see why the current situation should deserve a different assessment of the co-legislators.
10	46	A joint supervision by home and host supervisors of key business units (e.g. governance, outsourcing, business strategy) undermines the home state principle which is fundamental for the architecture of the internal market. Therefore, we consider an ongoing cooperation between host and home supervisor to be critical, even in the case of significant cross-border insurance business.
10	56	We would like to point out critically that the home supervisor and the insurance undertaking as the addressees of a request are of equal rank next to each other according to the draft proposed new text of Article 153. While we understand the rationale of the draft proposal,

		the host supervisor should only be authorized to approach the undertaking if the request for information addressed to the home supervisor was dismissed or not adequately complied with.
		11. Macroprudential policy
11	7	We accept that there are theoretically possible systemic risks emerging from or being amplified by the insurance sector, but would also point out that, so far, the existence of systemic risk in insurance has not been adequately substantiated. The one example often quoted regarding such a risk (AIG) is in fact an example of systemic risk stemming from non-insurance activities. Before additional macroprudential measures can be shown to be useful and appropriate, the nature of systemic risk in insurance needs to be more clearly evidenced and articulated. In practice, potential systemic risks are of limited relevance for insurance, given the nature of the insurance business model, actual activities of European insurers and limited transmission channels, but also the already existing supervisory framework.
11	8	<p>We agree that macroprudential policy, with its mandate to identify and mitigate systemic risk, has an important contribution to make in minimizing the social costs of financial crises. However, it is important not to overload macroprudential supervision. Well-functioning financial markets are inherently volatile, and microprudential regulation and supervision is already designed to cope with a lot of volatility, without additional macroprudential tools. In addition, it is crucial that the limitations of macroprudential supervisions are always borne in mind. For example, there are substantial conceptual challenges regarding the appropriate design of the macroprudential framework.</p> <p>It is also important to acknowledge that macroprudential policy can only be one element in the safeguarding of financial stability. Other areas of policy and supervision also have manifold direct and indirect effects on the stability of the financial system and have to contribute to financial stability as well. Besides microprudential policy, forward-looking and stability-oriented fiscal and economic policies are vital. In addition, monetary policy has an important role to play. Instead of introducing ever more macroprudential tools, it can often be more effective to strengthen financial stability by other measures. For example, completion of the European Capital Markets Union would enhance cross-border capital flows, leading to decreased concentration risks and a better cushioning of exogenous shocks to the financial system and the economy.</p>
11	9	<p>As stated by EIOPA, there is a broad consensus that – in contrast to the banking sector – systemic risks from the insurance sector are quite limited and that there is very little systemic risk in the core business of insurers. Because of the specific characteristics of the insurance business – long-term orientation, stable financing of liabilities, advance financing through insurance premiums, insured events overwhelmingly triggered by external causes – the insurance industry does not only have lower systemic risks, it tends to work as a stabilizing factor in the financial system. Compared to the banking industry contagion risks from insurers are much lower – both within the industry and from the industry to other sectors of the economy – for several reasons. Banks are heavily connected through the interbank market – which in the past has often shown to be the source of strain. In contrast, insurers operate much more on a stand-alone basis. Insurers are not providers of financial market infrastructure (e.g. the payment or settlement systems). Also, insurers are not at the heart of the monetary transmission mechanism; they do not create fiat money.</p> <p>In light of the existing supervisory framework in place, we see little need for additional macroprudential measures. All new measures aimed at further reducing systemic risk impose financial costs on insurers. These costs can only be justified by a (more than) equal benefit – also in view of the overall economy. Otherwise, too much or inappropriately designed regulation of the insurance sector could impair the economic function insurers provide. It could thereby even lead to higher systemic risk, e.g. if it were harming insurers in their role as long-term</p>

		investors or were to weaken their competitive position compared to other (less or unregulated) industries.
11	11	We do not agree with EIOPA's view that currently there is a lack of macroprudential framework for the insurance industry. In the aftermath of the global financial crisis of 2008, reinforced by the impact of the extremely low / negative interest rate environment, macroprudential policy has been greatly extended, encompassing the insurance industry as well. Examples are EIOPA's risk dash boards and financial stability reports, stress tests, the design of Solvency II (e.g. the inclusion of macroprudential elements like the VA, transitionals) and additional national macroprudential supervision.
11	28	We do not share the conclusion that additional macroprudential tools and measures are strongly needed. Over the past months, we have extensively looked into macroprudential questions and analysed the new macroprudential tools under discussion. In our position paper on macroprudential policy from July 2019 (see www.gdv.de) we have come to the conclusion that there is very limited need for new macroprudential tools or measures. In light of the limited systemic risk from the insurance industry the macroprudential framework already in place for European insurers goes a very long way to effectively address potential systemic risks from the insurance sector.
11	31	Regarding the importance of financial stability for the insurance business, we support an explicit statement that a macroprudential perspective is part of Solvency II. However, we do not see a need for introducing far-reaching new provisions or new supervisory macroprudential tools. In our view, only minor adjustments are needed to further enhance the macroprudential impact of Solvency II (e.g. improvement in volatility adjustment). It is our view, that the framework currently in place for European insurers (e.g. macroprudential aspects of Solvency II, stress tests, regular risk dashboards and financial stability reports by EIOPA, macroprudential monitoring by the ESRB) already goes a very long way to effectively address potential systemic risks from the insurance sector. We believe that – beyond specific instruments – the quality of Solvency II as a whole is already crucial not only for effective microprudential supervision but also from a macroprudential perspective. Solvency II is an effective microprudential supervisory system, which already adresses macroprudential challenges and risks to the extent necessary.
11	32	We do not agree with the proposal to introduce new macroprudential tools and measures in a general article on macroprudential supervision. As far as additional macroprudential provisions are necessary at all, they would, as a matter of principle, be better placed as an enhancement of existing provisions. In our view, there is often no clear delimitation between micro- and macroprudential tools and interventions. Further, there could be trade-offs between the different objectives (e.g. policyholder protection and macro objectives) which to our reading are not even mentioned. We see no need but could accept a general article covering macroprudential objectives, policy and surveillance as we think that financial stability is already one of the main objectives of Solvency II. The proposed article should be in line with international developments (ICP 24 Macroprudential Supervision). Furthermore, a strict application of the principle of proportionality is essential, based on the actual level of risks a business model or activity implies for the stability of the financial system. Traditional insurers with a less complex risk profile and no or little importance for financial stability should be excluded. In order to implement the proportionality principle in practice, appropriate instruments need to be developed in a timely manner, such as definition of thresholds for relevant financial stability activities. We do not

		<p>consider the definition of fixed national coverage of market shares, as proposed in the area of recovery and resolution planning, to be suitable. It is crucial to take the different situation in the Member States with regard to the threat to the financial stability sufficiently into account.</p> <p>When evaluating potential further measures, in our opinion, a holistic view is essential. Both, the potential sources of systemic risk and the macroprudential impact of the existing regulatory framework, should be taken into account. A comprehensive impact assessment of any potential new macroprudential tool should be performed, taking into account both expected benefits and direct as well as indirect costs arising from the new tool. The current impact assessment of EIOPA explicitly does not meet these requirements.</p>
11	33	In our view, the focus should be on reducing counterproductive effects in the current supervisory system. E.g. we strongly support to improve the effectiveness of the volatility adjustment under Solvency II.
11	34	We do not share the conclusions. According to our analysis, most of the tools EIOPA suggests to propose are not suitable or necessary. Regarding both the costs and benefits as well as effectiveness and efficiency of the different options, our assessment differs substantially from EIOPA's analysis. For example, costs and negative side-effects could be substantially higher than stated in EIOPA's analysis. Operational challenges diminish the benefits and effectiveness of additional tools. In our view, a more comprehensive cost-benefit analysis is necessary, including quantitative impact studies, before deciding on the introduction of far-reaching new tools.
11	37	<p>It is crucial that any reform of macroprudential policy for the European insurance sector is fully consistent with the IAIS's holistic framework for systemic risk in order to avoid a further need for adaptation to implement the IAIS provisions.</p> <p>At the same time, to ensure a level playing field across jurisdictions, European provisions should not go beyond the IAIS framework.</p>
11	56	We do not agree with the concept of a separate provision for capital surcharges to mitigate systemic risks in the insurance industry. Under Solvency II, the SRC and MCR methodologies already ensure that companies have sufficient capital to cover most risks, including risks to financial stability. In addition, Article 37 already allows for capital add-ons if supervisors conclude that the risk profile of the insurer deviates significantly from the assumptions underlying SCR calculation, or its systems of governance deviate significantly from the standards set out. A significant size or certain systemically relevant activities or behaviour may cause such a deviation and lead to a capital add-on. Therefore, the Solvency II framework already allows for cases where risks are not adequately reflected and does not limit the nature of those risks. In line with the risk-based Solvency II approach, these capital add-ons are not permanent uplifts but have to be cancelled by the supervisor if the specific situation ends.
11	57	We agree that the process of imposing a capital surcharge should be transparent including clear documentation of the rationale for the surcharge and considering proportionality aspects. Supervisors should further note that capital surcharges seem to be less effective compared to other tools, especially if a high return can be expected from the systemically relevant activity. The instrument should therefore be applied in a subsidiary way to other more effective measures.
11	58	We support the uniform conditions of application to avoid inconsistent use across the EU. But important aspects for decisions to trigger, set, calculate and remove a capital surcharge for systemic risk need to be laid down at legal level and not in guidelines.
11	59	We see no need for a separate tool or article. Article 37 already allows for capital add-ons if supervisors conclude that the risk profile of the insurer deviates significantly from the assumptions underlying SCR calculation, or its systems of governance deviate significantly from the standards set out. A significant size or certain systemically relevant activities or behaviour may cause such a deviation and lead to a capital

		add-on. Therefore, the Solvency II framework already allows for cases where risks are not adequately reflected and does not limit the nature of those risks. In line with the risk-based Solvency II approach, these capital add-ons are not permanent uplifts but have to be cancelled by the supervisor if the specific situation ends.
11	60	We see no need for a separate provision. See our comment on paragraph 11.59.
11	61	We agree with EIOPA that the European capital add-on tool should be in line with developments at the international level. At IAIS level there is no separate capital add-on provision for systemic risks.
11	79	<p>We do not agree with the conclusion that soft concentration thresholds are a suitable macroprudential instrument for insurance supervision. In our view, the effectiveness and efficiency of this instrument are overstated in EIOPA's cost-benefit analysis. It is questionable whether this instrument could contribute to financial stability. As EIOPA rightly states, there are (in our view very substantial) operational challenges. It would also be very difficult to define the appropriate level of thresholds, in particular in light of national specificities.</p> <p>Concentration risk is already dealt with in the current Solvency II approach. Also, investment strategies employed across Europe are very diverse and strongly dependant on the individual insurance business. This already counteracts excessive asset concentration in the insurance industry.</p> <p>What is more, in view of the substantial operational challenges of soft thresholds it is questionably how effective this instrument would be in further reducing concentration risks. At the same time, costs and negative side-effects could be substantially higher than stated in EIOPA's analysis:</p> <p>Concentration thresholds or exposure limits go against one of the key intentions in the transition from Solvency I to Solvency II. Rather than applying allocation limits, insurers can decide over their strategic and tactical asset allocations within limits of own funds available. Supervisory concentration threshold, even if "soft" could lead to a distortion of the necessary balance between profitability, liquidity and security at the portfolio level of the individual insurer. They would restrict insurers in their choice of investments. Besides, assets are managed in the framework of the undertaking-specific asset-liability management to ensure a match with the liability side. It could also lead insurers to dispose of certain assets in anticipation of reaching the limits.</p> <p>At financial market level, selling pressure or forced sales would have negative side-effects and are potentially destabilising. Setting thresholds could lead to herd behaviour and procyclical actions, rather than mitigating them. Even soft thresholds require insurers to take them into account in their investment strategy, reporting obligations and regulatory interactions. Therefore, customers and market participants might also focus on potential limit breaches. De facto, soft thresholds could also result in strict requirements. Thus, any form of thresholds should be avoided. We strongly support fully maintaining the principle-based approach of the PPP.</p>
11	80	In our view, NSAs should not be granted the discretion to set soft concentration threshold as this instrument is neither necessary nor suitable (compare our comment on paragraph 11.79).
11	81	In our understanding, concentration thresholds are inconsistent with the Solvency II approach. With the introduction of Solvency II, hard regulatory investment limits were replaced by the Prudent Person Principle (PPP) as a principle-based approach.
11	82	We do not agree with the introduction of a new provision on soft concentration threshold (compare our comment on paragraph 11.79).

11	96	We are of the view that insurers are already required to consider in the ORSA process all material risks that may have an impact on their ability to meet obligations to policyholders. Hence, for insurance companies to provide a holistic view, they must already take into account all observable systemic risks which could have a material impact on their business. Examples in this respect are credit cycles, asset price bubbles or reduced market liquidity.
11	97	We do not agree with the inclusion of further clarifications related to macroeconomic risks in the ORSA. According to the current legal provisions, insurers include currently in the ORSA all material risks that affect their risk profile. Therefore, the ORSA includes already those risks with potential systemic impact as well.
11	98	<p>We are of the view that the harmonisation of the structure and content of ORSA reports and the mandatory consideration of systemic risks at request of the supervisory authority as laid out by EIOPA are in stark contrast with this fundamental principle of ORSA. ORSA should not become the place to deal with supervisory enquiries. Instead, it should remain an instrument tailored to the specific management of individual insurance groups and companies. Supervisory measures are permitted in the supervisory review process (Article 36 of the Solvency II Directive), taking into account proportionality (Article 29 (4) of the Solvency II Directive) and applying a risk-based approach (Article 29 (1) of the Solvency II Directive).</p> <p>Besides, we are of the view that the potential benefit of aggregating information from thousands of ORSA does not justify the large additional costs this would imply for both insurers and supervisors. Since ORSA reports are insurer-specific, a technical solution to aggregate these reports at reasonable costs cannot be expected in the near future. Moreover, this would also be prone to technical errors.</p> <p>As a result, we see a more proportionate and pragmatic approach in continuing to assess the ORSA on a standalone basis and to discuss any macroprudential implications in the context of the existing macroprudential surveillance framework (e.g. EIOPA's regular financial stability reports or EIOPA's and the ESRB's risk dashboards).</p>
11	106	We do not share the conclusion that an enhancement of the PPP with an explicit macroprudential perspective is necessary. We agree that insurers have to take macroeconomic and financial developments into account in their investment decisions. However, this is nothing new. PPP requires insurers to invest their entire capital in a way that security, quality, liquidity and profitability of the portfolio as a whole are ensured. That means that already today insurance companies have to consider potential risks to the integrity and stability of financial markets in their investment strategies. Hence, for insurance companies to provide a holistic view, they must already take into account all observable systemic risks which could have a material impact on their business.
11	107	<p>In our perception, macroprudential supervisors already have a strong focus on investment strategies and asset allocation of insurers (see e.g. EIOPA's financial stability reports). We believe that supervisors are already in a position to effectively monitor insurers' investment policies from a macroprudential perspective as well.</p> <p>Regarding the extension considered by EIOPA, we see the risk of a high administrative and cost burden on companies and the supervisory side. The capital investment process in the companies could become even more complex if further aspects and feedback processes were taken into account in the PPP. At the same time, we believe that the potential benefits of obtaining aggregated information from the diverse investment strategies put together under the PPP and implementing a new feedback process by the relevant authority in charge of</p>

		the macroprudential policy would be very limited compared to the process already in place.
11	108	In our view, a PPP enhancement is not necessary, therefore we suggest to refrain from introducing such a new provision.
11	120	Monitoring and analysing potential systemic risks in the insurance sector is mainly the task of macroprudential supervisors at national and European level. Here, a comprehensive macroprudential surveillance framework is already in place. Also from a cross-sector perspective, it is not clear why this instrument has so far not been established in the banking sector, even though systemic risks have proven to be higher there. EIOPA considers costs for the implementation as not significant, especially for large insurers or conglomerates. However, more reports and information requirements would produce significant administrative burdens and necessitate additional IT investments at the expense of insurers and, ultimately, policyholders. Prior to adopting any extensions to the SRMP, a comprehensive cost-benefit analysis is required recognising already existing macroprudential information (like Quantitative Reporting Templates (QRT) and stress tests).
11	121	Substitutability is not a suitable criteria and its inclusion could be counterproductive. In particular, it might de-incentivize product offerings in highly concentrated markets and could lead to a more restricted product range, e.g. in marine, aviation or export credit insurance.
11	122	We see no need for a separate provision. The SRMP should be incorporated in existing reporting requirements.
11	123	Considering the rather limited systemic risk originating from or being amplified by the insurance industry, we feel that a parsimonious approach to systemic risk management planning (SRMP) would be sufficient both in terms of companies involved and risks analysed. Besides, the approach should be consistent to IAIS regulation to avoid competitive disadvantages.
11	139	<p>We recognise the existence of liquidity risk in insurance companies but see no need for an enhanced liquidity risk framework. As EIOPA acknowledges liquidity risk in the insurance industry is much less pronounced than in banking (see our comment on paragraph 11.124 and 11.125).</p> <p>Solvency II already requires companies to effectively manage all liquidity risks (Article 44 (2) (d) of the Directive and Article 260 (1) (d) of the Delegated Regulation). Insurance companies have already to consider both short-term and long-term liquidity risks when assessing the appropriateness of their assets in terms of nature, duration and liquidity in order to meet the undertaking's obligations as they fall due. Insurers have to plan how to deal with changes in expected cash inflows and outflows. Given the fact that insurance companies have various risk management tools already in place, liquidity risk does not appear to be a major potential source for systemic risk in traditional insurance business. The expectations of a separate liquidity risk framework are too far-reaching for the moderate liquidity risk level of traditional insurance. Insurers' business models differ fundamentally from banks' business models. Insurers provide liquidity to the markets by transforming longer term and less liquid liabilities into shorter term and more liquid assets. Therefore, it makes no sense to expect comprehensive analyses. To supervise the robustness of liquidity risk management a large amount of data is already available to supervisors. Solvency II reporting templates (e.g. S.06.02, S.13.01, S.18.01) are already the basis for liquidity analyses, e.g. the "liquidity and funding risks" analysis in the EIOPA Risk Dashboard. In addition, the possibility of additional requests like EIOPA's request on Long-Term Guarantees and illiquidity already exists today. These instruments ensure a sufficient supervision of insurers' (potential) liquidity risks, especially in view of the moderate liquidity risks in traditional insurance business.</p>
11	140	We do not deem it necessary that all undertakings within Solvency II should be required to draft LRMP since in view of the very limited liquidity risks, expenses and benefits are disproportionate. EIOPA considers costs for the implementation as not significant, especially for large insurers or conglomerates. However, more reports and information requirements would produce significant administrative burdens and necessitate additional IT investments at the expense of insurers and, ultimately, policyholders. Prior to adopting any extensions to

		liquidity risk management planning, a comprehensive cost-benefit analysis is required recognising already existing macroprudential information (like Quantitative Reporting Templates (QRT) and stress tests). Any request for LRMPs should be duly justified, be applied only to a limited number of insurers and should also be subject to the proportionality principle. Only companies with demonstrably increased liquidity risks and systemic relevance should be obliged to provide LRMPs. This would also be in line with the IAIS's holistic framework for systemic risk to require more detailed liquidity risk management processes and reports only for insurers with activities that could generate unexpected liquidity needs (ICP 16.9).
11	141	We welcome the fact that EIOPA wishes to take proportionality aspects into account, but do not consider the possibility of exempting individual companies to be sufficient. Instead, only companies with demonstrably increased liquidity risks and systemic relevance should be obliged to draft LRMPs.
11	142	We agree with EIOPA that the existing liquidity management plan should be used.
11	143	We do not see a need for introducing new provisions focused on macroprudential surveillance and supervision. The effective Solvency II system addresses most risks from a macroprudential perspective as well.
11	144	Considering the rather limited liquidity risk originating from or being amplified by the insurance industry, we feel that a parsimonious approach to liquidity risk management planning (LRMP) would be sufficient both in terms of companies involved and risks analysed. Besides, the approach should be consistent to IAIS regulation to avoid competitive disadvantages (see our comment on paragraph 11.140).
11	160	A temporary freeze on redemption rights is only suitable and proportionate in the (extremely unlikely) case of a mass surrender scenario. Such a strong tool has to be handled with great care in order to avoid undesirable side effects.
11	161	We agree, that the power to temporarily freeze redemption rights should be only applied as a last resort measure, for a short period of time and only to undertakings affected by a significant liquidity risk.
11	162	In order to ensure uniform conditions of application it can be useful if EIOPA issues guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify the existence of "exceptional circumstances".
11	163	We agree that authorities should pay special attention to potential side effects on the economy and effects on the rights of policyholders before temporarily freezing redemption rights for the whole or a significant part of the market. In order to establish an appropriate supervisory practice, a public consultation on the guidelines should take place in advance.
11	164	See our comments on paragraph 11.31 and 11.32
		12. Recovery and resolution
12	47	<p>We welcome the objectives of strengthening the stability of financial markets and ensuring effective protection of policyholders. However, the European insurance system under Solvency II is inherently stable and failures of individual companies are a rare event. Systemically driven defaults are possible but are expected to be limited to specific problems, branches or countries. There is no reason to set the industry in panic mode and design recovery or resolution plans for each and every possible situation that may arise. Due to that, the implementation of new regulations for recovery and resolution must be restrained and meet the following criteria:</p> <ul style="list-style-type: none"> • The established Solvency II framework should not be undermined by a new recovery and resolution framework. New regulations should only be adopted in case of demonstrable deficiencies of Solvency II. • The coverage of the Solvency Capital Requirement should stay the key early warning indicator and intervention threshold for supervisory measures. A new pre-defined intervention level or an implicit new capital requirement should be avoided. • Pre-emptive interventions in the business strategy by supervisory or resolution authorities in order to improve resolution procedure

		<p>should be prevented.</p> <ul style="list-style-type: none"> • Additional bureaucracy without adequate added value should be avoided. Costs and benefits of each instrument are to be determined.
12	54	<p>Recovery plans at group level should be the default. In the case of a cross-border insurance group, a host supervisor may deem it appropriate to require a separate recovery plan for the insurance legal entity in its jurisdiction, particularly in cases where no group recovery plan exists, or the entity in its jurisdiction is not sufficiently covered by a group recovery plan, or is deemed systemically important in that jurisdiction. It is expected that the host supervisor would cooperate and coordinate with the group-wide supervisor to avoid inconsistent recovery planning. Recovery planning should either take place at individual insurer level or at group level.</p>
12	78	<p>We recognise that the instrument of a pre-emptive recovery plan may be useful in special cases but not for all insurers. A national market share is not appropriate because the national markets are completely different (in terms of economic constitution, financial stability, relevance and interconnectedness of the insurance sector, capital resources, etc.) An adequate market share for affected insurers, hence a risk-based approach and a strict application of the principle of proportionality are essential aspects to be taken into account.</p>
12	79	<p>We welcome the harmonised criteria for waiving undertakings from the requirement of pre-emptive recovery planning. A risk-based approach needs to consider the probability of a crisis of the individual undertaking or group and the potential impact of that crisis on the financial market. Insurers with a low probability of crisis (e.g. adequate solvency ratio, no complex risk profile) and whose failure or subsequent winding up is unlikely to have a material impact should not be obliged to draw up a pre-emptive recovery plan. Substitutability is not a suitable criteria and its inclusion could be counterproductive. In particular, it might disincentivise product offerings in highly concentrated markets and could lead to a more restricted product range, e.g. in marine, aviation or export credit insurance.</p>
12	80	<p>We support the application of proportionality but this should be subsequent to the risk-based approach (see our answer to question Q12.1). Endangered companies with systemic relevance should draft a pre-emptive recovery plan; non-endangered companies should not need to deliver a plan. In case of drafting is required, authorities should be permitted to apply different or significantly reduced recovery planning and information requirements on an undertaking-specific basis. For a less complex undertaking or group, a recovery plan could be reduced to some basic information on its structure, triggers for recovery actions and recovery options, for example as a standardized template. In addition, more time for the development and implementation of the plan and a lower a lower frequency for updates could be considered.</p>
12	98	<p>From German market perspective the supervisory authority is already empowered to use very extensive early intervention measures to react. According to Article 34 it could take any necessary preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions. Additional early intervention powers without identifiable infringements against any law or regulation should be avoided.</p>
12	99	<p>Additional early intervention powers without identifiable infringements against any law or regulation should be avoided. We see especially very critical</p> <ul style="list-style-type: none"> • the additional powers to implement within a specific timeframe one or more measures set out in the (up-dated) pre-emptive recovery plan (12.90 b) • or in case of no pre-emptive recovery plan further measures to overcome any problems (12.90 c) and • the power to limit variable remuneration and bonuses (12.90 d). <p>Such far-reaching measures should be implemented in the event of recovery and foremost on the basis of a management's decision. See also our comment on paragraph 12.98.</p>
12	104	<p>If a national resolution authority is to establish, it should be avoided that separate resolution authorities are created. A separate resolution</p>

		<p>authority would lead to additional bureaucratic burden and costs.</p> <p>If a national resolution authority should be established, additional bureaucratic burden and costs and confusion of competencies with complex coordination between various authorities should be limited. Existing competences and structures should be used instead of creating another authority with own information requirements and additional reporting lines. Therefore, we welcome the flexibility for Member States to decide which authority to designate as the resolution authority for insurers instead of creating a separate resolution authority.</p>
12	109	We agree with the objectives for resolution without an ex-ante predefined ranking.
12	133	We support that the resolution authority is in charge of drawing-up a pre-emptive resolution plan. To ensure realistic assumptions and decisions the drafting process should be transparent to the concerned undertaking. The rules on how such a resolution plan should be established should be published. At the same time, already available information should be used and additional requests of information from the insurer should be minimized in order to avoid an excessive unjustified burden. The request of completely new data or valuation methods ("gone concern") from the insurer should be avoided as these would require a fully different approach in addition to the existing supervisory, tax and commercial valuations.
12	134	We agree with EIOPA that the scope of pre-emptive resolution planning should be narrower than scope of pre-emptive recovery planning as resolution is only necessary if recovery measures have already failed. Nevertheless, we do not consider a national market share as an appropriate tool to identify the affected companies to develop a pre-emptive resolution plan (see also our comment on paragraph 12.78).
12	135	<p>A risk-based approach needs to consider the probability of a crisis of the individual undertaking or group and the potential impact of that crisis on the financial market. Insurers with a low probability of crisis (e.g. adequate solvency ratio, no complex risk profile) and whose failure or subsequent winding up is unlikely to have a material impact should not be obliged to draw up a pre-emptive resolution plan. There is no adequate benefit on developing a pre-emptive resolution plan for an apparently healthy insurance institution. The design of an appropriate resolution plan depends crucially on the kind of trouble the insurance entity is facing. The requirement of a pre-emptive resolution plan should be linked to triggers that indicate a stressed situation or a calibrated probability that the company is going into insolvency (MCR breach). Further the relevance of the insurer for the financial stability need to be considered.</p> <p>Substitutability is not a suitable criteria and its inclusion could be counterproductive. In particular, it might disincentivise product offerings in highly concentrated markets and could lead to a more restricted product range, e.g. in marine, aviation or export credit insurance. In addition, the European insurance system is a competitive system based on private ownership. Supervision is designed to protect the customer from inappropriate practices and safeguarding their future claims. In case of a crisis, authorities should focus on supporting the private sector to get back to its prior strength, not the continued existence of individual companies or products.</p>
12	136	We support the application of proportionality but this should be subsequent to the risk-based approach (see our answer to question Q12.1). For endangered companies with systemic relevance a pre-emptive resolution plan should be drafted; for non-endangered companies not. In case of drafting is required, we agree that proportionate simplifications (e.g. less content and lower frequency to report to the NSA) of the resolution plan should be feasible.
12	137	We are very critical on the draft proposed power to remove significant impediments at the request of the authority. It means that the company's business strategy could be interfered with in the ordinary course of business a long time before a potential crisis may or may not

		<p>appear. The company's strategy and governance structure must be aligned with the market and policyholder needs and comply with relevant laws, regulations and administrative provisions. According to Article 34, supervisory authorities are already empowered today to take any necessary preventive and corrective measures to ensure that insurance and reinsurance undertakings comply accordingly. It makes no sense to align the corporate structure of an entity or a group with potential smooth resolution processing. There is a clear risk that reasonable and efficient measures, like centralisation of processes and systems or intra-group transactions will not have to be implemented or even reversed at all. On the one hand, such interventions could also have far-reaching consequences in other areas such as corporate and tax law, but also on investor relations and ratings. It's not unlikely that concerned insurers will suffer competitive disadvantages in the long-term. Likewise, policyholders would incur in additional costs or loss of returns. On the other hand, a crisis in the traditional insurance business normally offers enough time to implement necessary crisis measures and remove significant impediments. Compared to banks, a "run" or a liquidity crunch is highly unlikely to occur in insurance, since policyholders cannot simply withdraw their money from the insurance policy on demand. So there's plenty of time to remove the impediments in real crisis situation. Against this background, interventions in a healthy company by an authority should remain an exemption and only take place when absolutely necessary (ultima ratio). They would have to be used very carefully and in a transparent way. The resolution authority should closely coordinate and first give the insurer the opportunity to propose its own solution to removing the impediment to resolvability. In all this proportionality and the freedom to conduct a business (Article 16 Charta of fundamental rights of the European Union) as well as specific company rights enshrined in the respective national constitutions must be observed.</p>
12	154	<p>We support the harmonisation of resolution powers that are mostly already available to the national supervisory authority. It is proposed that national resolution authorities should also analyse in advance which implications the use of these powers generate for statutory reporting, corporate law and tax. Cross-border aspects should be included if necessary.</p>
12	155	<p>In principle, we agree, but we take a critical view of some powers, in particular:</p> <ul style="list-style-type: none"> • "stay rights of the reinsurance undertakings of the ceding undertaking to terminate or not reinstate coverage on the sole ground of the ceding undertaking's entry into resolution of the reinsurance undertakings." This would be a systemic restriction of reinsurane companies. In addition, the costs of reinsurance cover could rise due to the increased risk. • "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;" This should only be feasible under strict and clearly defined conditions. • "Stay the early termination rights associated with derivatives and securities lending transactions". Great care must be taken with regard to the possible effects on the assets or investments, including existing contracts. In addition, a comparison with the existing regulations at the European level is absolutely necessary. Otherwise there could be contradictory regulations. • "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." Contagion effects may be expected from other group companies if they continue to have to provide services for the insurance company in resolution and may not receive adequate payments for these services. • "Sell or transfer the shares of the undertaking in resolution to a third party." Intervention in the ownership rights of shareholders should be allowed only under strict conditions.
12	156	<p>We agree that the order of the powers should not be regarded as an indication of the sequence in which these powers could be exercised.</p>

		Rather, it must be decided on a case-by-case basis.
12	157	The safeguards must provide sufficient flexibility for resolution procedure. The strict application of the NCWOL-principle is likely to lead to a considerable increase in the complexity. This results from the unavoidable uncertainties inherent in the necessary comparison of an already complex resolution scenario to a theoretical insolvency scenario at individual creditor level. In practice, the NCWOL-principle has made the resolution for banks considerably more difficult. At the same time, liability towards individual creditors would also have to be limited in justified cases. Reasonable deviations must be possible in pari passu and NCWOL principle. German law requires to predominantly burden policyholders with high guarantee rates. It also allows not to limit payments proportionally (which would be in line with NCWOL), but unproportionally with higher absolute and relative limits for large amounts or sums insured. We believe that this is an adequate tool which EIOPA should include in its advice. In addition, further technical details must be clarified.
12	158	The safeguards must provide sufficient flexibility for resolution procedure. See also our comment on paragraph 12.157.
12	166	We welcome the advice of EIOPA to establish cross-border cooperation and coordination arrangements between national resolution authorities. It is vital for the European authorities to cooperate efficiently and smoothly, especially when there is a crisis of insurance groups with subsidiaries in several Member States – multiple crisis scenarios require coordinated solutions. The coordination should also include Insurance Guarantee Schemes (IGS) where they exist.
12	167	It should be assessed whether improving cooperation between European authorities necessarily requires a legal initiative – or whether this goal could also be achieved by further developing cooperation agreements between authorities, as in the case of the existing supervisory colleges under Solvency II or the crisis management groups (CMGs) for global systemically important institutions (G-SIIs).
12	168	Cross-border cooperation and coordination for insurance group with operations in more than one jurisdiction should be improved by establishing cooperation agreements between relevant authorities.
12	181	From the German market perspective a transparent and objective key indicator for “early intervention” is de facto in force across Europe. The Solvency Capital Requirement obliges undertakings to hold a capital buffer at all times that enables it to survive a 200-year event. Additionally, the own risk and solvency assessment (ORSA) requires insurers to demonstrate their long-term risk-bearing capacity. To avoid that early intervention powers result in a new pre-defined intervention level or an implicit new capital requirement it has to be clearly stated that supervisory intervention should not take place before the Solvency Capital Requirement is breached (or there is a risk of non-compliance within the next three months).
12	182	The draft proposed soft early intervention triggers should only be used complementary to determine the scope and the need of supervisory measures if the Solvency Capital Requirement is undershot. See also our comment on paragraph 12.181.
12	183	We welcome that no new intervention level should be established. To avoid that early intervention powers result in a new pre-defined intervention level or an implicit new capital requirement it has to be clearly stated that supervisory intervention should not take place before the Solvency Capital Requirement is breached (or there is a risk of non-compliance within the next three months).
12	189	From our perspective the SCR is an early intervention trigger. Even if the respective undertaking is in breach of the SCR, it still disposes of sufficient own funds to meet all its obligations. However, at this early stage the supervisory authority is already empowered to use very extensive supervisory instruments to react. According to Article 34 it could take any necessary preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions. At the same time, affected undertakings need to draw up a recovery plan within two months and present it to its supervisor for approval. In addition, it needs to re-establish a sufficient level of eligible own funds within six months or reduce its risk profile.

12	190	From our perspective the SCR is an early intervention trigger. The draft proposed soft early intervention triggers should only be used complementary to determine the scope and the need of supervisory measures if the Solvency Capital Requirement is undershot. See also our comment on paragraph 12.181 and 12.189.
12	206	We support adequate triggers for resolution procedures. From our perspective the breach of the MCR should be the main intervention threshold for resolution and there should be no prospect of restoring the MCR documented by a negative or failed finance scheme.
12	207	We support the definition of judgement-based triggers. Compare also our comment on paragraph 12.206.
12	208	Regarding trigger c) should be clarified: "A resolution action is necessary in the public interest and to avoid a regular insolvency proceeding." In addition, further technical details must be clarified, especially who decides if and when public interests are affected.
		13. Insurance guarantee schemes
13	1	In this context we refer to our comments on EIOPA Consultation Paper on Proposals for Solvency II 2020 Review – Harmonisation of National Insurance Guarantee Schemes (BoS-19-259 from 09 July 2019). We maintain the views expressed therein. From our perspective there is no need to harmonize national insurance guarantee schemes.
		14. Other topics of the review
14		14.1 Other transitionals
14		14.2 Fit and proper requirements
14	49	From our perspective there should not be an ongoing assessment by the supervisor of the fitness and propriety of AMSB members, other persons effectively running the undertaking or having key functions. We note that Article 42, which is part of the system of governance section, requires the insurance undertaking, but not the supervisory authority, to ensure that the requirement is met at all times. We are of the view that this should not be changed because a regular ongoing assessment by the supervisor does create a lot of bureaucracy and redundancy, but little value where it is not based on new facts or evidence. A regulatory ongoing assessment by the supervisory authority can be expected to create cost in addition to the cost already created by the internal assessment. Instead it could be considered to state an obligation of the undertaking to notify the supervisory authority if the undertaking's assessment has lead to a negative result. For the remainder, as part of the general powers to supervise the system of governance of the undertaking, the supervisory authority has already today the necessary powers to investigate in case of doubt, to supervise the ongoing assessment process of the undertakings, and to require the revocation of a person that does not meet the requirement pursuant to Article 35 (1) a) (information right) and Article 41 (5) (remediation of breach) .
14	50	We are of the view that the power to withdraw the authorisation in case of AMSB not being fit and proper should not be added as supervisory tool, because it is already contained in Article 144 (c) in case of a serious failure. From our perspective it should remain a last resort, a serious failure by the undertaking should be required and there should not be a specific regime for the failure to comply with the fit- and properness, which is only one of many requirements. A better and more precise approach could be to ensure that NCA have the power to revoke the members of the AMSB that are not fit and proper.
14	52	A regular ongoing assessment by the supervisor does create a lot of bureaucracy and redundancy, but little value where it is not based on new facts or evidence. A regulatory ongoing assessment by the supervisory authority can be expected to create cost in addition to the cost already created by the internal assessment.
14	55	With respect to the ongoing assessment of fit- and properness of AMSB members, other persons effectively running the undertaking or having key functions, we note that Article 42, which is part of the system of governance section, requires the insurance undertaking, but not

		the supervisory authority, to ensure that the requirement is met at all times. We are of the view that this should not be changed because a regular ongoing assessment by the supervisor does create a lot of bureaucracy and redundancy, but little value where it is not based on new facts or evidence. A regulator ongoing assessment by the supervisory authority can be expected to create cost in addition to the cost already created by the internal assessment. Instead it could be considered to state an obligation of the undertaking to notify the supervisory authority the undertaking's assessment has lead to a negative result. For the remainder, as part of the general powers to supervise the system of governance of the undertaking, the supervisory authority have already the necessary powers to supervise the ongoing assessment process of the undertakings and to require the revocation of a person that does not meet the requirement pursuant to Article 35 (1) a) (information right) and Article 41 (5) (remediation of breach) .
14	57	NCA already today have the possibility to withdraw the license in case of non-compliance (Article 144), therefore a cost reduction will not be achieved by any such power.
14	58	We are of the view that the draft proposed clarification should better be added in paragraph 2 of Article 30, not in paragraph 1. The system of governance is part of "financial supervision".
14	60	We challenge the necessity of this draft advice. As EIOPA points out in its peer review on propriety of AMSB members and qualifying shareholders from January 2019, Article 29 of the Solvency II Directive requires supervision to be carried out on an ongoing basis. This includes the assessment whether AMSB members and qualifying shareholders continue to meet the propriety requirements. Therefore, EIOPA does not blame insufficient or unclear regulation, but a lack of enforcement for shortcomings observed in a number of Member States. Additional legislation is unlikely to change that.
14	61	Ongoing assessment of shareholders: We are of the view that there should not be an obligation for supervisory authorities to make an ongoing assessment of the fit- and properness of the qualifying shareholders. Rather supervisory authorities should have (and have already today) the power to investigate in case of doubt. Especially with respect to large groups, an ongoing assessment would create immense bureaucracy for the supervisory authorities as well as for the undertakings with little to no value. Where the ultimate parent of the group is considered as fit and proper, we are of the view that there should not be control at the level of intermediate shareholders. We do not agree with the draft proposed amendment of Article 19 (3). In our view the qualifying shareholder should not become subject to obligations vis-a-vis the supervisory authority, as it is not a regulated entity (with the exception of the ultimate parent of the group, which is subject to group supervision). Therefore, the information requirement should be addressed solely to the relevant insurance undertaking, which is responsible for the completeness of its approval request. From our perspective withdrawal should only be regulated in Article 62 (powers of supervisory authority with respect to qualifying holdings), not in Article 24 (taking up of business). Furthermore, we are of the view that the withdrawal should be an option, not an obligation for the supervisory authority, as it should be a last resort and other means (restriction of voting rights) should be considered first. Therefore, we suggest that Article 62 (resp. paragraph 1, second sentence of Article 24) should better read "... <i>may withdraw</i> ...". See also our comment on paragraph 14.60.
14	64	A joint assessment will create even more bureaucratic burden at the side of NCA and of undertakings. Therefore we are of the view, that there should not be an exception to the principle of financial supervision by the home state supervisory authority.
14	65	From our perspective it is important that the powers of EIOPA are in line with Regulation (EU) 1094/2010 and do not go beyond.
14	67	A joint assessment would change, i.e. limit, the responsibility of the competent NCA for the assessment of the fitness and propriety of the qualifying shareholder. While we agree that there should be exchange between NCA, we are of the view that the insurance undertaking should not be confronted with the information requests of several NCA. This would limit the principle of (prudential) supervision by the

		home state supervisor and, thus, the single license principle.
14	68	<p>According to paragraph 3.13 of the Call for Advice EIOPA is only supposed to review the Fit & Proper requirements in the context of FoS/FoE issues. The amendment of Article 26 (3) is from our perspective not suitable to foster convergence in FoS/FoE. Article 26 (1) requires an authorization procedure for an undertaking. The host supervisor has no power for that. Therefore, it is our understanding that the draft advice misses the Commission's request. With respect to the definition of qualifying holdings, we suggest that EIOPA considers to provide more clarity and encourage supervisory practice in line with the SII-Directive. The current definition relies on three criteria: a) holding of at least 10% of voting rights, b) holding of at least 10% of capital, and c) significant influence. While regulation is striving to close possible gaps, we are of the view that there should also be a common understandig on holdings which can be disregarded.</p> <ul style="list-style-type: none"> • The "multiplication criterion" stipulated in the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors is not in line with Article 63 of the Solvency II Directive, which refers to Article 10 (e) of the Transparency Directive (2004/109/EC) which clearly states the control criterion. • With respect to holdings in the asset management sector, the parent undertaking of an investment firm or of a management company can disaggregate the voting rights relating to holding managed by the subsidiary (Article 67 of the Solevncy II Directive and Article 12 (4) and (5) of the Transparency Directive). This necessary and appropriate disaggregation rule does not exist with respect to the holding of capital and the significant influence, but should from our perspective. We therefore recommend to review the definition of "qualifying holding" with respect to the comprehensive exclusion of holdings managed by asset management subsidiaries.
		Annexes
A	163	We agree that differences in the calibration of ESG's cannot be avoided – in the contrary, they should not be avoided. Undertakings need to choose the market model and corresponding calibration which fits to their business in a proportionate manner. For the German market, we already see a high level of harmonization in this area. We doubt that additional guidance at EIOPA level is required.

Disclosure of comments: Public

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