Insurance Ireland and Financial Services Ireland statement on IVASS consultation no. 2/2024 on limitations to the underlying investments for unit- and index-linked life insurance products

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About us

Ireland is the 4th largest market for insurance services in the EU and the third largest for reinsurance. In 2023, Irish insurers and reinsurers provided cover in Ireland, the EU and globally for nearly 103 bn Euros in gross-written premiums. In the same year, Irish insurers and reinsurers paid out more than 70 bn Euros in gross claims. The sector employs 35,000 people directly and indirectly and contributes more than 2.7 bn Euros to the Irish Exchequer.

Insurance Ireland is the voice of insurance in Ireland and of Irish insurers and reinsurers at EU level and globally.

Financial Services Ireland is the Irish Business and Employer Confederation's group representing the interest of the financial services sector in Ireland including insurance and reinsurance.

Introduction

On 4th April 2024 the Italian Insurance Supervisory Authority (Istituto per la Vigilanza sulle Assicurazioni, IVASS) published a revised Draft Regulation[1] on limitations to the underlying investments for unit- and index-linked life insurance products (hereafter: ***Draft Regulation***) for consultation laying down provisions on insurance contracts referred to in Article 41(1) and (2) of Legislative Decree no. 209 of 7th September 2005 (i.e., the Code of Private Insurance) – and subsequent amendments and additions. The revised Draft Regulation fails to address the general concern which a multitude of stakeholders voiced with regards to the initial consultation on the Draft Regulation[2] – the insufficient mandate by IVASS to include insurers operating in Italy under the freedom of establishment (FoE) and the freedom to provide services (FoS).

Italy is the largest importer of life insurance products in the EU Single Market. In 2022, Italian citizens assumed life insurance products from outside Italy worth almost 16 bn Euros (in gross-written premiums) representing nearly 15% of the Italian market for insurance. Losing this important part of the market partially or fully would mean a substantial reduction in the freedom of choice for Italian citizens. The high-quality insurance-based investment products imported into Italy also play an important role in the ability of Italian citizens to respond to the rapidly increasing pension gap and heightened pressure on the public pension scheme.

Instead of crowding-out this high-profile segment of its market, IVASS should review the market conduct regulations and seek closer cooperation with other supervisory authorities and the European Insurance and Occupational Pensions Authority (EIOPA).

Immediate action is necessary to avoid detriment for Italian citizens and the credibility of the EU Single Market for insurance. The Draft Regulation should not be further pursued.

General Remarks on the Draft Regulation

Insurance Ireland and Financial Services Ireland (FSI) appreciate the opportunity to comment on IVASS' consultation no. 2/2024 on a Draft IVASS Regulation (hereafter: ***"Draft Regulation"***) laying down provisions on insurance contracts referred to in Article 41(1) and (2) of Legislative Decree no. 209 of 7th September 2005 (i.e. the Code of Private Insurance) – and subsequent amendments and additions.

Irish life insurers' position in the EU Single market

Ireland is the 4th largest market for insurance and reinsurance services in the European Union. Irish insurers generated about 102 bn Euros in gross written premiums in 2022, providing cover to businesses and peace of mind to consumers in Ireland, across the EU Single Market and internationally. Life insurers manufacturing products in Ireland and supervised by the Central Bank of Ireland are considered to be state-of-the-art and set a benchmark for excellence for the EU Single Market for insurance.

Undermining the ability of Irish insurers to provide their full expertise and bespoke solutions to Italian citizens is an undue limitation of the functioning of the EU Single Market and its fundamental freedoms to the detriment of Italian policyholders and citizens. Insurance Ireland and FSI noted the recurring statements of the Italian Ministry of Economy and Finance addressing the strong and

[1] Consultation no. 2/2024 on a Draft IVASS Regulation laying down provisions on insurance contracts referred to in Article 41(1) and (2) of Legislative Decree no. 209 of 7th September 2005 (i.e the Code of Private Insurance).

[2] Consultazione n. 3/2022.

increasing demand by Italian citizens for pension and retirement products. Against the background of the recent turbulences in the domestic Italian life insurance market, Insurance Ireland and FSI emphasise the exceptional quality, security and value which insurance products manufactured in Ireland provide to Italian citizens.

The Fundamental Principles of the EU Single Market

Further, Insurance Ireland and FSI note that the IVASS amended Draft Regulation presented in this consultation continues to ignore the fundamental principles of the EU Single Market, i.e., the freedom to provide services (FoS) and the freedom of establishment (FoE). The prudential regulatory framework for insurance and reinsurance undertakings operating in the EU, Solvency II, enshrines the home-country principle. This principle also applies to the provisions in question, namely the freedom of investment as laid down in Article 133 of Solvency II. As referred to by IVASS in chapter 2.1 of the presentation report to this Draft Regulation, these fundamental principles can be overwritten by the host Member State only in very exceptional circumstances. Insurance Ireland and FSI strongly contest the conclusion of IVASS, that the provided evidence allows for the conclusion that the specific provisions following Article 133 (3) of Solvency II (namely the protection of the general good for natural persons) are justified.

Under Solvency II only the home Member State supervisor (here: the CBI) should have responsibility for the supervision of all aspects of insurers authorised in the home Member State other than in relation to general good matters, which will be elaborated below. At the same time, the supervisor of the host Member State (here: IVASS) has a mandate to supervise the conduct of business in its market. Insurance Ireland and FSI encourage IVASS to use its mandate to ensure that potential detriment on Italian citizens is prevented.

In preparing this response, Insurance Ireland and FSI have considered if a similar situation concerning Article 133(3) of Solvency II has arisen before in another EU Member State. It is understood that Belgium's implementation of Solvency II in 2016 included a provision limiting the type of eligible assets that an insurer carrying on business in Belgium could offer as part of its unit-linked insurance products. It is understood that this provision applied equally to both Belgian insurers and insurers head officed in other EU Member States that passported into Belgium. While seemingly the Belgian insurance supervisory authority at the time regarded that statutory provision as coming under "general good", it is understood that its effect was to lead to a material decrease in offers of investment funds and assets for life insurance in Belgium. Apparently, concerns were raised at the time regarding this provision's compatibility of with EU law – specifically that under Solvency II an EU head officed insurer must be entitled to passport from its home Member State into Belgium without constraints (subject to applicable "general good" of the host Member State, in this instance, Belgium) while remaining under the sole prudential supervision of its home Member State supervisory authority. It was argued that this provision affected the Solvency II home country prudential supervision principle. We understand that in 2017, Belgium repealed the provision, such that it no longer applies to any insurer carrying on business in Belgium – whether head officed in Belgium or in another EU Member State.

General good

An insurance undertaking operating under a Solvency II single authorisation must comply with the applicable host Member State rules adopted by it in the interest of the "general good". Such compliance is required in connection with FoE and FoS regimes.

Solvency II refers to the "general good" in several places[3].

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[3] See Recitals 77, 78 and 85, and Articles 146(3), 156, 180 and 206(1)(a) of Solvency II.

The concept of "general good" is not defined by EU law, but based in the Court of Justice of the European Union's (CJEU) case law. The CJEU requires that a national provision such as the Draft Regulation must come within a field which has not been harmonised if it is validly to obstruct or limit exercise of the FoE/FoS[4].

Provisions relating to investment rules and to the rules on the diversification of assets are not harmonised by Solvency II.

Article 133(3) on the Freedom of Investment of the Solvency II Directive states:

> *"This Article [on investment rules] is without prejudice to Member States' requirements restricting the types of assets or reference values to which policy benefits may be linked. Any such rules shall be applied only where the investment is borne by a policyholder who is a natural person and shall not be more restrictive than those set out in the Directive 85/611/EEC [on UCITs]".*

However, as the European Commission said in its Interpretative Communication on *"Freedom to provide services and the general good in the insurance sector"*, a *"Member State may lay down stricter rules **for insurance undertakings authorised by its own competent authorities"***[5]. This condition was enshrined in the former Third Council Directives 92/49/ECC and 92/96/EEC[6] and was gathered in the current Solvency II (e.g. Articles 30 and 155 of Solvency II).

Thereby, a Member State is free to impose on insurance undertakings stricter rules than those laid down in EU secondary law, but **only upon its own domestic insurance undertakings**. This interpretation is consistent with the CJEU's case law[7].

Accordingly, it is the home Member States' supervisor which has competence to lay down stricter rules for insurance undertakings authorised in their respective jurisdiction to operate in Italy. Foreign companies can legitimately issue and offer unit-linked policies structured according to their home Member State legislation in their home Member State and in other Member States in light of the EU fundamental principles of allowing home State supervision and FoE and FoS. Prohibiting them from offering such products in Italy would represent a significant misalignment with respect to such a possibility, as well as a violation of the EU law principles.

Ability of IVASS to engage with home Member State insurance supervisory authority

Where IVASS considers that these supervisory authorities do not fulfil their mandate and protect the "general good" for Italian citizens, IVASS has a set of measures at hand to engage with these supervisors and intervene. However, it is understood that IVASS did not engage with the relevant supervisory authorities ahead of publishing its Draft Regulation. On the basis that IVASS had (or continues to have) material concerns, it is unclear why IVASS did not do so. Other than IVASS, the most relevant supervisors for Italian citizens are likely to be the Irish CBI and the Luxembourgish CAA (because of the volume of life assurance products that are sold in Italy by life assurance companies headquartered in Ireland and Luxembourg respectively). Both supervisory authorities have a track record for the high quality of their cross-border supervision particularly in the insurance sector as proven by the European Insurance and Occupational Pensions Authority (EIOPA) in its peer review

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[4] See European Commission's Interpretative Communication on "Freedom to provide services and the general good in the insurance sector" (2000/C 34/03) (**Interpretative Communication**).
[5] See Ibid.
[6] See Recital 8 of Third Directive 92/49/EEC and Recital 9 of Third Directive 92/96.
[7] See Case 320/94 RTI and others v Ministero delle Poste e Telecomunicazioni (1996), para. 36 and 46.

report on the EIOPA's *"Decision of the Board of Supervisors on the Collaboration of the Insurance Supervisory Authorities of the Member States of the European Economic Area"*[8]. Solvency II provides for a mechanism in Article 155.
Solvency II allows IVASS to contact the home Member State supervisor of any recalcitrant insurer and that supervisor is **required** to take the appropriate action to remedy the situation. Such an approach would be proportionate and in keeping with applicable EU laws AND Protocols (see further below).

Further, Insurance Ireland and FSI have the strongest concerns regarding the proportionality of the measures laid down in the Draft Regulation to fulfil the identified objective. In consultation no. 3/2022 IVASS states that it intends to prevent the offering of products marketed to retail customers which are not suitable to their needs and infringe on their best interests. IVASS' Draft Regulation is neither suitable nor necessary, and therefore, not proportionate to the alleged public interest goal.

Under the CJEU-developed case law[9], a national measure such as the Draft Regulation would be allowed to stand only if the restrictive effect on the internal market FoE/FoS is an inescapable side consequence of the pursuit, by proportionate means, of the protection of a "general good". In order for the contested measure to be considered proportionate, the rule must be suitable and necessary.

The principles of proportionality which the CJEU requires in its case law are not sufficiently reflected in the Draft Regulation. IVASS has other substantial powers to address its concerns and problems with regard to the marketing of insurance products in its territory.

Availing of existing measures under PRIIPs Regulation and IDD

Although the burden of proof rests in IVASS, Insurance Ireland and FSI suggest some more proportionate measures that IVASS could use instead of the Draft Regulation:

- **PRIIPs Regulation** provides for a very effective tool for the national supervisory authority of the host Member State where a product might be harmful for consumers. Insurance Ireland and FSI do not see evidence of any measures being taken by IVASS using its existing powers under PRIIPs Regulation (e.g., under Article 17 powers to prohibit and restrict or Article 22 administrative penalties and other measures) with regards to its concern.

  PRIIPs Regulation also ensures the provision of meaningful and comprehensive information to consumers attending to assume an insurance-based investment product through its Key Information Document (KID). While there are certain concerns with regard to the KIDs, there are more proportionate ways in which IVASS can address these concerns. The most recently published update Q&A[10] provided further clarity.

- **IDD** requires insurers and intermediaries to run complex Product Oversight and Governance (POG) processes in order to ensure that the product offered to a consumer is suitable and targeted for the consumer in question.

  IVASS recognised the mandate under IDD in the Draft Regulation (i.e. Articles 7 to 9) but did not provide any further justification as to why it does not consider further action under its mandate or why it considers that these unused powers are insufficient.

[8] EIOPA-BoS-21-234.
[9] See Case 120/78, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (1979), ECR 649 - famously known as Cassis de Dijon case.
[10] Q&A on the PRIIPs KID, JC 2017 49, 14th November 2022.

In addition, IVASS has enforcement powers under Article 5 (Breach of obligations when exercising the freedom to provide services) and Article 8 (Breach of obligations when exercising the freedom of establishment) of the IDD. These include the ability to prohibit offending intermediaries from initiating any further activities within their territories.

Moreover, EIOPA and multiple national supervisory authorities emphasised the importance of a consistent and meaningful approach to the powers assigned to them under PRIIPs and IDD in the discussion on the value for money in the unit-linked market.

In its "Methodology to assess value for money in the unit-linked markets"[11], EIOPA does not support or recommend unilateral action by individual supervisors. Paragraph 3.28 of the mentioned supervisory statement is particularly noteworthy:

> *"In performing their assessment of whether manufacturers follow a POG process to ensure that products offer value to the identified target markets, competent authorities should also consider whether there are products which -because of their characteristics and features, including the unbalance between potential losses and benefits or the lack and opaque cost structure- are not suitable to any target market. In this case, competent authorities should consider all appropriate measures under national and Union law to prevent further detriment, including the use of product intervention powers as granted under the Regulation (EU No 1286/2014 [the PRIIPs Regulation]".*

This paragraph is targeted at issues with a specific manufacturer, rather than IVASS' proposed "scatter-gun" intervention. Notably, it proposes PRIIPs as the route to intervene in such product issues rather than Article 133(3) of Solvency II.

Therefore, in line with the CJEU ruling, EIOPA's statement and the European Commission's interpretation, Insurance Ireland and FSI consider that IVASS should exercise its existing powers under PRIIPS and IDD. This would fulfil the proportionality principle, rather than overwriting the home-country principle through the Draft Regulation risking the peace of mind of Italian citizens and Ireland's reputation in the EU.

Existing safeguard

In chapter 2.1 of the presentation report, IVASS states that the European Commission's interpretative communication requires that *"it is also necessary that the general good objective is not already safeguarded by the rules to which the provider is subject in the Member State in which it is established"*. However, IVASS does not assess if the general good is safeguarded by the rules to which insurers providing their products to Italian citizens under FoS/FoE are subject. The assumption that Member States which do not apply the same restrictions as IVASS, do not safeguard the general good for natural persons is overly simplistic and does not withstand a certain disregard for the well-functioning marketplaces across the EU Single Market – and also against the background of the recent challenges and (near) failures in the Italian insurance market. In fact, Article 133 (3) of Solvency II is transposed into Irish law. The Central Bank of Ireland, however, does not apply any limitations or restrictions to the EU-wide harmonised provisions safeguarding policyholder interest and the general good for natural persons laid down in Solvency II.

Supervisory collaboration

[11] EIOPA-BoS-22/482.

Finally, Insurance Ireland and FSI question if the process which EIOPA's "*Annex to the Board of Supervisors on the Collaboration of the Insurance Supervisory Authorities of the Member States of the European Economic Area*" [12] provides has been followed.

Based on the home-country principle, EIOPA describes the minimum requirements for the supervisory collaboration between national supervisory authorities. For example, according to EIOPA, IVASS must notify the CBI, EIOPA and insurance undertakings of any condition, under which, in the interests of the *"general good"*, the activity must be pursued within the territory of Italy or communicate that no conditions are imposed.[13]

Moreover, pursuant to Article 152a(2) of Solvency II, IVASS should have notified the CBI (or the supervisor in the home state of the relevant recalcitrant insurer) and EIOPA of whether it had a serious and reasoned concern with regard to consumer protection regarding an undertaking carrying out cross-border activity under FoE or FoS in Italy .

Insurance Ireland and FSI were not able to explore how these procedures have been complied with.

Divergence from UCITS

Insurance Ireland and FSI would draw attention to the operational effectiveness of the Draft Regulation when interacting with the divergence between the Draft Regulation and the existing Undertakings in Collective Investments and Tradable Securities (UCITS) Regulation including:

1. Insurance products such as IBIPs are sold in an open European market on either a freedom of establishment of freedom of services basis. This proposal creates potential barriers for insurance undertakings selling into Italy as the expectation is that they comply with certain requirements under current UCITS rules and other requirements under IVASS. It is noted that IVASS has not aligned its Draft Regulation with all of the UCITS rules for example:
    (a) UCITS limit for Covered bonds 5/80 rule not mentioned in the consultation document; and
    (b) UCITS cumulative limit of 20% specifically for transferable securities and money market instruments for issuers within the same group was also not mentioned. Greater clarity is required to understand IVASS's expectations.
2. Anti-competitive practices are business or government practices that prevent or reduce competition in a market. These measures could also result in anti-competitive measures where this proposal could result in reduced competition in the Italian market and in turn, pose a detriment to the end customer in relation to the choice of products available in the market. It should also be noted that customers will have built a relationship with their providers that may be impacted by this proposal. Competition allows companies to compete in order for products and services to provide more choices for consumers.

The assessment currently being undertaken by ESMA on the Eligible Assets Directive which should be considered given future changes in this regulation.

Technical Remarks on the Draft Regulation

Reference	Comment
Article 7 (4)	The regulation on internal funds are part of insurance conditions that are delivered to the policyholder before the conclusion of a contract and in the event of subsequent major changes or renewals. Greater clarity and definition is required to ensure a level playing field in relation to terms such as 'significant changes' or 'renewal'.

[12] EIOPA-BoS-21-235.

[13] See Paragraphs 3.2.2.1 and 3.2.3.2 of EIOPA-BoS-21-235.

Article 9 & Article 31 bis	The frequency of unit valuations has been amended from the first consultation no. 3/2022. This change is welcome. The amended provisions of Article 9 foresee that the valuation of units has to be carried out: a) Monthly, where a product is in scope of Article 31-bis or b) Bi-weekly, where the funds do not meet the criteria subject to Article 31-bis. However, the newly introduced art. 31-bis allows investments of internal funds into open-ended AIFs (up to a maximum of 30% of its assets) and in non-reserved close-ended AIFs (up to a maximum of 50% of its assets). In that regard, art. 2 of Regulation (EU) 231/2013 and Title V, Chapter 1, para 4.6 of Bank of Italy RGCR ("*Regolamento sulla Gestione Collettiva del Risparmio*") provide that close-ended AIFs are required to calculate their NAV at least once a year. Therefore, given that art. 31-bis allows investments in assets classes such as close-ended AIFs and given that IVASS's purpose is to ensure consistency of the rules governing unit-linked policies with the rules governing collective assets management, we believe that even this revised frequency might, as a matter of fact, prevent the possibility to invest in such assets. Based on the above, Insurance Ireland and FSI would request increasing to **one year** the frequency provided under Art. 9 for investment in close-ended AIFs under Art. 31-bis, so that such frequency is consistent with art. 2 of Regulation (EU) 231/2013 and with Bank of Italy RGCR. Alternatively, we would recommend increasing such frequency from monthly to at least quarterly, so that these new requirements do not completely impair the possibility of investors to invest into close-ended AIFs.
Article 10	The article 10 "Costs" at paragraph 3 states: In the event that the internal fund's assets include significant shares of UCITS, the management fee may be applied provided that an effective management service is systematically and adequately provided by the company. The management fees do not include any compensation for investment activities in UCITS when the investment policy involves a passive strategy based on replicating the performance of predetermined UCITS through investment in the latter. There are certain products where the Insurance Company sets up a UCITS fund with an external asset manager and invest solely in that external fund and the insurance company needs to be able to charge for the distribution and administration activities performed. Insurance Ireland and FSI propose to delete article 10 paragraph 3.
Article 18 (1)	Article 24 and Article 27 limits should apply here however the Draft Regulation explicitly excludes listed financial derivatives (Article 18) from such limits and instead includes unlisted derivative instruments (Article 19). The UCITS Directive requires that for financial derivative instruments that the exposure to the underlying assets does not exceed in aggregate the investment limits.
Article 20 (1) (a) & Article 21 (3) (b)	Article 21(3)(b) referring to Article 20(1)(a) – provides that the internal fund may invest in closed-ended AIFs, but if the close-ended AIF is not listed, then Article 20(1) shall apply (non-listed financial instruments)

	Article 20(1)(a) provides that the internal fund may invest in non-listed financial instruments provided that they *"are negotiable and the potential loss which the fund may incur in connection with the holding of such instruments, with the exception of the financial derivative instruments referred to in Articles 18 and 19, is limited to the amount paid for them"*. The requirement that unquoted or unlisted assets must be **negotiable** is a contradiction because unlisted assets are by their nature illiquid and therefore not negotiable since they have no market in which they can be easily traded – e.g., closed-ended funds, such as private equity funds, are not tradeable or redeemable until the relevant maturity dates provided for in the fund regulation have expired. Therefore, this requirement, if confirmed, would as a matter of fact rule out all unlisted investments from the scope of eligible investments. Accordingly, Insurance Ireland and FSI believe that the requirement set out in Article 31-bis (2)(b) regarding *"the investment horizon to be in line with the illiquidity of the assets"* should be used as an alternative parameter under Article 20(1)(a) to allow the internal fund to invest in unlisted financial instruments which do not need to be regularly traded. Article 20(1) should read as follows: *"The internal fund may invest in unlisted securities and Money Market Instruments, other than those subject to Article 16, subject to the limits set out in Article 29(1) (a) and provided that:* *a) they are ~~negotiable~~ transferable OR their investment horizon is in line with the illiquidity of the assets" and the fund's potential loss in connection with such instruments is limited to the price paid for them – except from derivatives mentioned in art. 18 and 19;* b) *[...]"* Please note that as the reference to "*negotiability*" in this provision is at least ambiguous - since it can be easily taken to mean "*liquidity*" (and thus, imply the existence of a market in which such instruments are traded) - we would suggest replacing the word "*negotiable*" under letter a) of art. 20, para 1, with the word "*transferable*" or with the expression "*their transferability is not restricted*".
Article 21 (2) (b)	Regarding investments in UCITS and AIF, Article 21 (2) (b) provides that the internal fund may also invest in non-reserved open-ended AIFs provided *that "the AIF provides for subscription and redemption mechanisms which are consistent with to those of a UCITS"*. This provision is a contradiction in itself and in practice there is no open-ended AIF allowing subscription and redemption rights comparable to those of a UCITS fund. UCITS allow for bi-weekly subscriptions and redemptions, while the majority of hedge funds (HFs) would provide for subscriptions and redemptions every quarter, some every month. AIFs do not (and cannot) ensure subscriptions and redemptions on a continuous basis. If this provision is confirmed, investments in the majority of AIFs would be ruled out as their subscription and

	redemption rules are, in most of cases, inconsistent with those of UCITS funds. Accordingly, Insurance Ireland and FSI believe that Article 21(2) (b) should be entirely deleted or, at least, amended to address the major flaw of the provision. At a minimum, the provision should read "*the AIF provides for subscription and redemption mechanisms, at least, on a quarterly basis".*
Article 23	Article 23 (General Limits) states: In the management of internal funds, the following shall not be permitted: (a) short selling financial instruments, except as provided for in Article 31; purchase goods, precious metals and stones or certificates representing them; In light of the above, Insurance Ireland and FSI believe a clarification is necessary to understand whether: UCITS investing in diversified commodities or commodity indices are generally permitted, and whether UCITS that invest in diversified commodities or commodities indices including precious metals and stones are allowed.
Article 24 (1) & Article 28	Article 24 (1) and 2(a) and Article 28 (1) & (3) limit the ability to invest in certain instruments to 5% for OTC Derivatives and 10% for AIFs. Both thresholds are inconsistent with UCITS where the limit for both types of investments is limited to 20%. Insurance Ireland and FSI believe that the thresholds should be adjusted accordingly for all investors, plus they should be adjusted as outlined further below for investors who meet the criteria set out in art. 31 bis (2). Where policyholders meet the criteria set out under Art. 31-bis (2), internal funds are still subject to the general UCITS rules (as identified in the RGCR) and, therefore, are subject to the investment limits applicable to UCITS funds for standard assets (such as equities and funds). Therefore, if the general comments regarding less stringent investment and concentration limits for policyholders investing in non-traditional asset classes who meet the criteria under Art. 31-bis (2) are deemed to be acceptable - and unless IVASS accepts our suggestion below to drop entirely all the limits set for standard asset classes – we believe there should also be less stringent limits (such as concentration under Art. 24 and Art. 28) for standard asset classes. Therefore, when the conditions established by Art. 31-bis (2) are met, we would propose amending Art. 24: a) in paragraph (1) by raising from 5% to 25% the concentration limit on investments in (i) a single listed financial instrument (including units or shares issued by listed ETFs); (ii) money market instruments; and (iii) structured deposits; b) in paragraph (2) (b) by raising from 25% to 50% the concentration limit; c) in paragraph (2) (c) by raising from 35% to 50% the concentration limit. In addition, when the conditions established by Art. 31-bis (2) are met, we would propose amending art. 22(2) to remove the requirements that the deposits have the following features: a) their maturity date does not exceed 12 months; and

	b) they are repayable on demand or with a notice of less than 15 days. This should allow for longer-term deposits which can be attractive when interest rates are high. Further, where the conditions established by Art. 31-bis (2) are met, we would also suggest removing the restrictions: 1) applicable to funds of UCITS funds under Art. 28 (1) and 2) on investments in UCITS funds up to 25% of the internal fund assets pursuant to Art. 28 (2). This is due to the fact that UCITS funds (including when they are part of a master-feeder structure) are already structured as diversified products that are directed to retail investors.
Article 27	Article 27 "Overall investment limits" in paragraph 2 refers to the investments described in Article 24(2)(d) (financial instruments issued or guaranteed by an EU State, its local authorities, an OECD Member State or public international bodies to which one or more EU Member States belong), and illustrates how through investment in the financial instruments referred to therein, the overall limit on investments referred to in Article 27(1) (set at 20 %.) may be exceeded and increased to 100 % of the assets of the internal fund. Article 24.2 d) states: 1. The internal fund may not invest more than 5 % of its total assets in the financial instruments of the same issuer referred to in Articles 16, 17, 19, 20, paragraph 1, 22, paragraphs 1 and 3. 2. The limit referred to in paragraph 1 shall be high: (a) 10 %, provided that the financial instruments referred to in Articles 16 and 17 are and the total financial instruments of issuers in which the fund invests more than 5 % of its total assets does not exceed 40 % of its total assets. Investments of more than 5% referred to in points (b) and (c) below shall not be taken into account; b) 25 %, provided that they are covered bank bonds issued by credit institutions having their registered office in a Member State of the European Union; (c) 35 %, when the financial instruments are issued or guaranteed by an EU Member State, its local authorities, an OECD Member State or international public bodies of which one or more Member States of the European Union are members; (d) 100 %, in the case of financial instruments referred to in point (c) above, provided that: 1. the internal fund holds financial instruments of at least six different issues; 2. the value of each issue does not exceed 30 % of total assets; 3. Such an investment option is provided for in the rules of the internal fund. In order to raise the limit to 100%, it is required to invest in several issues of government bonds for the financing component of fixed-maturity Internal Funds that use derivatives to obtain exposure to the financial market;

	For funds with fixed maturities, this diversification rule will reduce the client's value proposition without adding any real diversification, as the credit risk will remain the same as the bond issuer is the same, while the reinvestment risk, due to investing in bonds with different maturity dates, will need to be hedged at a cost to clients' performance return. Insurance Ireland and FSI believe that a clarification is necessary to evaluate the non-applicability of the requirements in Article 24 (2) (d) to internal funds with fixed maturities. Finally, Insurance Ireland and FSI question if this article should reference Article 18 (Listed derivatives) instead of referring to Article 19 (Unlisted derivatives).
Article 31 bis (1) & (2)	Article 31-bis has introduced an exception to the UCITS investment limits and rules when the specific conditions in Article 31 bis (2) are met. Notwithstanding the general position that the Draft Regulation breaches the fundamental freedoms enshrined in the EU Treaties, Insurance Ireland and FSI suggested such a client classification in its response to consultation no. 3/2022. Clarification is requested regarding the choice to include only natural persons as possible recipients of the specific investment limits described in the article. Since legal entities could also be considered retail customers and as such recipients of the same conditions and protections, it is requested to extend the regulatory provision to this type of policyholder as well. IVASS has accepted the argument that different investment parameters can apply to the investors that satisfy the conditions set out in Article 31 bis (2). As currently drafted, the wider investment limits only apply to the asset classes outlined currently in Article 31 bis (1). Therefore, even where a policyholder meets the criteria set out in Article 31-bis (2), internal funds will still be subjected to the general UCITs rules and the associated investment limits with respect to **standard assets** (such as equities and funds). Insurance Ireland and FSI consider this limitation avoidable to provide greater choice and flexibility to policyholders meeting the criteria of Art. 31-bis (2). Consequently, we believe that the limits set for standard asset classes (by way of concentration limits set out in Article 24) should be dropped. Further, we would recommend increasing the limit set under article 31 bis (1)(a) from 40% to 75%. Alternatively, we believe that where the general comments with regard to less stringent investment and concentration limits for policyholders that meet the criteria under art 31-bis (2) are deemed acceptable, then IVASS should at least consider allowing less stringent concentration limits in Article 24 for standard asset classes as well as outlined above under comment to articles 24 and 28. Finally, we note that Article 31-bis (2) specifically states that the application of the more flexible rules set out under Article 31-bis (1) is only permitted for unit-linked contracts linked to internal funds where the risk is borne by the individual policyholder (i.e. a natural person).

	Insurance Ireland and FSI also note that reference to art. 22 paragraph 3 is incorrect as this paragraph has been deleted within the Draft Regulation. We assume that the provision of Article 31-bis also applies where the unit-linked policy linked to the internal fund is held through a fiduciary company on behalf of an Ultimate Beneficial Owner who is a natural person but we would be grateful if you could clarify this issue.
Article 33 (1) & (2)	With reference to investment activities in UCITS, it is possible to apply a management fee provided that the fund is not "passively" managed. Insurance Ireland and FSI consider the provision of management fees to be permitted on active investment management in line with UCITS principles. A management fee may be charged provided that the company manages based on investment strategies consistent with the objective of risk and return. The conditions of insurance specify the activities carried out that justify the fee. In the absence of predefined guidelines provided by IVASS, Insurance Ireland and FSI do not consider it necessary to indicate a strategy consistent with the risk-return objective.
Article 38 (1) & (2)	After entry into force of the regulation for existing fund that is open to new subscriptions Insurance Ireland and FSI consider it a requirement that new subscriptions comply with existing UCITS Rules during the transitional period of 12 months so as to ensure fairness to all clients that invest in this product. Insurance Ireland and FSI strongly suggest a clarification that these new rules will not apply to additional premiums paid after the implementation date for contracts or funds which already existed before the implementation date of the Regulation.

Brussels/Dublin, 29th May 2024