Insurance Ireland
comment on

EIOPA Consultation Paper CP-19-006 on the Opinion on the 2020 review of Solvency II

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Florian Wimber
Head of European Affairs and International Insurance

P) +32 2 896 0206
M) +32 493 963623
E) florian.wimber@insuranceireland.eu

Jacqueline Thornton
Manager of EU & Domestic Legal and Regulatory and Company Secretary

P) +353 1 6447785
M) +353 86 796 11 98
E) Jacqueline.thornton@insuranceireland.eu

About us

Insurance Ireland is the *Voice of Insurance* in Ireland and represents the Irish general insurance, health insurance, life assurance, reinsurance and captive management sectors.

Insurance Ireland represents approximately 150 companies providing insurance to more than 25 million policyholders in more than 110 countries. Total industry employment is approximately 28,000 people both directly and indirectly, with one in four jobs in finance being in insurance. One of the most important aspects of insurance is to pay claims to customers at times when they need it most. Our members pay out more than €13 billion in claims and benefits to Irish customers annually.

Insurance Ireland

Dublin Office
Floor, 5 Harbourmaster Place, IFSC
Dublin 1, D01 E7E8

Brussels Office
Rue Montoyer 51,
B-1000, Brussels

Table of Content

0. General Comments 4

1. Specific EIOPA questions to stakeholders 7

2. General consideration of the EIOPA Opinion 16

a. Long-Term Equity Investments 16
b. Expected Profits in Future Premiums (EPIFP) 17
c. Risk Margin 18
d. Own Funds 19
e. Interest Rate Risk 20
f. Mass Laps Risk (underwriting risk) 21
g. Non-proportional Reinsurance 22
h. Reporting & Disclosures 22
i. Proportionality 26
j. Group Supervision (including intra-group outsourcing) 34
k. FoS/FoE 36
l. Recovery and Resolution 42
m. IGS 51

0. General Comments

Insurance Ireland and its members support the efforts of the European Insurance and Occupational Pensions Authority (EIOPA) to provide its advice on a potential review of the Solvency II Directive[1]. We believe that the review is an opportunity to make crucial next steps towards the regulatory and supervisory convergence of the EU single market for insurance. At the same time, the review should not lead to fundamental changes in the system which is only applied for three years.

The EIOPA draft advice presented in the “two waves” of consultations misses both opportunities. EIOPA’s proposals do not provide for a significant improvement of the convergence of the regulatory regime across the single market. In addition, the proposals lead to quite drastic changes which will result in a significantly increasing bureaucratic burden and rising capital requirements.

We would like to highlight the following areas of particular importance for the Irish market:

- **Freedom of Services (FoS) and Freedom of Establishment (FoE):** FoS/FoE are fundamental freedoms of the EU and essential for a small open economy like Ireland. In recent years, the FoS/FoE business model came under pressure due to some failures. Even though these failures presented a minor share of the total FoS/FoE business, they unveiled a more structural problem – shortcomings in the application or supervision by some national competent authorities (NCAs). Insurance Ireland, therefore, agrees to EIOPA that the system of cross-border supervision needs improvement. We also support the proposals made by EIOPA (detailed feedback below). But we strongly believe that these proposals are insufficient – structural problems need a structural answer. The basis for the necessary reforms needs to be part of the Solvency II Review. Insurance Ireland and its members suggest a review of the underlying governance of the system of cross-border supervision. Digital supervisory platforms for the provision of information and supervisory cooperation are a crucial next step to improve convergence and functionality.

- **Protection of consumers in case of insolvencies:** In its first wave of consultations EIOPA invited feedback on a potential minimum harmonisation of Insurance Guarantee Schemes (IGS). Insurance Ireland supports these efforts of EIOPA as we believe that a minimum harmonisation of crucial elements, e.g. funding mechanism and contribution, limits and excess or the scope of IGS, is indispensable. IGS need to be accompanied by efficient and effective resolution mechanisms to consistently avoid threats to consumers or market stability. Particularly for life insurance, a resolution mechanism is an essential element for consumer protection. Again, consistency is key to ensure that consumers across Europe are appropriately protected.

- **Proportionality:** EIOPA makes considerable efforts to improve the application of the principle of proportionality under Solvency II. However, it fails to provide a fully risk-based and consistent approach for the application of the principle across Europe. By maintaining Member State options and increasing discretion for NCAs, EIOPA’s proposals oppose the aim of regulatory convergence. EIOPA should set a clear sign for a more European approach of proportionality. The Dutch and the Irish insurance industries provided for an example in this respect. In their discussion paper a proportionality toolbox is proposed which provides for a (non-exhaustive) list of examples for proportionality tools. In addition, the toolbox suggests that these examples can be applied by companies which comply with certain criteria (risk-

[1] Directive 2009/138/EC

and size-based) by default. The default application of the measures particularly aims at insurers for which the administrative process of supervisory approval for the use of these measures would be relatively burdensome.

In its draft advice EIOPA makes a suggestion which we consider very concerning. EIOPA presents a direct link between the scope of the Solvency II Directive and proportionality. While we agree that the threshold for the application of Solvency should be increased, we do not see it as a measure of proportionality. In accordance with the Directive, Solvency II should be applied proportionate to the nature, scale and complexity of risks of an insurer. It does not mean the exemption from Solvency II or that proportionality is limited to undertakings of a certain size.

- **Risk Margin:** Insurance Ireland and its members strongly disagree with EIOPA's opinion that the risk margin in its current form is reasonable. We are disappointed that EIOPA does not propose any changes in the risk margin resulting in lower costs of capital (CoC) or a similar effect by a model change. For the Irish market the technical provision due to the risk margin have been reported to account for more than 9.9 billion Euros. Across all lines of business, the risk margin accounts for more than 20 % of SCR. For some insurers which provide long-term risk cover, the risk margin even exceeds the total SCR, significantly. The current calibration of the risk margin is putting a substantial burden on the Irish insurance industry. Its socio-economic implications should not be underestimated as it is particularly long-term business which is penalised. Insurance Ireland and its member share the joined industry position as expressed by Insurance Europe and strongly believe that the following issues should be addressed:

    - The CoC is exaggerated and should be reduced to an appropriate level. A 3% CoC is deemed appropriate.
    - The risk margin is overly sensitive to interest rates.
    - The calculation of the risk margin does not allow for diversification between life and non-life business within the same entity, or between different entities within a group.
    - The risk margin does not reflect risk dependence over time.

- **Interest rate risk:** Insurance Ireland and its members oppose the approach suggested by EIOPA in its advice to the European Commission on the 2018 review of the Delegated Regulation under Solvency II which the authority reiterates in this consultation. The proposed changes would raise the necessary own funds of insurers to cover their SCR significantly – making compliance even more "expensive". Implementing the EIOPA proposals would substantially harm insurers' ability to provide cover and to function as institutional investors. We believe that the two ideas proposed in the joined industry position as presented by Insurance Europe could improve the calibration while reflecting the changing interest rate environment appropriately.

- **Reporting & Disclosures:** We appreciate the idea of EIOPA to review the existing provisions, adjust them to certain shortcomings and reduce the regulatory burden. However, neither for the first wave of proposals nor for the current consultation, EIOPA fulfilled that aim. We particularly do not see the stringent overall strategy behind the proposals. Most of the templates which were deleted in the first wave of consultations were somehow reflected in other templates. On top of this, the level of detail significantly increased. We support EIOPA in their intention to get more granular data to employ RegTech and SupTech solutions. However, there needs to be an added value with regard to the resulting regulatory burden as well.

With a specific view to the second wave of consultations, we do not see how the EIOPA proposals provide more clarity or less burden. We believe that more consequence is necessary to review the regular supervisory reporting as well as the solvency and financial condition report.

- **Mass laps risk:** The current calibration of the mass laps risk under Solvency II is overshooting the monitored real surrender rates in the European market. While a company and risk sensitive approach is partially maintained for the 50% up- and down-shock calibration, we consider the default shocks of 70, 40 and 30 percent as exaggerated. In addition, we strongly believe that the assumption to focus on each policy individually is not in line with the insurance business realities. A portfolio-based approach would be more reasonable.

- **Non-proportional reinsurance (NP):** Insurance Ireland does not share EIOPA's analysis that NP is appropriately reflected in the Solvency II framework. While it is reflected in the catastrophe sub-module of the non-life underwriting risk module, it is not appropriately integrated in the premium and reserve risk sub-modules. We consider this to be a technical inconsistency of the standard formula and, thus, a particular threat to SMEs. Accordingly, the issue needs to be amended.

- **Group supervision:** Despite the technical dimension of the over 30 amendments to the group supervisory regime under Solvency II, Insurance Ireland believes that the overall system proved its value. Other than for the cross-border supervision of insurance activity, the group supervisory framework provides for the appropriate governance. The consistent implementation and application are crucial and improvements are necessary. Acceptance and consistent execution of decisions in the college of supervisors as well as an active participation and information sharing from all NCAs can improve the quality of supervision. The supervisory handbook as to be developed by EIOPA can be an important asset in this respect. Based on this assumption, the role of the ultimate parent undertaking should be strengthened. Practical issues like the recognition of the control of the ultimate parent undertaking for intra-group outsourcing should be included.

1. Specific EIOPA questions to stakeholders

Q2.1: What is your view on the options on the last liquid point for the euro (including the alternative extrapolation method) set out in this section?

Insurance Ireland and its members support the joined industry position as expressed by Insurance Europe. We strongly believe that neither the underlying parameters nor the methodology of the extrapolation method or the Last-Liquid-Point (LLP) as such need to be amended. Accordingly, we favour option 1 of the EIOPA proposals. We greatly appreciate the assessment and analysis provided by EIOPA. We believe that this analysis provides sufficient basis for not amending the LLP or the parameters of the extrapolation method.

In addition, we believe that it is important that the future development is further monitored. The recognised differences and changes compared to the initial market conditions based on which the LLP and the extrapolation method should feed into an ongoing analysis. So far, we do not see sufficient evidence to fundamentally change the LLP and the extrapolation method.

Q2.2: Should the calculation of the VA be based on the CF-Freeze approach or the MV-Freeze approach? Please explain your view.

Insurance Ireland agree to the joined industry position expressed by Insurance Europe and the underlying analysis. While the observed technical issue on very low rated bonds during financial stress is considered valid, we agree to the analysis that it is immaterial.

Q2.3: What is your view on the identified deficiencies of the current VA?

Insurance Ireland and its members support the joined industry position as expressed by Insurance Europe. None of the two provided options (approach 1 and 2) presents an improvement to the methodology underlying the Volatility Adjustment (VA).

Any changes to the methodology should result in a better reflection of the two core purposes of the VA – mitigate artificial volatility and reflect the ability of insurers to earn returns above the risk-free rate. We believe that targeted amendments to the VA can help to better reflect both purposes and, again, refer to the joined industry position expressed by Insurance Europe.

Q2.4: What is your view on this deficiency of the country-specific component of the VA? How should it be addressed? (You may want to take into account in particular the options 1, 7 and 8 set out in the following section.)

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe and share its analysis of the EIOPA proposals.

Q2.5: What is your view on the safeguards to avoid wrong investment incentives? In particular, how can wrong incentives with regard to investments in government bonds best be avoided?

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe and its detailed comments on Option 1.

Q2.6: Should liquidity buffers be recognized in the VA calculation? If yes, please describe how they should be recognized.

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe and its detailed comments on Option 5.

Q2.7: What are your views on Approach 1 and Approach 2? Your comments are also invited on the options that are implemented in Approach 1 and Approach 2 as well as on the other options specified in this section.

Insurance Ireland agrees to the joined industry position expressed by Insurance Europe. As already expressed in our answer to Q2.3 neither approach 1 nor 2 would achieve the necessary outcomes. Consequently, we do not consider any of the approaches as a valuable replacement of the current methodology.

Q2.8: What is your view on the general application ratio? Should it be changed in case approach 1 or approach 2 to the VA design would be adopted?

Insurance Ireland and its members agree to the joined industry position as expressed by Insurance Europe. We particularly want to highlight the political nature of the application ratio current level of 65 percent. As any limit in the application, that has to be considered as a prudent approach. Cutting the VA by 35 % is an overly conservative approach to avoid an overshooting of the VA's impact at political level. Insurers recognise a severe undershooting of the VA compared to real figures. Insurance Ireland and its members strongly believe that the application ratio should be increased. A higher application ratio would also serve the two main purposes of the VA, mitigating artificial volatility and expressing the ability to earn returns above the RFR.

Notwithstanding our general opposition to both approaches (1 and 2), we believe that the application ration should be significantly higher.

Q2.9: Should the dynamic VA be allowed for in the SCR standard formula? If yes, how should it be implemented?

Insurance Ireland supports the application of the dynamic VA to standard formula users and agrees to the joined industry position as expressed by Insurance Europe.

Q2.10: Should the correlation of risks between the participation and the participating undertaking be taken into account in determining whether a participation can benefit from the lower capital charge for strategic equity investment? Please explain your view.

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe that the correlation of risks between the participation and the participating undertaking is of only theoretical use and cannot reasonably be measured in practice. It can thus not be taken into account.

Q2.12: Do you consider that the illiquidity of liabilities (and more broadly the characteristics of insurance business) are reflected in an appropriate manner in the current equity risk sub-module? If the answer is "No", please elaborate on the changes that you deem necessary.

We agree to the joined industry position as expressed by Insurance Europe. We consider the current treatment of equity under Solvency II inappropriate. In particular, the industry is concerned about EIOPA statements in its report on insurers' asset and liability management in relation to the illiquidi-

ty of their liabilities.[2] The report claims that insurers are not long-term investors in individual assets and distinguishes between the length of an investment in individual assets and of an investment in an asset class. In this respect, the industry reiterates that the investment horizon of individual assets cannot be the basis to assess insurers' long-term behaviour, as this assumes a passive behaviour by the investor without properly reflecting the real nature of the exposure to investment risk. There are valid instances for selling assets, especially in consideration of insurers' duty towards their customers/shareholders, which are not in contrast with insurers' ability to hold equity investments in the long-term.

Q3.4: What is your view on the assumptions underlying the reference undertaking where the original undertaking applies the MA or VA? Considering the approaches for risk margin calculation outlined in section 3.2.7.2, are any of the noted pros and/or cons inconsistent with your own views or experience?

Insurance Ireland supports the general industry position as expressed by Insurance Europe.

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. The industry agrees 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, industry agrees not to consider VA/MA in the calculation of the risk margin.

Q3.5: Please note any possible approaches to the calculation of the risk margin you believe should be considered that have not been included under section 3.2. Please justify any such approaches,

Insurance Europe agrees to the provided list and the underlying analysis expressed in the joined industry position as expressed by Insurance Europe.

Q4.1: What is your view on the treatment of EPIFPs?

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe. The treatment of EPIFP should not be changed.

Q5.3: Do you consider that the correlations within market risk, as well as the correlation between lapse risk and market risks should be amended? If your answer is "yes", you are invited to provide quantitative evidence supporting your reasoning.

Insurance Ireland supports the general industry position as expressed by Insurance Europe:

Industry supports a recalibration of the correlation parameter between the market risk module and the life underwriting risk module. The current parameter is considered to be too high. This occurs, e.g., to situations where the life underwriting risk module is dominated by mass lapse risk. In such cases, combining mass lapse risk with an equity risk can lead to double counting of risks, which should be compensated through a lower correlation parameter in the aggregation of these modules. For example, if parts of the insurance contracts are surrendered, a subsequent fall on the equity

[2] https://eiopa.europa.eu/Publications/Reports/EIOPA_Report_on_insurers_asset_and_liability_management_Dec2019.pdf

markets will have less effect in absolute terms (in e.g. euros), and vice versa. As the stresses used in Solvency II are large (e.g. 40% for mass lapse risk and 39% / 49% for equity stress), these effects become significant. For more details, see for example Magnus Carlehed (2019), Practical aspects of the aggregation of two risks in the Solvency II standard formula, European Actuarial Journal 9:155–171.

Q5.4: What is your view on the recognition of non-proportional reinsurance in the SCR standard formula? If you consider changes necessary, please make concrete proposals. How does the proposal address the double counting issue regarding nonproportional reinsurance covers between the CAT risk sub-module and other submodules impacted by treaties?

Insurance Ireland and its members support the suggestion of the Reinsurance Advisory Board (RAB) to adopt the South African Solvency Assessment and Management framework (SAM) into Solvency II.

We further agree to the RAB that the SAM presents a highly-economic and principles-based approach which is comprehensive, includes aggregate covers and stop-loss – potential weaknesses of other approaches. The SAM is a good balance between different objectives and proofed to be fit-for-purpose in a supervisory regime similar to Solvency II.

The amended SAM approach as referred to by the RAB:

This approach builds on the RAB's proposals on Adverse Development Covers (ADCs) expanding them to both premium risk and reserving risk and addressing EIOPA's concerns about the application that were voiced in its advice to the Commission for the Solvency II 2018 review.

For the 2018 review, a CRO Forum working group proposed a methodology for recognition of Adverse Development Covers, submitted to EIOPA by email on 12.01.2018. The RAB believes that there is no reason why the methodology would have to be changed conceptually to be valid for covers on premium risk[3].

EIOPA raised a number of concerns with the proposed methodology. The RAB believes most of these issues can be addressed by making changes to the formula. A revised methodology could include a factor E that would represent a prudence factor to counteract the effect of any double counting on the reserve risk calibrations, as well as serve to make the method more prudent. As such, the formula presented for ADCs could be expressed as:[4]

$$NP_{adj} = (A - (B - C) \times D \times E) / A$$

[3] Please also refer to the RAB response to European Commission consultation on draft Solvency II 2018 review (Better Regulation Initiative).

[4] Definitions similar to ADC methodology presented as part of 2018 review.

A: Impact on the basic own funds (BOF) of premium reserve risk scenario as defined under the SF = Nominal best estimate net reserves x Standard deviation for non-life gross premium or reserve risk of the segment x 3

B: ADC recovery under premium or reserve risk scenario = The lower of the following:

- Nominal best estimate net premiums or reserves covered by the reinsurance structure x (1 + 3 · σ(res,s)) – reinsurance structure attachment point
- Reinsurance structure cover size

C: Additional reinsurance premium or the equivalent thereof ***D***: Cession to the reinsurer in %

E: Prudency factor in %.

With regard to the concerns raised in this consultation, we agree to the RAB's assessment that it should be specified that the requirement to adjust any capital benefit on the CAT-risk sub-module for any impacts on premium risk, as expressed in the Guidelines for catastrophe risk, effectively ensures that no duplication takes place – i.e. risk mitigation impact must be allocated to CAT risk or premium & reserve risk but not both.

Q5.5: What is your view on the recognition of adverse development covers in the SCR standard formula? If you consider changes necessary, please make concrete proposals.

Q5.6: What is your view on the recognition of finite reinsurance in the SCR standard formula? If you consider changes necessary, please make concrete proposals.

Q5.7: If EIOPA would to recommend a consistent treatment of contingent instruments (contingent capital and convertible bond instruments) between standard formula and internal models, one possible way of implementing this principle would be to clarify that the definition of SCR (Article 101 of the Directive) does not include planned basic own funds increases. What do you think about this clarification?

Q8.1: In your view, are changes to the provisions on the calculation of technical provisions necessary in order to improve the proportionality of the requirements? Please make concrete proposals.

Insurance Ireland and its members support the joined industry position expressed by Insurance Europe. For the further integration of the EU single market for insurance and the, therefore, indispensable regulatory convergence, a common approach towards proportionality is necessary.

Together with the Dutch Association of Insurers (VVN), Insurance Ireland proposed a proportionality toolbox for a more consistent application of the proportionality principle. A fundamental requirement of the toolbox is the consistent application of the principle across all three pillars. For smaller and less complex undertakings, the tools in the toolbox should apply by default. For all others, the tools should be applied in accordance with nature scale and complexity of risks. In addition to the list of measures already provided for in the joined VVN/Insurance Ireland discussion paper, we would like to the joined industry position for further proposals.

Q8.2 What is your preference with regard to the options on introducing further simplifications to the calculation of the SCR standard formula?

Insurance Ireland supports the joined industry position as expressed by Insurance Europe. We believe that the two options proposed by EIOPA to apply the pillar 1 requirements (option 2 and option 3) both appear reasonable and are appreciated. We believe that the two methods are not exclusive and should, therefore be developed in parallel. In addition, we would like to highlight the particular importance of approaches developed by individual companies. These can not only reflect nature, scale and complexity of the inherent risks appropriately but might also provide for best practise for the consistent application of the principle across Europe.

Q9.5: Taking into account that the availability assessment of own fund at group level is a complex issue, EIOPA would like to request feedback from stakeholders on which possible principle-based rules could be considered to reflect more appropriately the effective amount of available own funds at group level. In particular, how could the minimum required quality of own funds, which solo insurers must comply with at all times, be reflected in the availability assessment at group level? (i.e. the question is not querying on the quality of the solo own funds at a given point in

time, but how the availability assessment by the group supervisor can take into account the impact of a (potential) transfer of own funds within a group on the composition of solo own funds and on ongoing compliance with solo tiering limits – As an illustration, please refer to the case presented on the identification of the policy issue, paragraphs 9.325 to 9.327).

Insurance Ireland supports the joined industry position as expressed by Insurance Europe. We second the disagreement with EIOPA and echo the following analysis:

- The availability assessment does not intend to assess the "the impact of a (potential) transfer of own funds within a group on the composition of solo own funds and on ongoing compliance with solo tiering limits". How would such a transfer be defined, for which entity and to which purpose? The Solvency II framework considers that solo own funds which can be made available at group level cover at the same time the requirements of the group – which is logical because a group consists of its solo entities. Solvency II considers that if an own fund item cannot be made available at group level, then it can only be available at the solo entity level, and therefore is limited at group level to the contribution of the entity to the group SCR. However, this principle describes the case where a group would only cover its SCR at 100%. Whereas losses at group level can arise from losses at solo level, the losses can be absorbed at solo level by own funds only available at the solo entity level. Thus, these own funds (unavailable at group level) also protect the group solvency from losses coming from the involved entity. Therefore, solo own funds items which cannot be made available at group level could be included in group own funds to cover losses raising from the specific entity.
- Principles-based rules already exist to reflect the effective amount of available own funds at group level and it is not surprising that most of the NSAs are very comfortable with the current approach.
- Moreover, a group has the option to default a legal entity. If this option is taken into account, the group must not hold more capital than group SCR = max_subs SCR_sub.
- However, Solvency II views groups as economic entities. The option to default is explicitly not taken into account. This is manifested e.g. via the requirement to calculate group SCR as diversified SCR of all entities belonging to the group (taking participation share into account). This reflects economic reality: most groups are managed as economic entities and the option to default is not widely exercised as it undermines policy holder's trust in the whole group.
- Therefore, any considerations of availability of own funds should be aligned to this economic reality and to the principles of Solvency II. This includes the possibility of sale of one subsidiary to support another subsidiary. The global and EU insurance industry experiences a significant number of mergers and acquisitions every year. Therefore, there is in practice a liquid market to transfer individual portfolios and whole companies from one ownership to another.
- The Solvency II asset over liabilities (AoL) claim to provide for a market-consistent value of an undertaking. A franchise value is not taken into account. So, the Solvency II AoL should be considered a lower bound for a transfer value of an insurance undertaking. Consequently, there should be no transferability restriction on the AoL within an insurance group. Monetising via sale is possible.
- These arguments apply even more to the EPIFP. Per definition, the EPIFP is a positive future cash flow and the likelihood of selling the corresponding portfolio is even higher than the likelihood of selling the whole company (and the sale of the whole company includes the sale of the EPIFP).
- The concept of availability is derived from Solvency I, where the group was not treated as an economic entity. Solvency II now treats the group as 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 group. This obviously causes larger conceptual issues and difficulties. The rationale is that a group must not show a high solvency ratio if all the capital is locked in one entity and can't 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, even after deductions due to non-availability. However, no such floor exists, and the group solvency ratio may well be lower than the lowest solo solvency ratio. For example, where a large (re)insurance entity has a very high amount of non-available own funds, it contributes to the group own funds for an amount of own funds roughly identical to its diversified SCR contribution, even if it is very well capitalised. It is not convincing to require that own funds items be "legally transferrable". For example, a related undertaking can give a subordinated loan to a sister undertaking without reducing its own funds. Given these flaws and inconsistencies, extension or enhancement of the concept of availability should be avoided.

Availability assessment at group level and EPIFPs (Policy Issue 4)

Q9.6: Which methods/tools would be possibly used to make own funds available within 9 months from one undertaking to another when large amounts of EPIFP exist?

Insurance Ireland supports the joined industry view expressed by Insurance Europe. We would like to emphasise the underlying principle that the EPIFP is unconditionally available and should be considered as an assumed available own fund item at group level.

Q11.1: What principles should be taken into account by NSAs in their decision to trigger, set, calculate and remove capital surcharge for systemic risk?

Insurance Ireland strongly supports the joined industry position as expressed by Insurance Europe. No additional supervisory powers to apply new capital surcharges for systemic risk should be foreseen. Other than for banks, capital cannot be the default response to systemic risks. Where real systemic risk can be observed, other mechanisms, such as ensuring supervisory oversight and good internal controls and risk management, are essential. Given the comprehensive nature of Solvency II, risks which could lead to systemic concerns (such as losses in asset portfolios or mass customer policy surrenders), are already covered. Therefore, it is unclear why there would be a need for additional capital.

Q11.2: What factors should be taken into account by NSAs when setting soft thresholds at market-wide level?

Insurance Ireland and its members do not consider “soft thresholds” as an appropriate measure for macroprudential risk management. As already mentioned in our answer to Q11.1, we believe that Solvency II is providing the tools to appropriately measure risk. Rather than market-wide “soft thresholds” proper monitoring and oversight might be the answer. We further agree to the concerns expressed in the joined industry position through Insurance Europe.

Q11.4: What are the relevant factors to be taken into account to determine the scope of undertakings subject to SRMPs?

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe. Systemic Risk Management Plans (SRMPs) may offer a useful way for insurers to take corrective action on systemic risk before supervisory measures are necessary, but these need to be justified by clearly

quantified and articulated evidence of systemic risk in advance, with a clear commitment to proportionality. Applying SRMPs to all firms without reference to their specific risks would likely prove unnecessary and irrelevant.

Q11.5: What are the relevant factors to be taken into account to determine the scope of undertakings subject to LRMPs?

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe. Liquidity and Risk Management Plans (LRMP) are required at the discretion of the group-wide supervisors. However, any request for LRMPs should be duly justified and be applied subject to the proportionality principle. This would be also in line with the IAIS holistic framework, which requires more detailed liquidity risk management processes and reports only for insurers with activities that could generate unexpected liquidity needs (ICP 16.9).

Q12.1: How should the very significant market coverage across the Member States be determined? What are relevant factors to take into account?

Insurance Ireland disagrees with EIOPA that the additional recovery planning needs to cover a very significant share of each market. In contrast to the EIOPA advice, we believe it should be limited to insurers where a failure would have a significant – detrimental or disruptive – effect on markets (national and cross-border).

In order to ensure regulatory and supervisory convergence, we strongly oppose EIOPA's ideas to give full discretion to NSAs in determining which insurers will be subject to the new provisions. Such an approach might lead to regulatory arbitrage and inconsistencies across markets. We, therefore, strongly support EIOPA's advice to develop clear and harmonised criteria for the assessment.

In its advice EIOPA identifies a list of criteria. Insurance Ireland considers this list to be a good starting point for the assessment. However, the *"illustrative assessment"* drawn from each section (grey boxes) do not reflect an appropriate criterium by itself. Neither the size alone nor the fact that it conducts its business under the freedom to provide services should be a decisive fact by itself.

As for the resolution mechanism, the final question regarding the scope of the new recovery measures should be: "does a potential failure of the insurer have a disruptive impact on markets?".

Q12.2: How should the significant market coverage across the Member States be determined? What are relevant factors to take into account?

Insurance Ireland supports the approach taken by the DNB. Only companies which are likely to pass the underlying public interest test in case of failure are required to fulfil pre-emptive obligations. The according process should take the suggestions from EIOPA into account.

In order to ensure regulatory and supervisory convergence, we strongly oppose EIOPA's ideas to give full discretion to NSAs in determining which insurers will be subject to the new provisions. Such an approach might lead to regulatory arbitrage and inconsistencies across markets. We, therefore, strongly support EIOPA's advice to develop clear and harmonised criteria for the assessment.

With regards to these criteria, we believe that further efforts are necessary to develop clear and comparable criteria for the assessment carried-out by NSAs. In line with the general principles of Solvency II, we believe that nature, scale and complexity should also play a role in the determination

if an undertaking becomes subject to the potential new matters. We also would like to emphasise that the size of a company neither in total nor in relative terms to the national market should be a determining factor.

Anticipating that EIOPA is referring to the criteria in table 12.4 of this consultation, we would like to reiterate our disappointment that EIOPA repeats its previous position that the place where business is carried-out and if it is carried-out cross border is a risk-determining factor. With its suggestion that a materiality threshold for cross-border business should be foreseen, EIOPA repeats a position discriminating smaller markets and the protection of policyholders therein.

Q12.3: What factors need to be considered by NSAs for early interventions?

Insurance Ireland agrees to the general industry position as expressed by Insurance Europe:

- There is no need for triggers for early intervention as Solvency II already provides for a supervisory ladder of intervention, and a breach of the SCR should not be seen as a trigger for the application of supervisory intervention measures.
- An insurer with below 100% SCR is still clearly solvent and above Minimum Capital Requirement (MCR) and so intervention at the SCR breach would likely push supervisors towards short-termism in their approach to supervisory intervention measures, which is inappropriate given the long-term nature of insurance. An SCR breach should trigger a conversation between a firm and its regulator to discuss recovery options, starting with management actions within the discretion of the firm (capital raising, sell off a book of business).
- We welcome EIOPA’s clarification that new early intervention points based on a solvency ratio above the Solvency Capital Requirement (SCR) should be avoided, however this suggests that supervisors will instead use their own judgement to determine when early intervention is required. This allows too much discretion for supervisors to intervene at a point when an insurer is clearly meeting Solvency II 1-in-200-year capital requirements.
- There is no need for resolution triggers as this is already provided under local legal frameworks and would generally be linked to capital insolvency or default of payments. Therefore, no action by EIOPA in this area is necessary.

Q12.4: How could resolution authorities determine whether undertakings are likely to be no longer viable and have no reasonable prospect of becoming so?

Insurance Ireland believes that the triggers should be based on the Solvency II ladder of supervisory intervention. Consequently, the irrevocable breach of the MCR should be the fundamental trigger. A resolution should only be triggered where an ordinary insolvency procedure would also be started.

2. General consideration of the EIOPA Opinion

a. Long-Term Equity Investments

Paragraph 2.937

Insurance Ireland shares the disappointment expressed in the joined industry position (see Insurance Europe's contribution). Rather than a comprehensive approach how Solvency II can be better adjusted to reflect the goals of the Capital Markets Union (CMU) and the Sustainable Finance Action Plan, EIOPA suggests an increasing complexity of the existing piece-meal approach.

We would like to echo the joined industry concerns:

The industry appreciates that the framework contains a set of sub-categories for equity, meant to cover the cases where insurers' equity risk exposures are lower. Unfortunately, the qualification criteria for these categories are difficult to apply in practice, which is also acknowledged by EIOPA. However, EIOPA fails to provide solutions to address the challenges.

In general, any assessment about insurers' long-term investment in equities should be done at a portfolio, rather than individual level. Insurers invest in equities for their long-term performance arising from the combination of dividends and capital gains. While equities can exhibit significant short-term price volatility, where insurers can avoid being forced sellers of their equity holdings the actual risk that they face is one of long-term underperformance of the asset and not the instantaneous fall in value. It is the long-term liabilities and the stable resources (including future premiums on a going-concern basis and own funds), combined with flexibility in terms of management actions that allow insurers to avoid being forced sellers. In fact, insurers manage equity investments as part of diversified portfolios of assets including fixed income, property, etc which back liabilities. These assets are bought and managed based on insurers' ALM (asset liability management) strategies, and in line with insurers' risk appetite and internally set investment limits.

The current treatment of equity under Solvency II is therefore not appropriate.

Specifically, in the case of long-term equity (LTE) investments (Art 171a), the very restrictive conditions of Article 171a are hard to fulfil in practice and reduce the practical use of this measure to increase insurers' investments in equities:

- For example, the requirement that the sub-set of equity investment has to be included in 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. Similarly, the requirement to separate the assigned portfolio of assets from the other activities of the undertaking is also not applicable in practice in many cases where liabilities are generally covered by a cover pool of investments, with no allocation of individual investments to individual liabilities.
- The 5-year limitation on the holding period, as well as the restrictions on selling equity are not appropriate. Although insurers typically have investment policies and strategic asset allocations based on a long-term horizon, it is important to avoid requirements to hold specific equity holdings or equity funds for a minimum number of years, as this effectively imposes a "passive asset management system" without regard to actual risks and performance potential. Instead, the industry suggests that concerns related to exposure to forced sales of assets should be assessed via the ORSA.

- Regarding EIOPA's proposal for a new criterion, there is very limited to no value in adding a criterion requiring portfolio diversification for long-term equity. In practice, adding another criterion further increases the complexity of the sub-module and, in reality, the diversification element is already a requirement of the Solvency II prudent person principle.
- Regarding EIOPA's proposal to exclude controlled intra-group investments from the scope of LTE, the industry does not support this change unless the volatility criterion is removed from the strategic equity investments (see below).
- In general, some uncertainty remains regarding the scope of application and the criteria to be satisfied under the LTE sub-category. Guidance and dialogue at NSAs level is needed to ensure that the application of the LTE investments sub-category is duly considered and is workable in practice. As in other cases, the burden of proof should not always lie with the undertakings, but also with the NSAs, and efforts to make the LTE sub-category work should be shared.

Regarding strategic equity investments (Art 171), the industry believes that:

- The lower volatility criterion should be removed. As EIOPA acknowledges, this would reduce complexity for both insurers and supervisors.
- A prescribed beta-method for the volatility criterion in the regulation is not needed, neither as an optional nor as a compulsory method.
- The 20% minimum ownership and control threshold is too high. This should be reduced to 10%.
- The qualifying criteria should be built instead on the strong links between the insurer (i.e. the participating undertakings) and the investee company (i.e. the strategic participations), focusing on the long-term holding strategy/ability of the insurer and its strategic commitment in the investee company.

b. Expected Profits in Future Premiums (EPIFP)

Paragraph 3.73 – 3.75

Insurance Ireland supports the general industry position as expressed by Insurance Europe and disagrees with the amendments to DA Art 260(2) and 260(4) as proposed in paragraph 73 and 74.

The industry is concerned with the implied assumption that an HRG may only contain profit- or loss-making policies, irrespective of the underlying risks, and believes this amendment should be dismissed. EIOPA did not provide 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 the EPIFP's nature as a component of the reconciliation reserve and neither does it 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.

In addition, assessing whether policies are profit- or loss-making – before even setting assumptions – would put a disproportionate burden on undertakings, in particular for life insurance undertakings. Indeed, within each HRG the company should distinguish profit- and loss making-policies and this would imply a high level of detail in the calculations currently not requested. Moreover, the very concept of profitable/unprofitable HRG is questionable when stochastic valuation methods are used

(i.e. the same HRG can be profitable in X scenarios and turn unprofitable in X others) and will certainly lead to more volatile EPIFP. According to the industry, this change is costly in terms of implementation and could also lead to a delay in the calculation times that would be incompatible with the already available time limits (5 weeks to complete the entire Solvency II quarterly reporting requirements). Whether HRG are profitable or unprofitable is an output of the BEL calculation. As such, changing e.g. market conditions at each valuation date may change the allocation of policies, resulting again in more volatile and unpredictable EPIFPs. From the industry's understanding, the EPIFP are already negative, when relevant. The reported figure of EPIFP is positive because it is an own fund item; reporting negative own funds would obfuscate the vision of the firms' solvency. Unprofitable future cash-flows are liabilities and therefore rightly captured in the BEL. EIOPA is asked to clarify whether this amendment would result in two figures, the expected profits and the expected losses, and how they would be interpreted.

c. Risk Margin

Paragraph 3.210

Insurance Ireland and its members strongly disagree that the risk margin in its current form is reasonable. We are, therefore, disappointed that EIOPA does not propose any changes in the risk margin resulting in lower costs of capital (CoC) or a similar effect by a model change.

The risk margin is a conceptual approach to adjust the system to the general principles of Solvency II. The risk margin expresses the capital equivalent which would be necessary to sell the portfolio of a failing insurer to another insurance company. The risk margin expresses the "price" of portfolio continuity in the 1 in 200 case of failure of an insurer.

Following this logic, the risk margin expresses the "surcharge" for non-hedgeable risks and the additional solvency capital necessary for the insurer taking-over the portfolio from the failing insurer. In its current form, the risk margin is applied as a cost-of-capital (CoC) rate of 6 percent. The risk margin has a very significant impact on the overall solvency capital requirement (SCR) of insurers. Due to its concept, its impact is higher for insurers offering products with long durations, i.e. life insurances and some long-tail non-life business. Looking into the dynamics of the insurance market and the functioning of the long-term business, this has a detrimental effect. For some long-term exposures, the risk margin can overshoot the effective SCR. This leads to a tremendous miscalibration and consequently limits insurers' ability to efficiently provide protection to customers and invest long-term.

A huge impact factor on the current risk margin is the inclusion of mass lapse. For many products (i.e. unit-linked products), the existence of a large mass lapse risk is closely linked to a large part of the own funds being "financed" by the value of future profits. Contrary to sources of own funds corresponding to shareholders´ equity, companies are usually not applying a return requirement on the value of future profits in the business. Actually, it could be argued that if the insurer, that acquires the portfolio, receives a portfolio dominated by mass lapse risks, it takes over a profitable portfolio with a large value of future profits. In such a situation, it is very unlikely to end up in a situation with solvency problems triggering the transfer of the portfolio.

Insurance Ireland believes that the risk margin should be significantly lower. The over-reliance on some risk factors (i.e. mass lapse) and the excessive estimated CoC rate stand against the fundamental aim of the long-term insurance business model, affecting both risk-taking capacity and investments.

For the Irish market the technical provision due to the risk margin have been reported to account for more than 9.9 billion Euros. Across all lines of business, the risk margin accounts for more than 20 % of SCR. For some insurers which provide long-term risk cover, the risk margin significantly exceeds the total SCR. The current calibration of the risk margin is putting a substantial burden on the Irish insurance industry. Its socio-economic implications should not be underestimated as it is particularly long-term business which is penalised. The excessive calibration of the risk margin does not only bind capital which could be invested elsewhere, i.e. in the sustainable transition, but also harms the risk-taking capacity of insurers. The more expensive it is for insurers to ensure risks, i.e. long-term risks, the less can insurers mitigate and cover risks.

Insurance Ireland and its member share the industry position as expressed by Insurance Europe and strongly believe that the following issues regarding the risk margin should be addressed, and throughout the present response the industry proposes various ways to solve these:

- The CoC is exaggerated and should be reduced to an appropriate level. A 3% CoC is deemed appropriate.
- The risk margin is overly sensitive to interest rates.
- The calculation of the risk margin does not allow for diversification between life and non-life business within the same entity, or between different entities within a group.
- The risk margin does not reflect risk dependence over time.

d. Own Funds

Paragraph 4.112

Insurance Ireland supports the joined industry position as expressed by Insurance Europe that there should not be a fixed limit above which supervisory actions should be taken. Any “excessive leverage” would show in the group balance sheet, and any risk arising from the financing of subsidiaries should be monitored by group risk management, as any other risk. Should EIPOA propose any changes, further clarification work would be necessary.

Accordingly, we also disagree with EIOPA’s analysis to consider as “double leverage” the fact that a parent undertaking in a group invests in Tier 1 instruments issued by a subsidiary. Given that any issue would become apparent in the consolidated market value balance sheet, qualifying a ratio parent undertaking’s T1 own funds investment in its subsidiaries compared to its own T1 items above 100% as an “excessive leverage” is an unnecessary concern. Such a limit should not be introduced, and in any case a 100% ratio would be very low. Solvency II already provides for the elimination in group solvency of the double use of eligible own funds and of the internal creation of capital (article 222 and 223 of the Directive). The definition of “double leverage” should distinguish between Senior debt and Tier 2 or Tier 3 debts. Double leverage should characterize situations where a parent entity in a group provides T1 capital support to a subsidiary which is financed by externally issued senior debt (i.e. non own-funds items). There are indeed conditions to redemption in Tier 2 external debt looking at affiliates’ financial strength (no breach of group SCR including affiliates risk and no winding-up of affiliated entities). A regulated participating (re)insurance undertaking will typically not use senior debt instruments to finance its operations.

The proposal is not clear in terms of which financing operations between a parent and its subsidiaries would be considered as potentially problematic (back-to-back loans mirroring external debts?) and the scope is likely to be too extensive and not proportionate to the identification of excessive situations. A participating (re)insurance undertaking considers already the risk of its affiliates in its

SCR. A double leverage constraint would be excessive and overlooking the "availability" assessment as per art. 330, which ensure that own funds within the group are free from encumbrances and available. If Tier 1 own-funds of affiliates are assessed as available to the group, the double leverage concern is not relevant. It would constrain the financing of groups with Tier 2 or Tier 3 debt considering that in many jurisdictions (such as the US), it is not always possible to down-stream back-to-back loans mirroring the Tier 2 or Tier 3 debt and equity financing is the only option including for fiscal reasons.

We note that under the Solvency II framework, it is already of the responsibility of undertakings to assess and manage any arising liquidity risk, as it is the case for any other risk. Adding a specific requirement is consequently unnecessary and listing some risks that should be monitored may be detrimental to sound risk management, as it may place a focus on some immaterial risks instead of ensuring a risk-based approach.

Paragraph 4.160

Insurance Ireland agrees to the general industry position that The EIOPA's advice to not change the treatment of EPIFPs is welcomed. EIOPA should not try in the future to limit the eligibility or downgrade the tiering of EPIFPs, which are a useful tool for insurers to offer long term guarantees. The industry also welcomes that no change to Article 37 of the Directive is retained.

With regards to EIOPA's analysis if EPIFP can accelerate insolvency, we agree to the general industry's support for some NSAs' view that positive EPIFPs should be regarded as a good thing. EPIFP are an output of the economic valuation of the BEL (i.e. the present value of expected future cash flows) and the level of EPIFP depends on each undertaking's risk profile (i.e. there is no "good" or "bad" levels of EPIFPs per se). EIOPA should not try in the future to limit the eligibility or downgrade the tiering of elements such as EPIFPs, which are a useful tool for insurers to offer long term guarantees.

Regarding the Comparison of EPIFP and Contractual Service Margin according IFRS 17 Insurance Contracts we agree to consider that NSAs have the responsibility to monitor and assess the accuracy of the calculation of EPIFPs. The current framework already allows for sufficient supervisory powers to achieve that purpose. In contrast, Insurance Ireland does not share the view that the changes in the calculation of EPIFPs as outlines in the TP section of the consultation paper would result in less volatile estimated EPIFPs, it would be quite the contrary.

We are concerned that the idea to allow for capital add-ons related to EPIFP is inconsistent with the very concept of capital add-ons. Capital add-ons have been designed to address gaps in the SCR calculations. EPIFP arise from the calculation of the BEL and supervisors are granted full power to review BEL calculations, methods and assumptions. The rationale for capital add-ons on the BEL seems therefore very unclear in that it is silent on the type of issues in the derivation of the BEL which cannot be remedied with existing supervisory powers.

e. Interest Rate Risk

Paragraphs 5.26 – 5.39

Insurance Ireland and its members oppose the approach suggested by EIOPA in its advice to the European Commission on the 2018 review of the Delegated Regulation under Solvency II which the authority reiterates in this consultation.

EIOPA suggests amending the current assumptions and anticipate an even more extreme downturn. The proposed changes would raise the necessary own funds of insurers to cover their SCR significantly – making compliance even more "expensive".

Insurance Ireland does not challenge EIOPA's view that the current low interest rate deserves additional observation and potential adaptions. However, we strongly believe that the proposed extreme changes to the current methodology are unrealistic and harm insurers' ability to provide cover and to function as institutional investors significantly.

We agree to the general industry position expressed by Insurance Europe that:

The industry opposes all EIOPA's proposed calibrations of the standard formula interest rate shock.

There are two key deficiencies with EIOPA's proposed formulation; 1) the level of the effective lower bound of interest rates in the model and 2) the use of factor-based stresses for both the liquid and extrapolated parts of the interest rate term structure.

The industry does not support the extension of the last liquid point for the Euro RFR curve. Consequently, it does not support the proposed extension to the interest rate risk stress factors which reflect the proposed extension to the Euro LLP.

However, any updated interest rate risk model must be calibrated and designed to:

1. Contain a floor which properly reflects the extent to which yield curves can go negative and the true risk in a low and negative yield environment
2. Extrapolate the illiquid part of the yield curve using standard extrapolation parameters and methodology.
3. Be appropriate for all currencies to which it is applied.

Furthermore, it appears that whatever the calibration will be, such a change will have a significant impact on solvency ratios. So, any changes to the interest rate risk submodule should be jointly considered with other changes. Potential impacts must be carefully assessed and phased in over time.

f. Mass Laps Risk (underwriting risk)

Paragraph 5.213

Insurance Ireland and its members strongly disagree with EIOPA to not to advice to review the underwriting risk. In contrast to EIOPA, we strongly believe that the lapse risk needs to be reconsidered.

Insurance Ireland and its members agree that the lapse risk can be a threat and should therefore be subject to the calculation of the Solvency II capital requirement. But the current design and level of the lapse risk sub-module under Solvency II need to be reviewed. The delegated regulation specifying the SCR calculation describes the lapse risk as the largest of the following:

- capital requirement for the risk of a permanent increase in lapse rates,
- the capital requirement for the risk of a permanent decrease in lapse rates or
- the capital requirement for mass lapse risk.

The permanent increase/decrease of lapse rates are set to 50 percent. The mass lapse is defined as an instantaneous discontinuance of 70 percent in case of insured pension schemes and 40 percent in

other cases. Particularly the design of the lapse risk overshoots the data monitored in markets. Following the logic of the increase/decrease assumptions in the delegated regulation, the resulting calibration of the lapse risk would be significantly lower than the calibrated mass lapse. Furthermore, we would suggest that a more granular approach is taken when determining the laps risk factor. Instead of the differentiation between life (pensions and general life) and non-life, Insurance Ireland suggests that the calculation of the lapse risk should be based on type of business written.

In addition to the calibration of the lapse risk factor, concerns remain regarding the calculation basis of the lapse risk. Currently, the lapse risk factor is applied on a contract-by-contract basis. Consistent with the aforementioned, that would mean that each individual will make a fully informed decision about his/her preference regarding a surrender at the same time. While this might be a theoretically fair assumption, it is very unlikely in reality. Therefore, we support the position that the lapse risk should be calculated on a portfolio basis.

Furthermore, Insurance Ireland shares the joint industry concern, voiced by Insurance Europe, that only the best estimate is considered as a diminishing factor. As the lapse risk only materialises in cases of surrender, the risk margin would need to be taken into consideration as well. Based on the aforementioned impact of the risk margin, i.e. on long-term business, the exclusion of the risk margin from the calculation of the SCR due to lapse risk is enormous.

g. Non-proportional Reinsurance

Paragraph 5.284

Insurance Ireland and its members can only agree to a certain extent with EIOPA's analysis and oppose its advice to not amend the treatment of non-proportional reinsurance (NP) in the Solvency II standard formula. While the impact of NP is reflected in the catastrophe sub-module of the non-life underwriting risk module, it fails to do so in the premium and reserve risk sub-modules. We consider this to be a technical inconsistency of the standard formula and, thus, a particular threat to SMEs would particularly support SMEs.

The current approach does not reward companies that have sought to reduce their risks through NP. The only alternative to internal models which allows for a proper consideration of NP reinsurance are undertaking-specific parameters (USP). The regulatory burden created by the application process for USPs, again, particularly penalises SMEs – it does not provide for a viable solution. The additional uncertainty about the compatibility of the resulting data requirements on company experience and the nature of some of the covers, including adverse development covers (ADCs), will remain.

Insurance Ireland and its members support an approach whereby the recognition of non-life NP reinsurance would be based on allowing companies to determine the appropriate adjustment factors for NP reinsurance arrangements in force. In this regard, we support the work carried-out by the Reinsurance Advisory Board and suggest adopting the South African Solvency Assessment and Management framework (SAM) into Solvency II.

h. Reporting & Disclosures

Paragraph 7.21

Insurance Ireland believes that the RSR frequency is still at the discretion of the supervisor. A three-year RSR is sufficient and should become the standard, as opposed to simply being an option at the NSA's discretion. This would ensure clarity and a level playing field in the reporting requirements.

We agree to the joined industry views expressed by Insurance Europe that EIOPA's proposal for the possible mandatory assessment by NCAs and communication of the frequency of the RSR to undertakings are a positive development, because it promotes risk-oriented reporting and takes the individual situation of the insurer into consideration. At the same time however, it is not clear how it would work in practice. In case the supervisor obliges the insurer to report more frequently, it is not clear whether the possibility in the future to report an abbreviated report would remain (in line with DA Art 312 (3)).

Paragraph 7.29

Insurance Ireland supports the joined industry position as expressed by Insurance Europe that it welcomes EIOPA's intention to revise the structure and content of the RSR, while it believes that the required contents of the RSR should be fundamentally reviewed.

- As noted in response to the first consultation on reporting and public disclosure (July – October 2019), the reporting requirements were not actually reduced, as information was simply moved from the SFCR to the RSR. And in the current consultation the level of detail of the information required is even increased.
- Throughout the Annex EIOPA states several times that there is further need for granularity and detail, simply stating that "more precise requirements are needed", without further explanation.

Further, the proposal as described in Annex 7.1 is difficult to assess, the - often - conditional wording of the proposals leads to unclarity and increases uncertainty. A proper assessment can only be made with full details and a comprehensive proposal.

EIOPA has recognised potential overlap between ORSA and RSR and would like to avoid duplication between these reports, however how this would be realised in practice is not clear – see for example the comments EIOPA provide in Annex 7.1 regarding Art. 308 System of governance point 4 p. 846-847.

It is not clear whether EIOPA intends to keep only the full RSR report or whether it intends to maintain the option to have an abbreviated RSR (limited to material changes). In case EIOPA decides to go ahead with the moving of several sections of the SFCR to the RSR, it would only result in a reduction of the overall reporting burden if the abbreviated RSR is to be reported.

Paragraph 7.42

Insurance Ireland supports the proposal to amend Art 254 of Solvency II to allow for exemption of group reporting without the condition of exemption of all solo insurance undertakings belonging to that group. Now it should be ensured that a practicable procedure is defined in order to exempt the groups viable over the long term.

Paragraph 7.53

Insurance Ireland supports the proposal to delete template S.05.01 at group level.

Paragraph 7.58

Insurance Ireland supports the joined industry position as expressed by Insurance Europe.

While the industry takes note of EIOPA's proposal to delete the 'changes in other technical provisions', it notes that the proposed deletion will not reduce this burden and will cause issues for undertakings having to make IT systems changes – which will significantly add to costs.

Paragraphs 7.65 – 7.67

EIOPA proposes to add various additional items to the list of assets template. While the current template is already demanding to complete, more information will be requested, and it is not clear for what purpose EIOPA/NSAs will use this information. It is also not clear what "complementary external financial information" EIOPA expects national supervisors to collect to balance this additional burden.

Paragraph 7.68

Insurance Ireland shares the joined industry concerns about solo level additional reporting burden also prove to be applicable when transposed at group level. For example, for (re)insurers that have adopted an internal model to reflect their risk profile, introducing standard formula reporting requirements makes little sense at solo level as well as at group level as capturing the economic reality of the group often requires more sophistication and flexibility.

Paragraphs 7.72 – 7.73

Insurance Ireland welcomes the proposal to keep template S.23.01 unchanged.

Paragraph 7.78

Insurance Ireland supports the joined industry position as expressed by Insurance Europe: While the industry takes note of EIOPA's proposal to delete S.23.02.04.03 from template S.23.02 on 'excess of assets over liabilities – attribution of valuation differences', it notes that the proposed deletion will not reduce this burden and will cause issues for undertakings having to make IT systems changes – which will significantly add to costs.

Paragraph 7.82

Insurance Ireland supports the introduction of a risk-based threshold.

Paragraph 7.106

Insurance Ireland supports with EIOPA's proposal to keep the template unchanged.

Paragraphs 7.120 – 7.122

Insurance Ireland supports the joined industry position in its disagreement with EIOPA's proposal not to amend the Solvency II legislation regarding the addressees of the group SFCR. This inconsistency would mean that the proposals for splitting the SFCR into two parts at solo level (policyholder and professional public) would be useless. The industry does not understand the logic behind

EIOPA's decision, as also in the Single SFCR the addressee orientation is reflected. Against this background, the industry suggests making the solo level proposals also applicable at group level.

Furthermore, the industry suggests making the solo level proposals also applicable at group level, and to divide the Group SFCR into a section for the policyholder and a section for the professional public.

Paragraphs 7.137 – 7.139

External audit requirements were discussed and rejected during the development of Solvency II. While only leading to limited benefits, the proposals would have significant additional burden and costs across the industry and would also be unworkable within the timetable applicable to 2018 data. Against this background, there should be no introduction of external audit requirements.

The introduction of a minimum measure entails the risk that special national regulations will be introduced. It is therefore questionable why a Europe-wide regulation should be introduced at all.

Insurance Ireland shares the disappointment expressed in Insurance Europe's joined industry position. EIOPA fails to provide clarity on the expectations towards the level of assurance of the audit required. This makes it difficult to have a clear/full overview of the proposals in the area of reporting and disclosure.

Paragraph 7.146

Insurance Ireland supports EIOPA's proposal to remove DA Art 360 (3), and as such no longer requiring the translation of the summary into the official language(s) of the MS where any of the (re)insurance subsidiaries of the participating (re)insurance undertaking, IHC or MFHC has its head office.

Paragraph 7.151

Generally, it is very hard to gain the full perspective of the changes EIOPA is proposing. EIOPA highlights its intention to keep the public disclosure templates unchanged. At the same time however, a lot of changes were proposed during the first wave. EIOPA should be clearer on what changes are due to those changes proposed in the supervisory reporting package (QRTs).

Insurance Ireland agrees to the joined industry position as expressed by Insurance Europe that the QRTs and the public disclosure templates should continue to be closely aligned or the same, to ensure there is no duplication of effort.

Paragraph 7.157

Insurance Ireland supports EIOPA's clarification regarding the single SFCR, making it more attractive for insurers. The splitting into a part for policyholders and a part for policyholders also seems sensible here.

At the same time, we agree to the joined industry position as expressed by Insurance Europe that it notes that EIOPA's proposed multiple deadlines for insurers to publish a single SFCR could be impractical.

The advice on page 465 of the consultation paper suggests that the deadline for production of the policyholder section of a single SFCR will be 16 weeks, whereas the deadline for production of the "professional" (other financial users') section will be 22 weeks. To address this, the industry would propose EIOPA establishes a single, 22-week deadline for production of a single SFCR, thereby avoiding the practical difficulties associated with different deadlines for different parts of the same document.

The industry is disappointed with EIOPA's advice not to allow a single group RSR. The industry notes that a well-structured document can address the concern of the document being too lengthy. Moreover, it would be at the discretion of the parent company to produce a single group RSR, and as such the insurer is aware that the information is shared with several supervisors.

i. Proportionality

Paragraph 8.18

Insurance Ireland and its members appreciate that EIOPA considers the proportionality toolbox as presented by the Dutch Insurance Association (VVN) and Insurance Ireland in their joined discussion paper "A proportionality toolbox for Solvency II"[5] (2nd bullet of the paragraph). Unfortunately, the suggestions made in the paper are fully misinterpreted as creating a Solvency II "light regime". This assumption is incorrect.

A major obstacle in the proportionate application of Solvency II is the burden put on small and medium-sized entities (including captives and new market entrants such as InsurTechs) in the application and proof of eligibility for the application of Solvency II requirements in a way which is proportionate to the nature, scale and complexity of their inherent risks. In response to this observation, VVN and Insurance Ireland proposed that a certain set of measures might apply to an eligible group of small undertakings by default. As correctly stated in this consultation, these measures would not lead to lower own funds requirements but to a decrease of the administrative and compliance burden.

Furthermore, it is crucial to note, that the application of Solvency II in a proportionate way by default can be challenged by NCAs. In cases where the NCA proofs that the nature, scale and complexity of the risks inherent in a company are disproportionate to the measures of the proportionality toolbox, the NCA might request the insurer to comply with the regular Solvency II provision.

Thus, the approach taken in the Solvency II toolbox, suggested by VVN and Insurance Ireland, does neither exempt insurers from supervisory oversight nor from appropriate consumer protection. As a consequence, we do not understand why EIOPA and NCAs consider the approach a limitation of the scope of Solvency II.

Paragraph 8.28

The Dutch Association of Insurers and Insurance Ireland consider that the EIOPA statement in paragraph includes the Dutch-Irish proposal for a proportionality toolbox. In contrast to EIOPA's statement, the proportionality toolbox proposed by the Dutch Association of Insurers and Insurance Ire-

[5] https://www.insuranceireland.eu/media/VVV-DiPa%20Solvency_II-07_FINAL.pdf

land is not "primarily based on the size of the insurance company" and does take sufficient account of the individual risk profile of the insurance company.

The toolbox dependents on the nature, scale and complexity of the risks and considers, e.g. the type of insurance products. Insurers which sell class 10 (Motor vehicle liability), liability class 3 (Road transport liability), class 11 (Aircraft liability), class 12 (Liability for ships), class 13 (General liability), class 14 (credit) and class 15 (suretyship), unless these are ancillary risks, are not eligible for applying the toolbox automatically. In contrast to our ideas, the EIOPA proposal in paragraph 8.44 does not mention other criteria than size.

Furthermore, it needs to be clarified that the idea of a proportionality toolbox aimed at smaller and less complex insurers is not replacing the general application of the principle of proportionality as such. The aim is to provide for more consistency of the application of the principle across the EU and to simplify the governance on the proportionate application of Solvency II for insurers and NCAs alike.

Paragraph 8.29

EIOPA considers that "The initial decision would be burdensome for both undertakings and NSAs and the monitoring of the decision would be very difficult considering the reduced supervisory reporting in place." EIOPA is proposed reducing reporting requirements and introduced a "basic" set of QRTs in its previous consultation on reporting and disclosure. Although EIOPA's proposal for a "basic" set of QRTs involves different QRTs than the Irish-Dutch proposal, the concept is the same. However, we do not believe that the identified basic QRTs are appropriately narrowed to fit its own definition.

Paragraph 8.30

EIOPA states that the SME definition "did not had in mind regulated and supervised activities where policyholders' protection is at stake". This is true, the European Commission's definition is general. It is, however, possible to apply the definition in making rules for small and midcap corporations, as it has been done in the Prospectus Regulation (where investor protection is at stake) and in MiFID/MiFIR (where investor protection is also at stake, with particular attention to retail investors).

The Dutch Association of Insurers and Insurance Ireland do not propose a similar separate regime, but we propose a toolbox for smaller and less complex insurers. This "Insurance SMEs" insurers with, usually, relatively small numbers of staff and relatively small budgets should not be exposed to a disproportionate burden of proof on the application of the principle of proportionality as such. The SME definition, therefore, seems to be less relevant but appropriate to us.

Paragraph 8.31

The Dutch Association of Insurers and Insurance Ireland agree to EIOPA that the proportionality principle should not lead to a one-size-fits-all approach but should rather provide for a proportionate application of the full Solvency II framework in accordance with nature, scale and complexity of the risks inherent in the respective undertaking. However, a differentiation might be necessary in terms of the governance around the application of proportionate measures, i.e. for smaller and less complex insurers. Therefore, we propose a set of predefined measures by default to smaller and less complex insurers to improve the proportionate application of the regulatory provisions on the principle of proportionality itself. Eligible insurers to apply our proportionality toolbox are determined at a combination of relatively small size (up to € 50 mn) and less complex insurance products (see our comments on para. 8.28).

Paragraph 8.32

The Dutch Association of Insurers and Insurance Ireland agree to the EIOPA observation expressed in the earlier consultation on reporting and disclosures that the fundamental problem is that proportionality only works if and when the NCA takes the initiative to introduce proportionate measures. Some NCAs have done that and some have not. EIOPA's proposals do not solve this fundamental problem.

Therefore, the Dutch Association of Insurers and Insurance Ireland have taken the initiative to support the practicality and governance on proportionality more explicit in the legal texts themselves. A proportionate application of Solvency II should be about the nature (of risks insurers ensure), scale (of which size in terms of premium income and technical reserves is a good indicator), and complexity (of the organisation and its products). Our proposed proportionality toolbox has major benefits for policyholders, because (1) we do not propose a reduction in capital requirements, so the policyholder is still protected and (2) it would result in lower costs for the insurer and thus indirectly and over the longer term, lower premiums for the policyholders.

Paragraph 8.33

Insurance Ireland and its members strongly support EIOPA's advice to maintain Article 4 and to reinforce a proportionate application of Solvency II across all three pillars.

As laid down in our comments on paragraph 8.18, it will be crucial to ensure proportionality across the system as such, including the application of the principle of proportionality as such. We consider a "toolbox"-approach a suggested by VVN and Insurance Ireland as a well-tailored measure to ensure that smaller and less complex insurers can apply Solvency II in a proportionate manner unless challenged by the respective NCA. The reversed burden of proof would mean a significant improvement for the application of Solvency II.

Furthermore, we believe that defining the toolbox and the eligibility thresholds for its application by default will fundamentally improve the consistency of the application of Solvency II and foster regulatory and supervisory convergence.

In the analysis presented at its workshop on the Solvency II review in Frankfurt on 15th July 2019, EIOPA concluded that the proportionate application of Solvency II across the EEA is inconsistent. Therefore, we cannot follow EIOPA's opposition to improve a shortfall which the authority identified itself.

Paragraph 8.44

Insurance Ireland and its members welcome EIOPA's decision to review the thresholds of Article 4 Solvency II. However, we strongly suggest following policy option 2 (paragraph 8.41) instead of the chosen option 5.

EIOPA commits itself to increase consistency and regulatory convergence across the EU. Therefore, we cannot understand why EIOPA is suggesting increasing national discretion with regards to the application of Solvency II. It is not comprehensible why the EU supervisory authority is assessing the EU single market for insurance as 28 separate markets. Instead of regulatory and supervisory convergence, EIOPA is fortifying national boundaries. Insurance Ireland and its members fail to under-

stand why an insurer with the same risk profile (nature, scale and complexity of risks) is treated differently depending on the location of its headquarters.

Already with its suggestion to support the existing national discretions with respect to the application of the reporting & disclosure requirements of Article 35 Solvency II, EIOPA undermines the consistency of Solvency II. Insurance Ireland and its members strongly believe that EIOPA should stop the national piecemeal approach currently maintained in the common Solvency II framework and calls on the authority to develop a truly European approach to proportionality.

Paragraph 8.45

Insurance Ireland strongly agrees with the first sentence of the paragraph regarding technical provisions as the first line of defence in consumer protection. However, we could not disagree more with the proposal of an empowerment for Member States leading to an inconsistent application of Solvency II across the EU.

Paragraph 8.110

Insurance Ireland and its members strongly support a more proportionate application of Solvency II. We believe that a non-exhaustive list of measures to increase the proportionality of pillar 1 calculations should be developed.

The measures on this list could be used as examples and could facilitate the work of NCAs with regard to eligibility and appropriateness of certain tools. In line with the idea of the proportionate toolbox, we strongly support such an approach. Along the same lines, EIOPA could be tasked with collecting best practices of NCAs applying Solvency II proportionately and make these best practices available to all NCAs.

Paragraphs 8.173

The Dutch Association of Insurers and Insurance Ireland strongly support a more proportionate application of Solvency II. We believe that a non-exhaustive list of measures to increase the proportionality of pillar 2 requirements should be developed.

The measures on this list could be used as examples and could facilitate the work of NCAs with regard to eligibility and appropriateness of certain tools. In line with the idea of the proportionate toolbox, we strongly support such an approach. Along the same lines, EIOPA could be tasked with collecting best practices of NCAs applying Solvency II proportionately and make these best practices available to all NCAs.

Paragraph 8.174

Our impression of the EIOPA suggestions is that the combination of Management Board member and key function holders should only be allowed when certain conditions are met. This will lead to avoidable discussions with the NCA and thus inefficiencies on both sides. Given the particular importance to ensure the availability of sufficient risk management knowledge at decision making level and to ensure a clear risk governance (including responsibilities and accountabilities). We would like to emphasize that a model where the CRO is key function holder and a Board member, is an appropriate and compliant model, provided the other management board members can effectively challenge the CRO.

In connection with paragraph 8.178, the Dutch Association of Insurers and Insurance Ireland would like to note that we propose that non-life insurers with a maximum of € 50 mn premium income, which do not insure risks class 10 (Motor vehicle liability), liability class 3 (Road transport liability), class 11 (Aircraft liability), class 12 (Liability for ships), class 13 (General liability), class 14 (credit) and class 15 (suretyship), unless these are ancillary risks, should only be required to have an actuarial function (either outsourced or in-house) if they sell insurance contracts with a duration of more than 4 years. Life insurers, however, should always have an actuarial function.

We consider this approach an explicit example for the proportionate application of the Solvency II system of governance (art. 41(2) + recital 31 of the Solvency II directive 2009/138/EC).

Furthermore, the Dutch Association of Insurers and Insurance Ireland note that, in accordance with art. 45(2) of the Solvency II Directive, the ORSA process explicitly must be proportionate. We, therefore, propose a template for a proportionate ORSA, which we source from the Central Bank of Ireland (the Low/Medium Low ORSA Template) should apply to insurers with a maximum of € 50 mn premium income, who do not insure risks class 10 (Motor vehicle liability), liability class 3 (Road transport liability), class 11 (Aircraft liability), class 12 (Liability for ships), class 13 (General liability), class 14 (credit) and class 15 (suretyship), unless these are ancillary risks.

According to the EIOPA Guidelines on ORSA (EIOPA BoS 14/259, paragraph 1.4), the insurer should decide how to perform the ORSA given its nature, scale and complexity of the risks. We believe that this proposal is a good way to bring this proportionality for the large number of smaller insurers in the EU to life in practice. It will significantly help guiding these insurers to create a high quality, yet proportionate, ORSA. The standardisation of the measures would further enhance convergence and transparency in the proportionate application of Solvency II.

Paragraph 8.175

The Dutch Association of Insurers and Insurance Ireland would like to highlight the dependency of the EIOPA proposal on the conditions which will be set in the subordinated regulations on Solvency II (level 2 and level 3).

Notwithstanding this assessment, the Dutch Association of Insurers and Insurance Ireland believe that the combination of key functions, a combination of key functions with operational functions and the combination of the position/role of key function holders with the position/role of member of the AMSB, as mentioned in this paragraph 8.175, should only be linked to the proposed conditions (b) and (c), and not to condition (a). The reference to condition (a) suggests that combinations are only available to smaller and less complex insurers and insurance groups. Conditions (b) and (c) already sufficiently ensure good governance and at the same time avoid the unjustified implication that these combinations should only be available to smaller insurers. We do not see a rationale for such a limitation.

Furthermore, we believe it is necessary to explicitly clarify that combinations of functions are not inherently problematic. In practice, a very common combination of a key function with another function is the combination of the legal function with the compliance function, where the key function holder for compliance has – in addition to unrestricted reporting capabilities to the AMSB (i.e. to the collective corporate body) – an organisational reporting line to a person that bears equal organisational responsibility for both functions. This could e.g. be the general counsel (or head of Legal & Compliance), who in turn could be (but does not need to be) a member of the AMSB. We consider compliance and legal to be compatible functions.

We strongly believe, and experienced, that governance structures can be established in a way that allows for an operationally independent and sound execution of the function in accordance with the Solvency II principles and ensures the adequate management of conflicts of interests.

Despite the envisaged overall compliance with the principle of ‘3 lines of defence’ not all activities that are part of the key functions under Solvency II fit neatly in this model. For instance, a part of the activities of the compliance function (e.g. advising on compliance with laws and regulations and on the impact of changes in regulation on the operations of the undertaking) could be equally well per-

formed by the legal or the compliance function (or partly by both, depending on the nature of the requirements). Therefore, the compliance function usually has both 1st and 2nd line elements in it. Fundamentally sticking to the model might undermine the practicability and credibility of a governance regime.

Paragraph 8.176

The EIOPA proposal does not include an ORSA. On p. 146-147 of the Impact Assessment, EIOPA says that: "option 2a.2 (standardised ORSA supervisory report for small/less complex undertakings) is deemed to have a negative impact with respect to the objective of promoting good risk management and improving proportionality." The Dutch Association of Insurers and Insurance Ireland cannot EIOPA's justification. In the case of (re)insurers with a small scale, by nature not very difficult products (as we mention in our comments on para. 8.28) and a not very complex structure, a standardised ORSA should not interfere with good risk management and does meet the proportionality principle.

In line with our previous comments, we strongly advocate for a proportionate application of the proportionality principle's burden of proof. For the aforementioned insurers with a small scale, by nature not very difficult products and a not very complex structure, we believe, the proportionate application of Solvency II can be significantly improved by reversing the burden of proof.

Paragraph 8.179

As for paragraph 8.175, the Dutch Association of Insurers and Insurance Ireland would like to highlight the dependency of the EIOPA proposal on the conditions which will be set in the subordinated regulations on Solvency II (level 2 and level 3).

Notwithstanding this assessment, the Dutch Association of Insurers and Insurance Ireland believe that the combination of key functions, a combination of key functions with operational functions and the combination of the position/role of key function holders with the position/role of member of the AMSB, as mentioned in paragraph 8.175 of this draft advice, should only be linked to the proposed conditions (b) and (c), and not to condition (a). The reference to condition (a) suggests that combinations are only available to smaller and less complex insurers and insurance groups. Conditions (b) and (c) already sufficiently ensure good governance and at the same time avoid the unjustified implication that these combinations should only be available to smaller insurers. We do not see a rationale for such a limitation.

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Despite the envisaged overall compliance with the principle of '3 lines of defence' not all activities that are part of the key functions under Solvency II fit neatly in this model. For instance, a part of the

activities of the compliance function (e.g. advising on compliance with laws and regulations and on the impact of changes in regulation on the operations of the undertaking) could be equally well performed by the legal or the compliance function (or partly by both, depending on the nature of the requirements). Therefore, the compliance function usually has both 1st and 2nd line elements in it. Fundamentally sticking to the model might undermine the practicability and credibility of a governance regime.

Paragraph 8.181

EIOPA states that "Insurance and reinsurance undertakings may be allowed to perform a less frequent review, up to three years, taking into account the nature, scale and complexity of the risks inherent in their business." The Dutch Association of Insurers and Insurance Ireland believe that this condition should be reverted requiring that the review is performed at least once every 3 years, and more frequently if certain conditions (to be elaborated) are met. The current EIOPA text proposal leaves high uncertainty for insurers and might lead to fragmentation.

Paragraph 8.183

The Dutch Association of Insurers and Insurance Ireland would like to comment that, while we agree that assessing board effectiveness is generally appropriate, we do not believe this should be included in the Solvency II framework. This requirement already follows from general corporate governance/corporate law requirements and compliance is governed through regular corporate law provisions. Inclusion in the Solvency II framework would be an unnecessarily duplication of requirements and could easily lead to a formalistic approach to the review of board effectiveness and the review of the system of governance in general.

Board effectiveness and the effectiveness of the system of governance are monitored on an ongoing basis within the organisation of any insurer, by the corporate bodies, the key functions, and to some extent the external auditor. Moreover, the ORSA process already implies an assessment of the governance system, board effectiveness as well as the regular reporting and disclosure cycle and it also implies that these elements are being assessed. It is not clear to us what value this additional requirement would add.

Paragraph 8.186

Insurance Ireland and its members contributed to the EIOPA consultation on reporting and disclosure requirements launched in June 2019. Overall, we believe that the EIOPA proposals made in this consultation fail to fulfil the aim of a material reduction of the regulatory burden.

From the current state-of-play, these proposals constitute a significant increase in the reporting burden as such. Insurers would be required to make considerable additional efforts for their implementation (including fundamental system adjustments) and application. In light of this assessment, a proportionate application of these additionally burdensome requirements is even more important. In this regard, we are disappointed that EIOPA decided to recommend maintaining the empowerments for NCAs in Art. 35 (6) and (8) Solvency II. In contrast to relying on national measures, we consider an ambitious and stronger approach towards the definition of risk-based thresholds important.

As step in the right direction is for example the definition of core and non-core QRTs. This approach is welcomed. In line with our position on the application of proportionality measures, we suggest reversing the application requirement. Instead of allowing a very limited number of companies to be

exempted, we consider it more appropriate that NCAs may have the option to request this information from insurers if duly justified on an individual basis.

In accordance with the aforementioned, the Dutch Association of Insurers and Insurance Ireland propose to invert the burden of proof in article 35(6-8) of S II. What we mean is a default exemption from quarterly and semi-annual QRTs, unless the insurer has (a) low quality QRTs in the past and (b) a low or unstable solvency position. Article 35(6-8), Solvency II allows this exemption only on condition that the insurer has (a) good quality QRTs in the past and (b) a large and stable solvency position. The consequence is that the NCA has to act (and not the insurer) if it wants to receive these QRTs.

In the proportionality toolbox, the Dutch Association of Insurers and Insurance Ireland propose that deadlines for reporting annual data on a solo basis should be 20 weeks (annually) instead of the current 16 weeks (annually) and 6 weeks for quarterly. Group reporting deadlines should be 12 weeks (quarterly) and 22 weeks (annually). We propose this because that would reduce the time pressure and therefore reduce the bill these SME insurers get from external advisers such as external actuarial consultants and external auditors.

Furthermore, we propose that the SFCR part that is meant for the policyholder should be consumer tested. We are not sure that the items EIOPA proposes to include in the policyholder SFCR can be easily understood a devaluated by policyholders / consumers.

Also, we propose an exemption to EIOPAs proposed “professional” section of the SFCR for insurers who do not have financing from capital markets. That part of the SFCR is mainly of importance for professional and institutional investors and investment analysts. In case an insurer’s bank(s) or reinsurer(s) need this type of information, the insurer could generate the desired information in the context of that bilateral relationship. In case the insurer has no shares outstanding nor any bonds to finance itself, it has no dealings with capital markets and therefore the “professional” part of the SFCR is not needed.

Accordingly, we agree to EIOPA that the consumer section of the SFCR is only relevant where insurers have policyholders who are unaffiliated with the insurer itself, i.e. captives.

j. Group Supervision (including intra-group outsourcing)

Paragraph 9.46 – 9.50

Insurance Ireland agrees to the joined message expressed by Insurance Europe.

We disagree with EIOPA’s numerous (32 in total) proposals for changes in the area of group supervision.

In particular, the proposed additional powers for NSAs to restructure a group, or to choose which company would be designated as the responsible for horizontal groups are overly intrusive and too far-reaching compared to the (theoretical) benefits. Other proposals considered as overly conservative measures are the consideration of EPIFPs and benefits from transitional measures on technical provisions and interest rate as unavailable by default at group level, which does not reflect economic reality; or the broadening of the scope of the minimum consolidated group SCR to insurance holding companies and mixed financial holding companies, which would aggravate the existing weaknesses of its design.

While there may be a need to improve convergence of supervisory practices, this should not be achieved by changes to the legislation, but more appropriately through the supervisory handbook, workshops, colleges of supervisors, etc. These tools also foster dialogue between NSAs, and between EIOPA and NSAs, and allow to understand why and how in some cases divergent practices are justified by the specificities of particular groups.

In addition, there is no need for new clarifications on definitions and additional requirements where no specific issues were reported and the only justification is purely theoretical/hypothetical. Any change could result in costs and burden, and therefore changes should only be made when there is strong evidence that changes are necessary and justified on a cost/benefit basis. When specific issues occur, they can already be solved by the NSAs and the supervisory colleges ad hoc.

When extending group supervisory requirements in any way, there is a risk of legal inconsistencies across financial sectors. It is important that regulation regarding groups is consistent with the legal framework of financial conglomerates and with its equivalence in banking regulation.
In view of the proposed amendments regarding group own funds and group solvency it is crucial that the potential effects of these amendments are considered together with effects of amendments on solo level.

Paragraph 9.501

Insurance Ireland and its members agree to EIOPA that clarity about group governance is important. The role of the AMSB plays a central role in this respect. In addition to the issue highlighted by EIOPA about the internal control mechanisms and the ultimate responsibility of the parent undertaking, we would like to highlight the importance of amendments to the existing treatment of intra-group outsourcing.

The Solvency II outsourcing requirements apply to each outsourcing agreement notwithstanding if the receiving company is controlled by the group of the insurer or a fully external service provider. Insurance Ireland believes that the same treatment of intra-group and external outsourcing is not justified. The service provider, as part of a group, is part of the regulated organisation which is responsible for the implementation and execution of the internal control and management functions across the group – in accordance with EIOPA’s advice regarding the ultimate responsibility of the parent undertaking’s AMSB.

As a result of this situation, the potential risks associated with the outsourcing of a function or a service differs significantly between intra-group outsourcing and the outsourcing to external partners. Solvency II already provides for strict requirements for the internal control, risk management and reporting for the regulated group. The group-wide systems are applied consistently across the group – including internal service providers and the outsourcing company. The group-wide application of a group-wide management system includes aspects which are in focus of the Solvency II outsourcing requirements, e.g. IT security, data protection, etc. Automatically, this leads to a consistent data protection or contingency planning. By principle, the strategy of the outsourcing company and the service provider are subject to the same coordinated strategic approach across the group. As a result, unilateral arbitrary behaviour and the associated risk of such behaviour are eliminated.

Finally, the supervision of the group by the competent authority leads to a consistent supervision of both the outsourcing entity and the service provider. The consistent group supervision under direct Solvency II supervision, or Solvency II equivalence, ensures regulatory compliance with the standards of Solvency II. This lowers the risk associated with an outsourced activity even further as not only the

outsourcing entity's compliance with the outsourcing requirements but also the service provider is included in the Solvency II group supervision.

k. FoS/FoE

Paragraph 10.1

Insurance Ireland and its members strongly support the further integration of the EU single market for insurance as well as regulatory and supervisory convergence therein. Insurance Ireland believes that the future of cross-border supervision can be significantly improved. The Solvency II review is an opportunity to make crucial steps in this direction. Fair competition, a regulatory level playing field, consistent supervision and consumer protection must be the guiding principles on this journey.

The freedom to provide services and the freedom of establishment are fundamental principles that led to the creation of the European single market – including the one for insurance. The integration of the market over the last decade was significant increasing the provision of protection, consumer choice and competition. The introduction of the application of Solvency II in 2016 was an important milestone of the integration process. The upcoming review should aim to further foster this development.

Despite the application of Solvency II, a limited number of companies still failed. Notwithstanding the individual consumer detriment and potential hardship, it has to be noted that the overall impact on the EU market for insurance was minimal. Nonetheless, Insurance Ireland and its members strongly advocate for enhanced regulatory convergence and supervisory cooperation to ensure a consistent consumer protection across the EU.

Since the creation of the single market, the number of insurance policies managed across EU internal borders increased steadily. The integration of the market for insurers does not only increase competition but also the availability of cover for EU citizens and the economy as well as consumer choice. A very small share of this cross-border business as part of the aforementioned insolvencies.

Some Member States increased the pressure on cross-border business models. It is important to note that the failing insurers were concentrated in a small number of Member States. The failure of these companies does not put Solvency II as such or the cross-border business model in question. The main reasons for the companies' failures were the inconsistent application of the common supervisory rules by the respective NCAs and unsustainable business models. These inconsistencies undermine the credibility of Solvency II and the European single market for insurance. It allows unsustainable businesses models to maintain in operation – which must be prevented.

However, the recent initiatives by some Member States limiting the freedom to provide services and implementing protectionist measure must not be accepted either, as it is an approach that goes against the fundamentals of the European Project. Instead, Insurance Ireland and its members strongly believe that the future of the European insurance market is more Europe and not nationalism and separation. Therefore, a consistent application of Solvency II, an increased cooperation between national competent authorities and Member States as well as more transparency are the right approach to solve these problems.

The proposals EIOPA provides in this consultation are mainly focused on lifting the provisions of EIOPA decision EIOPA-BoS-17/014 to a regulatory level. Even though we support the intention of EIOPA, we do not believe that these steps will substantially improve the quality of supervision in some

Member States. Furthermore, the EIOPA proposals fail to use the opportunity presented by the Solvency II Review to significantly increase supervisory convergence.

It goes without saying that compliance with Solvency II from Member States, NCAs and the industry must be ensured. To foster the compliance, we believe that EIOPA should be empowered to run peer reviews and other assessments more frequent and more independent. We further encourage the authority to use their existing rights to force NCAs compliance.

EIOPA identified the lack of cooperation between NCAs as one of the key threats to the consistent application of Solvency II. The authority set-up cooperation platforms in which, similar to supervisory colleges, NCAs should exchange information and coordinate their policies. This cooperation should be encouraged and supported in a tangible way. The platforms should not be seen as a one-way road. As the conduct supervision is part of the mandate of the host NCA (the NCA of the market where the policyholder is located), information on market developments and conduct need to be exchange as well. The formalisation of the platforms in the recent ESA-Review was an important step. The respective discussion, however, highlighted a certain tendency to penalise smaller markets. This must be avoided under all circumstances. It is indispensable that any measures in this respect are applied consistently across the Union. Otherwise consumer protection, fair competition and market stability will be harmed.

The cooperation and exchange of information between NCAs is already a key pillar of an increased transparency of cross-border insurance provisions.[6] Other measures could aim at making the market situation in the EU clearer and prevent regulatory forum shopping. An example for such a measure is a register for on-going license application processes. If implemented such a register could 1) avoid that companies run various licensing processes at the same time and 2) go from one Member State to the other to look for the easiest access (*"jurisdiction shopping"*).

Additional value could be created if such a register allows for the exchange of information on licensing processes including reasons for the declinature of a license. In its consultation, EIOPA picks this idea up and suggests that any withdrawn are rejected application should be highlighted in an authorisation process (paragraph 10.20). Insurance Ireland supports this idea.

In addition, the already existing list of compulsory insurance products per Member State and the underlying legal requirements (Art. 179 Solvency II) could be enhanced. Public availability of this list and the addition of specific supervisory measures, which might apply, can increase the transparency across markets. Notwithstanding the tools which might be envisaged, it is important that they are applied consistently and do not harm a particular market or business model.

Finally, Insurance Ireland and its members strongly suggest that the governance under which the supervisory platforms are operated is generally reviewed. We suggest that the EIOPA Hub for data exchange is transformed into a fully functioning platform allowing for individual digital supervisory platforms for the supervision of cross-border insurers. The ECA report highlights the value of supervisory platforms as ad-hoc mechanism. We share this assessment. However, the platforms are only created in situation where a certain deteriorating situation already appeared and a consumer threat is likely. A more consistent establishment of platforms for cross-border supervisory purposes would be appreciated. EIOPA highlighted the immense resources necessary from EIOPA and all concerned NCAs to run the platforms. Therefore, Insurance Ireland suggests that instead of physical platforms and an exchange of information based on individual formal requests, digital supervisory platforms are developed which allow an effective and efficient engagement of EIOPA and all concerned NCAs.

[6] The ESA-Review introduces articles 152a and 152b foreseeing increased notification duties and exchange of information in cross-border business cases.

These platforms could be based on the existing EIOPA Hub and the information available thereon. To cater for the needs of a transparent and effective supervision, a sub-set of important data could be shared covering both sides, prudential supervision by home NCAs and conduct supervision by host NCAs. Supported by the development of key indicators based on the available data, transparency and cooperation of EIOPA and all concerned NCAs can be significantly improved. In addition, the digital supervisory platforms can provide for a direct, swift and efficient communication between all concerned NCAs.

With regards to the information available on the platform and the development of the key indicators, we would like to refer to EIOPA's consultation on reporting and. Disclosure. In this EIOPA justifies the increased granularity of the requested data with the utilisation of regulatory and supervisory technology (RegTech and SupTech). We support the intention of EIOPA as the use of enhanced technological solution could also reduce the regulatory burden for insurers. For the purposes of regulatory supervision of cross-border cases we particularly support the use of RegTech and SupTech to develop the key indicators to be made available on digital supervisory platforms. These indicators should be based on the information available. The indicators will support the ability of all concerned NCAs to assess the situation of an insurer active in their market and could also function as early warning indicators triggering more detailed analyses.

Insurance Ireland and its members are convinced that establishing such platforms would enhance supervisory convergence and consumer protection in the EU.

Paragraph 10.20

Insurance Ireland supports EIOPA's advice to include the information on the withdrawal or rejection of an authorisation in another Member State in the information to be transmitted to the authority. We consider the provision an important part of the existing framework created by the EIOPA decision[7].

Paragraph 10.29

Insurance Ireland and its members support EIOPA's advice that an immediate information of the insurance undertaking to the respective home NCA as well as an information from the home NCA to all involved host NCAs in cases of "material changes" should be included in the Solvency II Directive.

However, it will be important how "material changes" are defined. Already during the discussion on the review of the regulations establishing the ESAs it became obvious that materiality thresholds might present a threat to consumer protection in smaller Member States and the competitiveness of companies stemming from these smaller markets. It needs to be avoided under all circumstances that new regulation leads to an unlevel playing field between different business models or is even discriminating certain markets systemically.

In line with our general position that a certain digitalisation of platforms can significantly transparency without creating an unnecessary burden, such a platform could alert host NCAs automatically about changes to the business model of an undertaking reported by the insurer to the home NCA. Such a solution could also allow host NCAs to assess the individual "materiality" of the change for their market without interfering or undermining the competences of the home NCA.

[7] EIOPA-BoS-17/014

Paragraph 10.38

Insurance Ireland and its members agree to the assessment of EIOPA and the necessity of a coherent supervision of the EU internal market for insurance. We believe that the platforms, which EIOPA established, are an important factor for the supervision of cross-border insurers, in particularly in cases of deteriorating conditions of the insurer. As stated in the ECA audit and repeated by EIOPA, these platforms only provide an ad-hoc measure and, thus, do not contribute to the general consistency of supervision.

Therefore, Insurance Ireland and its members strongly recommend establishing digital supervisory platforms for cross-border supervision. These platforms can ensure a timely information, transparency from home and host perspectives as well as facilitate the exchange between concerned NCAs and EIOPA. An on-going interaction (or at least means to do so) on a specific insurer will help to prevent or mitigate disagreement. A more regular information exchange and less ad-hoc interaction between NCAs and EIOPA will allow for a more efficient resource allocation and earlier awareness of non-preferential conditions, i.e. for consumers.

The proposal to empower EIOPA to intervene in the process by issuing a recommendation and a potential public “name & shame” of non-compliant supervisors might have only a very limited impact and might be too time consuming in cases where a platform and an agreement reached thereon is only foreseen in ad-hoc cases. Therefore, we reiterate our call for a more constant and regular exchange.

Paragraph 10.39

Insurance Ireland supports the proposal by EIOPA to amend the new Article 152 a of Solvency II in a way that all concerned NCAs (home and host) are required to inform each other in cases of deteriorating financial conditions or other emerging risks, including consumer protection risks. As mentioned above, we strongly believe that the creation of digital supervisory platforms can enhance the quality and consistency of supervision consistently.

In terms of detecting deteriorating financial conditions or other emerging risks, including consumer protection risks, platforms provide an ongoing exchange mechanism where involved NCAs can access the information provided by home and host on a regular and efficient basis. Platforms could also facilitate the access of host NCAs to the reports on the outcomes of the supervisory review processes of the home NCA as envisaged by EIOPA in paragraph 10.46 of this consultation.

Furthermore, we believe that the creation of a set of key or early warning indicators can be developed to support the detection of such conditions. The use of RegTech can allow EIOPA to develop these indicators based on the information regularly reported by insurers.

As stated in our general comments, we believe that such platforms can enhance the exchange of information on supervisory information on prudential and conduct supervision limiting the necessity for ad-hoc information requests and interventions. It will allow NCAs and EIOPA to engage earlier than in the current procedure of ad-hoc platforms and, therefore, prevent potential consumer threats more efficiently.

Paragraph 10.40

Insurance Ireland agrees to the EIOPA assessment that an enhanced information exchange on market particularities, special legal and supervisory provisions will strengthen cross-border supervision across the EU.

We believe that a general increase in market transparency would be a major step in this direction. Currently, the Solvency II Directive foresees that a list of compulsory insurances in each Member State and the underlying legal provisions is created. Insurance Ireland suggests that this list (or a similar list) is developed which collects compulsory products as well as other products to which special legal or supervisory provisions apply. Based on this list, NCAs could determine if an insurer operating cross-border is engaging in the provision of such products.

An increased awareness for the special provisions applying in different Member States can improve the supervisory process and might trigger enhanced cooperation between home and host NCA from the beginning.

Paragraph 10.46

Insurance Ireland supports the enhanced cooperation of NCAs and increased transparency in the EU insurance market. We strongly believe that an increased information provision on market particularities, special requirements and other relevant information can improve the quality of supervision already from the start. We further believe that the establishment of a standing communication and exchange channel (i.e. a digital supervisory platform) will support the supervisory convergence significantly.

With regard to the specific proposal by EIOPA, we would like to reiterate our concerns about the materiality threshold in the wording. Already during the discussion on the review of the regulations establishing the ESAs it became obvious that materiality thresholds might present a threat to consumer protection in smaller Member States and the competitiveness of companies stemming from these smaller markets. It needs to be avoided under all circumstances that new regulation leads to an unlevel playing field between different business models or is even discriminating certain markets systemically.

Paragraph 10.54 – Paragraph 10.56

Insurance understands the need for the EIOPA advice for an empowerment of host NCAs to request information from home NCAs/insurance undertakings on the conduct in its market. We understand the need for timely processes and information in the language of the host market.

Against this background, we strongly believe that the primary point of contact for the host NCA should always be the home NCAs. Only in cases where the home NCA fails to cooperate with the host NCAs request, direct requests to insurers might be foreseen. However, all of these information requests should be duly justified and sufficiently defined. With regards to the requirement of providing the information in the language of the host market, potential time necessary for translations needs to be taken into account in the determination of the appropriate timeframe for replying to the request.

The information made available might also be provided on potential digital supervisory platforms in order to allow all involved NCAs access to the data. In cases where the host NCAs takes supervisory

action or engages in processes relevant to the supervision of the insurer, the according outcomes should be made available to all concerned NCAs through the platform.

Finally, Insurance Ireland strongly believes that host NCAs should share relevant information resulting from its role as a conduct supervisor with all concerned supervisors (all NCAs supervising companies active in the market). This information will facilitate the consistency of supervision and allow home and host NCAs to cooperate efficiently to avoid potential consumer threat.

Paragraph 10.59

Insurance Ireland strongly supports the suggestions made by EIOPA. The EIOPA Hub is the starting point for creating appropriate and fit-for-purpose digital supervisory platforms. Notwithstanding our concerns raised in the specific consultation segments regarding the amended reporting requirements, we support the identification of core information to be shared via digital supervisory platforms.

In its consultation on reporting and disclosure, EIOPA justifies the increased granularity of the requested data with the utilisation of regulatory and supervisory technology (RegTech and SupTech). We support the intention of EIOPA as the use of enhanced technological solution could also reduce the regulatory burden on insurers. For the purposes of cross-border supervision we support the development of key indicators supporting the ability of all concerned NCAs to assess the situation of an insurer active in their market. These indicators could also function as early warnings triggering more detailed analyses. The indicators should be based on the information available.

I. Recovery and Resolution

Paragraph 12.47

Insurance Ireland and its members agree that a minimum harmonisation of recovery and resolution frameworks might support the further integration of the EU insurance market and improve market stability and consumer protection across the Union. However, it will be important that the resulting provisions will be outcome focused and do not deteriorate competition in the EU insurance market.

At the same time, it must be ensured that intervention powers are only triggered, where an insurer is in breach of the SCR. Early intervention tools as suggested by EIOPA might implicitly increase the SCR above the fundamental eligibility standard of Solvency II of an SCR of 100. Regular supervisory powers are considered sufficient to allow NSAs to assess the solvency condition and inherent risk of an insurer. A risk-proportionate closer monitoring of the insurer or deeper assessments are not prohibited under Solvency II. However, NSAs should maintain this operational freedom of carrying-out their duties and should not be forced into action.

In general, it has to be noted that EIOPA justifies the need for additional measures with the existence of national initiatives. Solvency II should be the determining standard of what is regulated at EU level – not a regulatory race to the top based on Member State gold-plating and national initiative. The initiative to review and amend the Solvency II Directive where necessary is with EU institutions. Insurance Ireland and its members believe that if such measures will be foreseen, they should be focussed on avoiding disruptive and deteriorating market effects – on national markets and the EU market as such. Therefore, we do not agree that it should be up to the NSAs to decide which companies have to comply with recovery and resolution provisions and in which cases recovery or resolution mechanisms might be triggered. For Insurance Ireland, it goes without saying that wher-

ever there is a financial action triggered (i.e. industry funds made available) public administration has to be ensured (no bridge-funding).

In accordance with the aforementioned, we consider it appropriate that the European Commission takes action where a clear need has been identified. Insurance Ireland and its members consider this need demonstrated for the case of resolution mechanisms and IGS. Even though not subject to this consultation, Insurance Ireland wants to emphasise the importance of the interplay between functioning resolution mechanisms and IGS. Particularly where the cover/compensation of consumers is considered to be more appropriate based on portfolio-continuity, resolution schemes are indispensable. Therefore, Insurance Ireland strongly believes that the appropriate measure for protecting life insurance policyholders is a well-functioning resolution mechanism rather than an IGS (see also paragraph 12.133).

We agree to EIOPA that a minimum harmonisation of key elements (e.g. resolution powers, funding models and scope) is necessary to avoid consumer detriment and competitive disruption. We, therefore, believe that a minimum harmonisation of the criteria under which insurers become subject to a (recovery and) resolution framework must be harmonised as well.

Regarding the functionality of resolution mechanisms in cross-border cases, we agree to EIOPA that the respective fora (i.e. college of supervisors and supervisory platform) need to be in a position to exchange information and come to joint conclusions on the resolvability or liquidation of an insurer as well. The aforementioned minimum harmonisation is the basis for this common understanding. EIOPA's role in the colleges of supervisors and in the supervisory platforms is defined in the Solvency II Directive. Notwithstanding the amended mandate discussed in section 10 of this consultation, Insurance Ireland sees no need to amend the mandate.

Box 12.2

In its analysis, EIOPA refers particularly to the specific situation of reinsurers. Insurance Ireland supports the joined industry position as expressed by Insurance Europe. Accordingly, we would like to highlight the following:

- Reinsurance is a business-to-business activity, with limited policyholder protection implications, and there is no evidence or history of it contributing to systemic risk or financial instability. The application of regulation to reinsurance needs to be proportionate.
- Regarding entity-based systemic risk, the 3 biggest reinsurers in the EU combined total assets represent 0.1% of the total financial assets in the world (as computed by the FSB in the 2018 Global monitoring report on NBFI). The 10 biggest global reinsurance groups represent no more than 0.3% of the total financial assets in the world.
- Regarding activity-based systemic risk, reinsurance is primarily about property, casualty and biometric risks. Those risks are not linked to the financial cycle and therefore traditional reinsurance activities are not subject to "bank-run" or risk of fire sales. Climate change does not either create systemic risk for the (re)insurance sector insofar as the related risks will fully materialize over the longer term, thus allowing (re)insurers to manage their exposure to transition risk and to adjust the pricing of their policies to the changing cost of risk in a timely manner.
- Regarding behaviour-based systemic risk, reinsurance activity covers in particular long tail risks and thus, from an ALM perspective, reinsurers invest through the cycle and are not prone to herding behaviour.

Paragraph 12.48

Insurance Ireland agrees to EIOPA's description of the minimum harmonisation of recovery and resolution regimes.

Paragraph 12.77

Insurance Ireland agrees to EIOPA to the extent where such measures would create significant added value. Given the different measures already in place, i.e. the ordinary supervisory review, ORSA and the existing Solvency II recovery plans (in breach of the SCR), this will have to be assessed carefully. From our perspective, this can only be the case where the failure of the insurer would lead to deteriorated or disrupted market – national or cross-border. It needs to be avoided that the additional provisions lead to overlaps or duplications of parts of the existing provisions (the aforementioned and regular reporting).

Paragraph 12.78

Insurance Ireland agrees to EIOPA's assessment that the scope of the potential future recovery provisions requires more work and a careful determination. We disagree that it needs to cover a very significant share of each market. In contrast to the EIOPA advice, we believe it should be limited to insurers where a failure would have a significant – detrimental or disruptive – effect on markets (national and cross-border).

In order to ensure regulatory and supervisory convergence, we strongly oppose EIOPA's ideas to give full discretion to NSAs in determining which insurers will be subject to the new provisions. Such an approach might lead to regulatory arbitrage and inconsistencies across markets. We, therefore, strongly support EIOPA's advice to develop clear and harmonised criteria for the assessment.

Paragraph 12.79

As per our comments on paragraph 12.79, we strongly oppose EIOPA's ideas to give full discretion to NSAs in determining which insurers will be subject to the new provisions in order to ensure regulatory and supervisory convergence. Such an approach might lead to regulatory arbitrage and inconsistencies across markets. We, therefore, strongly support EIOPA's advice to develop clear and harmonised criteria for the assessment.

With regards to the criteria suggested by EIOPA in table 12.4, we believe that further efforts are necessary to develop clear and comparable criteria for the assessment carried-out by NSAs. In line with the general principles of Solvency II, we believe that nature, scale and complexity should also play a role in the determination if an undertaking becomes subject to the potential new matters. We also would like to emphasise that the size of a company neither in total nor in relative terms to the national market should be a determining factor. Furthermore, we are very disappointed that EIOPA reiterates its previous position that the place where business is carried-out and if it is carried-out cross border is a risk-determining factor. With its suggestion that a materiality threshold for cross-border business should be foreseen, EIOPA repeats a position discriminating smaller markets and the protection of policyholders therein.

Paragraph 12.80

Insurance Ireland and its members appreciate the ongoing efforts of EIOPA to emphasise the principle of proportionality in this section of the draft advice. In line with the fundamental principles of Solvency II, we believe that the whole Solvency II regime needs to be applied in a proportionate manner depending on nature, scale and complexity of risks and consistently across the EU. There-

fore, we consider the empowerment to NSAs to ensure a proportionate application of the new provisions critical. Furthermore, we believe that it must be ensured that the new provisions as such are developed in a sound and sensible manner. It has to be carefully assessed which level of detail and frequency is necessary to create the added value envisaged, without creating unnecessary burdens.

In order to ensure such an approach, a clear proposal for future provisions would be the first step before determining their proportionate application.

Paragraph 12.98

Insurance Ireland and its members strongly oppose the implementation of any early intervention measures triggered with an SCR above 100. Such provisions would add an additional layer of implicit capital requirements in addition to the SCR and MCR. It further would undermine the credibility of the SCR as the determining factor for the financial condition of an insurer.

Paragraph 12.99

Based on our fundamental opposition towards undermining the Solvency II framework by introducing early intervention powers, we also oppose the specific measures proposed by EIOPA. We strongly believe that NSAs have the right means at hand to fulfil their mandate and gain information on a case-by-case basis.

Paragraph 12.100

Notwithstanding our comments above, Insurance Ireland agrees that such fundamental intervention rights need to be clearly justified. A major problem might arise regarding the retroactive application of these rights and where there are conflicting legal provisions in place.

Paragraph 12.104

The implementation of resolution mechanisms and provisions requires an appropriate system of governance. Therefore, we agree to EIOPA's assessment that the according responsibility needs to be clearly assigned. The question if the responsibility is assigned to an existing body (e.g. NSAs) or a new body is created will depend on national structures. In any case it will be important that the authority in charge is free of any conflict of interest and appropriately established to carry-out its duties independently.

Paragraph 12.109

Insurance Ireland and its members believe that a resolution mechanism should have the primary objective of protecting public interest. In this respect the points listed by EIOPA are very valuable to assess the impact of an ordinary administrative procedure in the public. A potential resolution mechanism cannot be assessed isolated. The interaction of resolution mechanisms with the general safeguards of Solvency II and the parallel discussion on Insurance Guarantee Schemes will need to be taken into account. In addition, existing insolvency procedures and other relevant legal provisions will need to be considered.

Paragraph 12.133

The recently implemented Dutch resolution mechanism might provide a good example for such a for a practicable and balanced approach. The guiding principle of the resolution mechanism is that no

creditor is worse off with the resolution than with an ordinary liquidation procedure. In contrast to an IGS or the Bank resolution schemes, the Dutch system is focused on the continuity of policies. In order to ensure this continuity, the Dutch National Bank (DNB) has four major tools: a bail-in tool, the sale of business, installation of bridge institutions and asset separation (the latest only when applying one of the other tools).

The overarching aim of the contract continuity is reflected in the policies under which the resolution mechanism applies. The fundamental condition for the application of the resolution mechanism is that a public interest test is passed. The mechanism applies if it protects policyholders and prevents severe social disruption together with either preventing significant adverse effects on financial markets and the real economy or preventing the use of public funds. In the cases where the resolution mechanism applies the DNB will apply the tools described above to remove potential impediments for the transfer of business and improve the resolvability of the company.

With regards to the scope of the resolution mechanism, Insurance Ireland supports the approach taken by the DNB. Only companies which are likely to pass the underlying public interest test in case of failure are required to fulfil pre-emptive obligations. In order to keep processes efficient, we believe that the potential requirements should be based on the existing provisions without unnecessary duplicating them.

This efficiency needs to be reflected in the funding of the mechanism as well. The Dutch system is slim and efficient. The system foresees an ex-post funding arrangement which explicitly does not cover recapitalisation or absorb losses of the insurer under resolution.

Instead, the funds are collected to cover the administrative costs of the operation, potential operative costs due to the establishment of a bridge institution or compensation where the no creditor is worse off requirement is not met. This approach keeps the running administration costs for the resolution mechanism low and ensures avoids additional costs due to the management of the fund.

Paragraph 12.134

As per our input on Paragraph 12.133, we believe that the example from the Netherlands provides for a reasonable approach to identify insurers which will have to fulfil the respective duties. We strongly believe that this approach also reflects the principles set-out by the Financial Stability Board and the International Association of Insurance Supervisors.

Insurance Ireland agrees to EIOPA’s assessment that the scope of the potential future resolution provisions requires more work and a careful determination. In comparison to our previous input on 12.78, we believe that the scope for the resolution mechanism should be more exclusive and clearly focus on the potential threat.

As for the resolution proposals, we disagree that it needs to cover a very significant share of each market. In contrast to the EIOPA advice, we believe it should be limited to insurers where a failure would have a significant – detrimental or disruptive – effect on markets (national and cross-border).

Paragraph 12.135

Insurance Ireland supports the approach taken by the DNB. Only companies which are likely to pass the underlying public interest test in case of failure are required to fulfil pre-emptive obligations. The according process should take the suggestions from EIOPA into account.

In order to ensure regulatory and supervisory convergence, we strongly oppose EIOPA's ideas to give full discretion to NSAs in determining which insurers will be subject to the new provisions. Such an approach might lead to regulatory arbitrage and inconsistencies across markets. We, therefore, strongly support EIOPA's advice to develop clear and harmonised criteria for the assessment.

With regards to these criteria, we believe that further efforts are necessary to develop clear and comparable criteria for the assessment carried-out by NSAs. In line with the general principles of Solvency II, we believe that nature, scale and complexity should also play a role in the determination if an undertaking becomes subject to the potential new matters. We also would like to emphasise that the size of a company neither in total nor in relative terms to the national market should be a determining factor.

Anticipating that EIOPA is referring to the criteria in table 12.4 of this consultation, we would like to reiterate our disappointment that EIOPA repeats its previous position that the place where business is carried-out and if it is carried-out cross border is a risk-determining factor. With its suggestion that a materiality threshold for cross-border business should be foreseen, EIOPA repeats a position discriminating smaller markets and the protection of policyholders therein.

Paragraph 12.136

In line with our comments on 12.80, Insurance Ireland and its members appreciate the ongoing efforts of EIOPA to emphasise the principle of proportionality in this section of the draft advice. In line with the fundamental principles of Solvency II, we believe that the whole Solvency II regime needs to be applied in a proportionate manner depending on nature, scale and complexity of risks and consistently across the EU.

Therefore, we consider the empowerment to NSAs to ensure a proportionate application of the new provisions critical. Furthermore, we believe that it must be ensured that the new provisions as such are developed in a sound and sensible manner. It has to be carefully assessed which level of detail and frequency is necessary to create the added value envisaged, without creating unnecessary burdens.

In order to ensure such an approach, a clear proposal for future provisions would be the first step before determining their proportionate application.

Paragraph 12.137

In line with the concerns expressed by Insurance Europe we disagree with the proposed power to remove significant impediments to the resolvability of undertakings at the request of the authority. This would mean 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 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 of the Solvency II Directive, 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 are a clear risk that reasonable and efficient measures, like centralisation of processes and systems or intra-group transactions, will not have to be implemented at all or even be reversed.:

- On the one hand, such interventions could 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. Against this background, interventions in a healthy company by an authority should remain an exemption and only take place when absolutely necessary. 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.

Paragraph 12.154

Insurance Ireland and its members agree to the EIOPA opinion that national resolution authorities will need an appropriate set of powers to intervene in cases where failures might present a substantial threat to public interest. We also agree that this set of measures should not be too narrow to allow for effective and efficient processes.

Paragraph 12.155

With regards to the specific measures listed by EIOPA, Insurance Ireland and its members agree to the industry-wide assessment as presented by Insurance Europe:

- Control, manage and operate the insurer or bridge institution. In a situation where the insurer is no longer viable, the power to continue to carry on some of the insurer's business, for example making payments to annuitants would be consistent with policyholder protection. However, the aim should be to establish appropriate adjustments in value, where required, as soon as practicable so as to prevent conflicts of interests arising between different policyholder groups. We agree that control, management and operational powers are necessary, but would point out though that in insurance, establishing a bridge institution is another means to undertake a portfolio transfer.
- Restructure, limit or write down liabilities, including insurance and reinsurance liabilities, and allocate losses to creditors and policyholders, where applicable and in a manner consistent with statutory creditor hierarchy and jurisdiction's legal framework: Buyers of insurance purchase protection against financial losses that are incurred by the occurrence of the insured risk. Insureds pay a premium to mitigate risk, whereas investors take risk to earn a premium. Therefore, insureds are entitled to higher protection in resolution (and liquidation) than investors.
- Stay the rights of reinsurers of a cedent insurer to terminate or not reinstate coverage on the sole ground of the cedent's entry in recovery or resolution: We considers that this resolution power may be appropriate where the cedent enters resolution. It is however important to introduce adequate safeguards. Reinsurers should not be made liable to pay for losses beyond those covered by contracts existing at the time of the loss. Any reinstatement of coverage must be carried out at market prices. In the absence of comparable market prices, the reinsurer should be able to use its existing pricing mechanisms. Reinsurers can provide valuable capacity in off-loading risk. Where the implementation of such a framework creates legal uncertainty or moral hazard risks in the case of recovery this could limit reinsurers' willingness to get involved when firms are in financial difficulty.
- 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 invest-

ments, 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.

Paragraph 12.157

Insurance Ireland and its members agree to the safeguards suggested by EIOPA.

Paragraph 12.158

Insurance Ireland and its members agree that additional safeguards should be foreseen.

Paragraph 12.166

Insurance Ireland and its member believe that more regulatory and supervisory convergence are indispensable to further integrate the single market for insurance and to protect policyholders across the Union. In line with our comments on section 10 on the freedom to provide services and the freedom of establishment, we support EIOPA's suggestion that any potential implementation of a minimum-harmonised resolution mechanism needs to be reflected in the EU-wide framework.

Insurance Ireland believes that the EIOPA Hub and the improved governance on supervisory platforms we suggest, would be well prepared to also support the cooperation of resolution authorities. NSAs will have to take a leading role in the cross-border cooperation, irrespective if the company is operating as a cross-border group or under the freedom of services. For the general supervision as well as for the cooperation of resolution authorities, clear governance requirements as well as slim and efficient structures should be foreseen. As it can be expected that concerned NSAs will have more frequent interaction, the cooperation arrangement for resolution authorities should be linked to that system. In any case, it will have to be ensured that duplications between the regular supervision and the monitoring by the resolution authorities are avoided.

Paragraph 12.167

In line with our comments on section 10, Insurance Ireland believes that a general change in the governance and an information exchange mechanism through the EIOPA Hub should be envisaged. Solutions like the digital supervisory platforms, which Insurance Ireland suggest, can also facilitate the exchange of information between resolution authorities.

In addition to an efficient exchange of information, we believe that the general availability of data can be significantly improved by such an approach.

Paragraph 12.168

Insurance Ireland believes that EIOPA can have a fundamental role in facilitating the work of national competent authorities (both supervisors and resolution authorities). In our opinion it will be one of EIOPA's core task to ensure that the governance and facilities for the cross-border cooperation are in

place. As for the cross-border supervisory process, we further believe that EIOPA should develop best practices and support the work of national competent authorities.

We do not see a role for EIOPA in the legal procedure, yet. Resolution and insolvency procedures are significantly dependent on national provisions (i.e. insolvency law).

Paragraph 12.181

Based on our previous statements and in agreement with the industry position expressed by Insurance Europe, we believe that Solvency II SCR coverage as provided by the directive is by far the most accurate determinant of an insurer's financial condition and of its ability to meet claims to policyholders.

Paragraph 12.182

As per our previous answer, Insurance Ireland believes that an SCR breach is the point of intervention. This is a rule-based trigger.

Paragraph 12.183

Insurance Ireland agrees to the general industry position expressed by Insurance Europe that no new intervention level should be established. To avoid that early intervention powers result in a new predefined intervention level or an implicit new capital requirement, it has to be clearly stated that supervisory intervention should not take place before the SCR is breached (or there is a risk of non-compliance within the next three months).

Paragraph 12.189

Insurance Ireland supports the general industry position as expressed by Insurance Europe.

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 of the Solvency II Directive 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.

Paragraph 12.190

Insurance Ireland and its members strongly oppose the implementation of any early intervention measures triggered with an SCR above 100. Such provisions would add an additional layer of implicit capital requirements in addition to the SCR and MCR. It further would undermine the credibility of the SCR as the determining factor for the financial condition of an insurer.

Paragraph 12.206

Insurance Ireland agrees that adequate and triggers will support the functionality of resolution regimes, i.e. in a cross-border context.

Paragraph 12.207

Insurance Ireland strongly supports EIOPA's position that the decision on a resolution needs to be judgment-based and made on a case-by-case basis.

Paragraph 12.208

Insurance Ireland believes that the triggers should be based on the Solvency II ladder of supervisory intervention. Consequently, the irrevocable breach of the MCR should be the fundamental trigger. A resolution should only be triggered where an ordinary insolvency procedure would also be started.

m. IGS

Paragraph 13.1

Insurance Ireland participated in the separate EIOPA consultation on Insurance Guarantee Schemes (EIOPA-BoS-19-259). Nonetheless, we would like to reiterate the indispensable prerequisites and characteristics for a harmonisation of national guarantee schemes. Furthermore, Insurance Ireland believes in a crucial interplay between insurance guarantee schemes and resolution mechanisms. This holds particularly true for cases in which the sole compensation of claimants does not provide for an appropriate solution in the interest of the consumer. In cases where the protection of consumers demands the continuity of insurance policies, i.e. life insurance, sound, effective and efficient resolution mechanisms must be ensured before any guarantee scheme comes into play.

Therefore, we urge EIOPA to ensure that the following issues are taken into consideration:

Insurance Guarantee Schemes are a valuable measure of last resort of policyholder protection in cases of insolvency. The Irish Insurance Compensation Fund was recently reviewed and adapted to best reflect the needs of the Irish market. We understand and support the initiative of EIOPA to ensure that EU citizens are appropriately covered by guarantee schemes. As the measure focuses on consumers, we believe that the most sensible way for an EU measure would be a "host-approach". This approach provides that every policyholder is covered by the guarantee scheme of his/her Member State of residence. Accordingly, insurers, irrespective of the location of their headquarters, contribute to this scheme in an equitable manner. This approach ensures that the consumer is appropriately covered in accordance with the social and economic circumstances of the country of his/her residence.

Critiques of the host-approach focus on the differentiation between the prudential supervisor in charge (home-supervisor) and the guarantee scheme covering the potential compensation of policyholders (host). We strongly believe that the performance of a public authority – the NCA – should not need to be incentivised. However, as several Member States push for a home-approach, we will discuss the issue. The resulting system requires insurers to contribute to the insurance guarantee scheme in the country where they are located. To allow for a reliable and sustainable fund and risk management, that automatically means that the compensation of policyholders in case of an insolvency can only be the one applicable in the home jurisdiction of the insurer. If not harmonised to a certain minimum, that might leave the policyholder with insufficient compensation. Furthermore, it could only apply to policies which are covered by the home guarantee scheme of the insurer. In addition to the consumer protection aspect, there might be a competitive issue about the home-approach. An inconsistent system of national guarantee schemes might create regulatory arbitrage. Companies, i.e. those with unsound financial positions, might be incentivised to search for the

“cheapest” system. To avoid such a situation and create a certain consistency in this safety-net for consumers, a minimum harmonisation is indispensable.

The features of this minimum harmonisation should, at least, cover the following:

- Products and policyholders in scope,
- Minimum maximum compensation levels,
- Funding mechanism and minimum contribution.

The definition of the products in the scope of an IGS is one of the crucial determining factors. Insurance Ireland strongly believes that the minimum harmonisation should focus on compulsory non-life consumer products, that are consistent across all EU member states, MTPL, being the prime example.

Non-life insurance products are usually short-term contracts and the underlying risk does not depend on the personal condition of the insured (health status, age, etc.). For these products, replacement is, usually, a quick process. The compensation through an IGS can, therefore, focus on current claimants This makes the determination of eligible people to be covered by the IGS simpler. The scope should further be limited to natural persons for the purpose of the minimum harmonisation. Natural persons are, usually, most vulnerable. Even small companies can normally acquire specialised consultancy services.

In order to ensure, that people are appropriately compensated notwithstanding where they are domiciled in the European Union, a minimum level for the maximum cover should be mandatory for all national guarantee schemes. Prices, costs of living and replacement costs differ significantly across the Union. A policyholder residing in a Member State with higher costs of living should not face financial hardship due to the location of the head offices of the insurer.

The crucial factor for fair competition of insurers across the Union is the funding mechanism and the funding level. In order to not distort competition and ensure swift payments to consumers a certain minimum level of pre-funding might be defined (ex-ante funding). In addition, a certain minimum contribution as share of the business written or be some other risk-based contribution by an insurer might be defined. These two factors will ensure that incentives for forum shopping and regulatory arbitrage are limited.

For **life insurance products**, Insurance Ireland and its members agree to the EIOPA assessment that contract continuity is crucial. We further agree with the idea that mechanisms to continue insurance policies might be beneficial. However, we do not agree that an IGS is the right form. In contrast to the EIOPA consultation of July 2019, we believe that a practicable and efficient resolution mechanism is more appropriate. With respect to the proper design of such a mechanism, we refer to the specific chapter of this consultation and our according contribution.

Brussels, 15th January 2020