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Public consultation on technical advice on the implementation of the new proportionality framework under Solvency II

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Introduction

The European Insurance and Occupational Pensions Authority (EIOPA) has published a consultation paper on technical advice on the implementation of the new proportionality framework under Solvency II. Stakeholders are invited to provide their feedback on the consultation paper by Friday 25 October 2024. The feedback received will be taken into account in the finalisation of the draft technical advice, which is due to be submitted to the European Commission by 31 January 2025.

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

To submit your comments, please click on the blue “Submit” button in the last part of the survey. Please note that comments submitted after Friday 25 October 2024 or submitted via other means will not be processed. In case you have any questions please contact SolvencyIIreview@eiopa.europa.eu.

Publication of responses
Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.
Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA’s rules on public access to documents.

Declaration by the contributor
By sending your contribution to EIOPA you consent to publication of all non-confidential information in your contribution, in whole/in part – as indicated in your responses, including to the publication of the name of

your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

Data protection
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General information on the respondent

* Name of the stakeholder

Gesamtverband der Deutschen Versicherungswirtschaft e. V.

* Type of stakeholder
  - ○ Insurance or reinsurance undertaking
  - ◉ Industry association
  - ○ Consumer protection association
  - ○ Academic
  - ○ Other

* Jurisdiction of establishment

Germany

* Name of point of contact

Elias Hartmann

* Email address of point of contact

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* Please provide your explicit consent for the publication of your response
  - ◉ Yes, publish my whole response
  - ○ Yes, publish a part of my response
  - ○ No, do not publish my response

Questions

General comments

* Q1. Do you have general comments on the consultation paper?
  - ◉ Yes

No

Comments field

The German insurance industry appreciates the opportunity to provide input on EIOPA's draft technical advice concerning the new proportionality framework under Solvency II. The proposed methodology for non-small and non-complex undertakings (non-SNCUs) and related groups has the potential to enhance regulatory consistency. However, the following key concerns and recommendations from the German industry are raised:

Reducing administrative burdens and simplifying implementation

At European level, there are increasing efforts to reduce bureaucratic hurdles and regulation, especially with a particular focus on small and medium-sized enterprises. Among others, this is reflected in the following statements:

• Ursula von der Leyen's Political Guidelines for the next European Commission: "Each Commissioner will be tasked with focusing on reducing administrative burdens and simplifying implementation: less red tape and reporting, more trust, better enforcement, faster permitting. […] We also need to better support firms whose size and financing capacity cannot be compared to large corporations. They are often the target of killer acquisitions from foreign companies seeking to eliminate them as a possible source of future competition. We will introduce a new category of small midcaps and assess where existing regulation applying to large companies is too burdensome, disproportionate or a hindrance to their competitive development."

• Mission Letter for Maria Luís Albuquerque (Commissioner-designate for Financial Services and the Savings and Investments Union): "You will ensure that existing rules are fit-for-purpose and focus on reducing administrative burdens and simplifying legislation. You must contribute to reducing reporting obligations by at least 25% - and for SMEs at least 35%. You should leverage the power of digital tools to deliver better and faster solutions. We must listen to all companies and stakeholders who work on a daily basis to comply with EU legislation. You will organise at least two Implementation Dialogues per year with stakeholders to align implementation with realities on the ground. You will prepare an Annual Progress Report on Enforcement and Implementation for your respective Parliamentary committees and Council formations."

• European Council's Strategic Agenda 2024 – 2029: "To allow businesses to flourish, we will ambitiously reduce the bureaucratic and regulatory burden at all levels, and simplify, accelerate and digitise administrative procedures, including permitting, to meet the needs of a modern, dynamic and consumerfriendly investment environment. We commit to better regulation, including by making the best use of digital government and taking into account the needs of SMEs and start-ups. We will work in an integrated, coordinated and coherent way across all policy areas and put special focus on implementation and enforcement of agreed policies."

• Mario Draghi's report on the future of European competitiveness: "All three examples also point to the need to better consider the size of companies affected by regulation, using appropriate mitigation measures in line with the proportionality principle. SMEs tend to perceive the cost of complying with EU law as greater, also because they are less likely to survive long enough to reap the full benefits of regulation. In 2023, 55% of SMEs flagged regulatory obstacles and administrative burden as their greatest challenge.[…] Uphold proportionality for SMEs and small mid-caps in EU law, including by extending mitigation measures to small mid-caps. The Commission should urgently define the baseline upon which to calculate the already announced cut by 25% in the cost of reporting obligations and fully implement it, while committing to further

reducing it for SMEs (up to 50%). The proposed stress-testing of the EU acquis under the 'evaluation bank' [proposal 1] could support such reduction. The Commission should also postpone initiatives which are found to be particularly problematic from a competitiveness or innovation standpoint or with a disproportionate impact on SMEs and suggest the introduction of adequate mitigating measures."

• Enrico Letta's report on the future of the Single Market: "The compass of the new Single Market must emphasise the crucial importance of proportionality and subsidiarity, especially in the context of its regulatory framework.[…] To enhance efficiency and effectiveness, it is recommended to prioritise efforts towards the identification and alleviation of the most burdensome unnecessary obligations. However, defining what is 'unnecessary' is often a matter of political appreciation."

1. Introduction

* Q2. Do you have comments on Section 1.1 'Call for advice'?

- (x) Yes
- ( ) No

Comments field

Continuation of answer to Q1:

In order to meet these expressed demands for regulation, EIOPA's approach should be fundamentally questioned, especially with regard to the complex conditions for non-SNCUs, but also with regard to practicable solutions for groups, costs for companies and supervisory authorities and effects on the European market and its competitiveness.

Proportionality and application to SNCU and non-SNCUs

The German insurance industry emphasises that the Solvency II framework allows any (re)insurer to apply to its NSA for the use of proportionality measures suited to its specific risk profile. This flexibility is a fundamental part of the framework and must be preserved to accommodate a variety of business models and risk structures. The principle of proportionality is essential to maintaining a balanced approach that avoids unnecessary costs and operational complexities, particularly for non-SNCUs.

Methodology for classifying undertakings and groups as small and non-complex undertakings

While the German industry acknowledges EIOPA's advice that no further specifications may be required regarding the methodology for classifying undertakings and groups as small and non-complex, it suggests that two general aspects should be clarified:

A smoothing mechanism should be introduced over several (e.g. three) years for interest-rate criteria, especially the interest rate criterion (Art. 29a (1) a i)) and the technical provisions criterion from life activities (Art. 29a (1) a iii)) as the fluctuations are significantly influenced by interest rate trends and can only be controlled by the company to a limited extent - in contrast to the development of gross premium income, for example.

The reinsurance limit (Art 29a (1) lit a v) and b vi)) should not apply to reinsurers.

Relative quantitative approach for granting proportionality measures to Non-SNCUs

Regarding EIOPA’s advice to introduce a set of conditions with the objective of guiding the supervisory assessment on approving or withdrawing the approval to use the proportionality measures, and more specifically to endorse option 3, ‘adopting a hybrid approach, introducing conditions based both on a quantitative and qualitative approach’. The German industry welcomes the fact that EIOPA wants to specify the criteria for non-SNCUs in a uniform manner.

The proposed quantitative thresholds for non-SNCUs (EUR 15bn technical provisions for Life and EUR 2 bn gross premium income for Non-Life) ensure a broad application but do not fit to all markets in Europe. Smaller markets would presumably be predominantly or completely below the thresholds. Therefore, we would suggest relative thresholds (e.g. 20% of the national market analogous to the current regulation on exemption from quarterly reporting according to Art. 35 (7) of the Solvency II Directive). The associated reduction would lead to harmonised application across Europe, create clarity and limit the risk that national supervisors granting relief to too many insurers in some markets.

In return, the remaining qualitative conditions (four general and 14 relief-specific) should be completely cancelled. They are too complex and bureaucratic. The large number of undefined legal terms (e.g. no concerns, no serious concerns, appropriate margin) does not help the NCAs anyway and does not create any legal certainty for the non-SNCUs. It also does not make sense to require an appropriate SCR margin with regard to the combination of key functions. In our view, the approach of qualitative conditions should be rejected. As Solvency II is well-implemented across Europe since the year 2016 NCAs have so far authorised proportional measures based on the assessment of the insurer’s risk profile. This approach should remain supplemented by the quantitative threshold.

* Q3. Do you have comments on Section 1.2 'Context'?

- (x) Yes
- ( ) No

Comments field

Continuation of answer to Q1:

Implementation in Groups

The EIOPA paper lacks information on the practicable implementation of simplifications in groups (e.g. with only one SNCU). The German industry also shares the concern regarding the application of the framework where one or more entities belonging to a group are SNCUs but the group itself does not qualify as a SNCU group. While this issue is not directly covered in the EC's Call for Advice, it may be worth considering in the advice. Currently, many proportionality measures for SNCUs in groups, that do not meet the overall definition of a Small and Non-Complex Group (SNCG), are not practicable. This applies in particular to all reporting and planning requirements at group level. These requirements involve consolidated information and data from all group entities. Although the SNCU is legally exempt from these requirements at entity level, it must indirectly comply with all requirements for the group perspective. Many groups in the EU have entities in more than one Member State and consistent application of the proportionality framework is crucial for the effective functioning of the EU Single Market for insurance.

Variable Remuneration

Regarding remuneration requirements, the German industry is critical of the proposed requirements for remuneration. It is considered premature to assume that the waiver for exempting a significant portion of deferred variable remuneration, as introduced in the Delegated Regulation, will be contingent on several quantitative and qualitative criteria. Such an approach would add unnecessary complexity.

Market impact and Cost Analysis

The German insurance industry would very much welcome if EIOPA could assess the impact of its proposals on the European market as a whole and the individual Member States. This applies in particular to the possible number of SNCUs and non-SNCUs that could use proportionality measures within the proposed quantitative thresholds. In addition, the EIOPA paper lacks an estimate of the expected costs of implementing the new hybrid approach for insurers and supervisory authorities. Here too, “Mario Draghi's report on the future of European competitiveness” points out that costs must be calculated using a uniform methodology: “Use a single, clear methodology to quantify the cost of new legislation for EU institutions and Member States. This methodology should be adopted by the Commission when making a proposal, by co-legislators when amending legislation, as well as by Member States when transposing it.”

* Q4. Do you have comments on Section 1.3 'Basis for draft advice'?

- (x) Yes
- ( ) No

Comments field

As the Call for Advice also covers group issues, the German insurance industry recommends focusing additionally on the implementation of simplifications in groups. Currently, many proportionality measures for SNCUs in groups are not practicable. This applies in particular to all reporting and planning requirements at group level. These requirements involve consolidated information and data from all group entities. Although the SNCU is legally exempt from these requirements at entity level, it must indirectly comply with all requirements for the group perspective. For example, a five-year interval for the provision of the Regular Supervisory Report (RSR) is not very useful if the group has to submit an RSR for the entire group annually. An exemption from external auditing of the Solvency II balance sheet offers no real added value if the auditor must audit a consolidated version at group level (see also comment on Q8).

* Q5. Do you have comments on Section 1.4 'Structure of the draft advice'?
  - ○ Yes
  - ● No

2. Methodology to be used when classifying undertakings as small and non-complex

* Q6. Do you have comments on Section 2.1 'Extract from the Call for Advice'?
  - ○ Yes
  - ● No

* Q7. Do you have comments on Section 2.2 'Relevant legal provisions'?
  - ○ Yes
  - ● No

* Q8. Do you have comments on Section 2.3 'Identification of the issue'?
  - ● Yes
  - ○ No

Comments field

The German industry agrees with the assessment by EIOPA regarding the criteria set out in Article 29a and Article 213a of the agreement on the Solvency II Review.

The German industry shares the concern regarding the application of the framework where one or more entities belonging to a group are SNCUs but the group itself does not qualify as a SNCU group. While this issue is not directly covered in the EC's Call for Advice, it may be worth considering in the advice. Many groups in the EU have entities in more than one Member State and consistent application of the proportionality framework is crucial for the effective functioning of the EU Single Market for insurance.

Currently, many proportionality measures for SNCUs in groups, that do not meet the overall definition of a Small and Non-Complex Group (SNCG), are not practicable. This applies in particular to all reporting and planning requirements at group level. These requirements involve consolidated information and data from all group entities. Although the SNCU is legally exempt from these requirements at entity level, it must indirectly comply with all requirements for the group perspective. For example, a five-year interval for the provision of the Regular Supervisory Report (RSR) is not very useful if the group has to submit an RSR for the entire group annually. An exemption from external auditing of the Solvency II balance sheet offers no real added value if the auditor must audit a consolidated version at group level.

These difficulties can be observed for the majority of proportionality measures for SNCU in the catalogue, in particular for the RSR frequency (Art 35 (5a)), the exemption from QRT and the item-by-item reporting (Art. 35a (2)), the frequency and simplification in the Own Risk and Solvency Assessment (Art. 45 (1b, 5); Art. 45a (5)), the SFCR frequency (Art. 51 (6)), the external audit of the Solvency II balance sheet (Art. 51a (1)), the liquidity risk management plan (Art. 144a (4)) and the sustainability reporting (Art. 19a (6) of the Accounting Directive). In order to enable an effective approach here, it should be permissible at group level to use historical data for the exempted companies or to exclude them from the consolidation in the reports or plans.

* Q9. Do you have comments on Section 2.4 'Analysis'?

- (●) Yes
- ( ) No

Comments field

The analysis related to Option 1 seems to overlook the costs for (re)insurers. The added flexibility for NSAs may introduce a level of uncertainty that could adversely affect the undertakings. A more balanced approach would include a thorough assessment of the financial impact on (re)insurers, ensuring that any increased supervisory discretion does not disproportionately burden the companies or create an unpredictable regulatory environment. In case of further simple conditions (compare comment on Q1) we see the benefit of a harmonized approach in all Member States.

* Q10. Do you have comments on Section 2.5 'Draft advice'?

- ( ) Yes
- (●) No

* Q11. Do you consider that any aspect of the methodology for classifying undertakings and group as small and non-complex would require further specification?

- (●) Yes

No

If yes, please describe which ones, the reasons why and the proposed further guidance

While the German industry acknowledges EIOPA's advice that no further specifications may be required regarding the methodology for classifying undertakings and groups as small and non-complex (option 1), it suggests that further clarification could be helpful. This includes areas such as the date of compliance with the criteria and the determination of the combined ratio criterion.

GDV agrees with EIOPA that the methodology for classifying undertakings and groups as small and non-complex is broadly clear and comprehensive but further specifications are needed on:

• Art. 29a (1) lit a i) The interest rate risk sub-module referred to in Article 105(5)(a) shall not exceed 5% of the technical provisions without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles referred to in Article 76. Here, a smoothing mechanism should be introduced over several (e.g. three) years, as the fluctuations in the interest rate risk module are significantly influenced by interest rate trends and can only be controlled by the company to a limited extent - in contrast to the development of gross premium income, for example.

• Art. 29a Abs. 1 lit a iii) The technical provisions relating to life activities, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles referred to in Article 76, shall not exceed EUR 1 billion. A smoothing mechanism should also be introduced here, as the fluctuations in technical provisions are also largely determined by interest rate trends.

• Art 29a (1) lit a v) and b vi): The reinsurance limit (not exceeding 50 % of total annual gross written premium income) should not apply to reinsurers, as otherwise reinsurers could not become SNCUs. This would contradict recital 18, according to which a proper implementation of the proportionality principle is crucial to avoiding an excessive burden on insurance and reinsurance undertakings.

The same clarifications are necessary regarding SNC-groups (Art 213a).

Another area potentially needing further clarity is the solo/group articulation, which EIOPA has acknowledged. (See also comments on Q8)

Furthermore, the German industry notes that classification criteria already impose rather conservative thresholds, such as for technical provisions and premium income and also, the lines of business allowed under these criteria are quite restrictive. As such, the scope of undertakings qualifying as SNCU is limited both in terms of the number of undertakings and their overall market share. Given that the criteria are already restrictive, there is no need for further restrictiveness.

Finally, the EC call for advice emphasizes the importance to avoid 'undue administrative burden'. Option 2 would introduce additional procedures and administrative requirements and is therefore not a suitable path.

3. Conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex

* Q12. Do you have comments on Section 3.1 'Extract from the Call for Advice'?

- [ ] Yes
- [x] No

* Q13. Do you have comments on Section 3.2 'Relevant legal provisions'?

- (x) Yes
- ( ) No

Comments field

EIOPA lists the proportionality measures non-SNCUs may use upon approval by the NSA.

It is noted that the structure of the rules clearly allows these non-SNCUs to implement multiple proportionality measures in a proportionate manner.

This is supported by Article 29d (1), which states: “The insurance or reinsurance undertaking shall submit a request in writing for approval to the supervisory authority. That request shall include all of the following: (a) the list of the proportionality measures intended to be used and the reasons why their use […]”. The use of the term "measures" in the plural, both in Article 29d (1) and (2), indicates that more than one proportionality measure can be employed, and it does not preclude a non-SNCU from implementing all relevant measures.

Furthermore, since Article 29d (1) refers to “proportionality measures […] explicitly applicable to small and non-complex undertakings in accordance with Article 29c”, while at the same time the proportionality principle continues to apply to all provisions of the Directive and the Delegated Regulation, as highlighted in Recital 10.

Regarding remuneration the German industry is critical of the proposed requirements for remuneration. It is considered premature to assume that the waiver for exempting a significant portion of deferred variable remuneration, as introduced in the Delegated Regulation, will be contingent on several quantitative and qualitative criteria. Such an approach would add unnecessary complexity. Furthermore, it is questionable to adopt such complex conditions for granting or withdrawing supervisory approval regarding remuneration developed for areas regulated in the Solvency II Directive for provisions stipulated in the Delegated Regulation
.
EIOPA's opinion on the supervision of remuneration principles in the insurance and reinsurance sector does not apply to individuals whose annual variable remuneration is EUR 50,000 or less and represents no more than one-third of their total annual remuneration. By imposing an exemption limit without further conditions, EIOPA is effectively implementing the proportionality principle in this regard. The German industry strongly believes that this approach should serve as the benchmark for the Delegated Regulation.

* Q14. Do you have comments on Section 3.3 'Identification of the issue'?

- (x) Yes
- ( ) No

Comments field

The German industry agrees with EIOPA’s assessment of the need for consistent conditions for applying the proportionality measures included in the agreement. But German industry considers the multitude of 5 general and 14 special conditions to be too bureaucratic and complex.

The proposed quantitative thresholds for non-SNCUs (EUR 15bn technical provisions for Life and EUR 2 bn gross premium income for Non-Life) ensure a broad application but do not fit to all markets in Europe. Smaller markets would presumably be predominantly or completely below the thresholds. Therefore, we

would suggest relative thresholds (e.g. 20% of the national market analogous to the current regulation on exemption from quarterly reporting). The associated reduction would lead to harmonised application across Europe, create clarity and limit the risk of supervisors granting relief to too many insurers in some markets.

In return, the remaining qualitative conditions (four general and 14 relief-specific) should be completely cancelled. They are too complex and bureaucratic. The large number of undefined legal terms (e.g. no concerns, no serious concerns, appropriate margin) does not help the NCAs anyway and does not create any legal certainty for the non-SNCUs. It also does not make sense to require an appropriate SCR margin with regard to the combination of key functions. In our view, the approach of qualitative conditions should be rejected. As Solvency II is well-implemented across Europe since the year 2016 NCAs have so far authorised proportional measures based on the assessment of the insurer’s risk profile. This approach should remain supplemented by the quantitative threshold.

If EIOPA sees the need for the large number of general and special conditions and wishes to retain them, the German industry disagrees with the notion that only undertakings meeting these conditions should be eligible to use the measures. This would create a “second tier” SNCU category. Instead, the additional conditions set out in the Delegated Act should guide, not prescribe, NCAs in their assessments. When an undertaking can demonstrate that a proportionate application of Solvency II measures is justified by the nature, scale, and complexity of its risk, the NCA should assess the individual case.

Proportionality beyond SNCUs

The German industry also disagrees with EIOPA’s assertion that the proportionality measures for non-SNCUs represent the maximum possible reduction of requirements. The baseline for proportionality should not be limited to the SNCU requirements. Recital 10 makes it clear that the proportionality principle applies across the entire directive, meaning that provisions beyond Article 13(41b) can also be applied proportionally, where appropriate. The difference is that the measures in Article 29d are standardised, while those outside of Article 13(41b) must be individually justified by the undertaking in dialogue with the supervisory authority, allowing for a tailored approach.

Overly narrow interpretation of proportionality

The definition of proportionality should consider not only risk profile but also the nature and scale of undertakings. Limiting proportionality solely to risk profile overlooks important factors such as the size and complexity of operations, which are crucial for determining appropriate measures.

Possibility to amend conditions

The German industry agrees with EIOPA that the Delegated Acts should include the possibility to amend the conditions for non-SNCUs after an initial application period, similarly to provisions for SNCUs under Article 52 (4) of Solvency II Directive.

Potential alternative approach

Instead of a hybrid approach, we believe that only a quantitative threshold is necessary in order to achieve harmonization across Europe. In order to do justice to the heterogeneity of the markets, a relative threshold should be chosen. The German industry proposes 20% of the market, analogous to possible exemptions from quarterly reporting.

Within this relative threshold each request for a proportionality measure begins with assessing the nature, scale, and risk profile of the undertaking against the directive's goals of policyholder protection and ensuring

financial stability. The key criterion should be whether the proportionality measure would materially increase the risk to these goals and how the regulatory burden balances with policyholder protection and financial stability.

* Q15. Do you have comments on Section 3.4 'Analysis'?

- (x) Yes
- ( ) No

Comments field

The German industry welcomes the fact that EIOPA wants to specify the criteria for non-SNCUs in a uniform manner.

When considering the options, the German industry misses an only quantitative approach in order to achieve harmonization across Europe. In order to do justice to the heterogeneity of the markets, a relative threshold could be chosen. The German industry proposes 20% of the market, analogous to possible exemptions from quarterly reporting.

When comparing policy options, the comment added to the item 'benefits'—"to ensure that only low risk profile undertakings may apply the proportionality measures"—seems unclear. This does not align with the objectives of the amending directive to Solvency II. Proportionality should be applied where appropriate, not limited strictly to 'low risk profile undertakings.'

In addition, the administrative costs and the potential number of affected insurers in the EU and each Member State should be included in the analysis.

* Q16. Do you have comments on Section 3.5 'Draft advice'?

- (x) Yes
- ( ) No

Comments field

The proposed quantitative thresholds for non-SNCUs (EUR 15bn technical provisions for Life and EUR 2 bn gross premium income for Non-Life) ensure a broad application but do not fit to all markets in Europe. Smaller markets would presumably be predominantly or completely below the thresholds. Therefore, we would suggest relative thresholds (e.g. 20% of the national market analogous to the current regulation on exemption from quarterly reporting according to Art. 35 (7) of the Solvency II Directive). The associated reduction would lead to harmonised application across Europe, create clarity and limit the risk of supervisors granting relief to too many insurers in some markets.

The approach with the large number of qualitative conditions to be too complex and bureaucratic. Despite the German industry's more detailed comments on the conditions outlined below, it notes that the set of proportionality measures included in the Solvency II agreement is not exhaustive. Additionally, the application of these proportionality measures is not restricted solely to undertakings that meet the criteria outlined in Articles 29a or 213a of the Solvency II agreement, nor is it limited by the conditions provided in the draft advice.

The new framework should assist in increasing consistency and certainty about the proportionate application of Solvency II and reduce the regulatory burden for SNCUs and non-SNCUs. It should not hinder the application of any specific measure which undertakings might apply for with their respective NCA.

For that reason, the remaining qualitative conditions (four general and 14 relief-specific) should be completely cancelled. They are too complex and bureaucratic. The large number of undefined legal terms (e. g. no concerns, no serious concerns, appropriate margin) does not help the NCAs anyway and does not create any legal certainty for the non-SNCUs. It also does not make sense to require an appropriate SCR margin with regard to the combination of key functions.

As Solvency II is well-implemented across Europe since the year 2016 NCAs have so far authorised proportional measures based on the assessment of the insurer's risk profile. This approach should remain supplemented by the quantitative threshold.

Section 3.5.1 - Overview of conditions measure by measure

* Q17. Do you have comments on the section on 'Article 35(5a): Information to be provided for supervisory purposes'?

- (x) Yes
- ( ) No

Comments field

Article 312 (3) of the Commission Delegated Regulation (EU) 2015/35 stipulates that where there is no requirement for a regular supervisory report to be submitted for a given financial year, insurance and reinsurance undertakings must nonetheless submit a report to their supervisory authority detailing any material changes that have occurred in the undertaking's business and performance, system of governance, risk profile, valuation for solvency purposes, and capital management over the financial year, along with a concise explanation of the causes and effects of such changes. The three-year interval / the longer five-year interval for the submission of the RSR, as proposed for Non-SNCUs and SNCUs, would only represent a meaningful measure if no change report is required in the interim years. The change report should be required only in exceptional cases.

EIOPA's recommendation to set the RSR frequency at three years, instead of annually or biennially, appears to suggest that undertakings must meet certain conditions to use the 3-year term, even though the directive establishes this as the default. This interpretation implies that undertakings must satisfy specific criteria to qualify for the 3-year term. However, the directive clearly designates the 3-year term as the standard. Therefore, the focus should be on defining the conditions under which supervisors can require annual or biennial RSRs, and the criteria for allowing an extension to five years for SNCUs.

EIOPA only refers to part of the text of Article 35(5a) and it provides only recommendations on (a), but not on (b).

The full text of Art 35 (5a) is as follows: “Taking into account the information required in paragraphs 1, 2, and 3 and the principles set out in paragraph 4, Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities a regular supervisory report that comprises information on the undertaking's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period. The frequency of the regular supervisory report shall be:

(a)every three years, for small and non-complex undertakings, or, where permitted by the supervisory authority, up to five years;

(b) every three years for insurance and reinsurance undertakings other than small and non-complex undertakings

For the purpose of point (b), if deemed necessary, a supervisory authority may require supervised undertakings to report more frequently”

For comments on conditions please refer to section 3.5.2.

* Q18. Do you have comments on the section on 'b. Article 41: General governance requirements - Paragraph 2a: Combination of key functions'?

- (selected) Yes
- No

Comments field

The German industry is supportive of the option to combine key functions and highlights it should also be effectively allowed by NCAs in practice. It is not clear when the cost of maintaining separate functions will be disproportionate with respect to the total administrative expenses. The application of Article 35 (5) remains at the discretion of the NSA, even for (re)insurers classified as SNCUs.

For comments on conditions please refer to section 3.5.2.

* Q19. Do you have comments on the section on 'b. Article 41: General governance requirements - Paragraph 3: Less frequent review of written policies'?

- (•) Yes
- ( ) No

Comments field

The German industry is supportive of the option to have a less frequent review of the written policies and highlights it should also be effectively allowed by NCAs in practice.

For comments on conditions please refer to section 3.5.2.

* Q20. Do you have comments on the section on 'Article 45: Own risk and solvency assessment - Paragraph 1b: Waiver from macroprudential analysis in the ORSA'?

- (•) Yes
- ( ) No

Comments field

The German industry agrees with EIOPA that - this requirement being subject to a preliminary reasoned request of the supervisor, – any potential waiver from this measure is already implicitly embedded in the request of the supervisor to those undertakings that satisfy the eligibility criteria in the dedicated RTS to be developed.

With respect to macroprudential considerations and the pertaining RTS, we would like to stress that in implementing the new requirements, a proportionate and risk-oriented approach is crucial. In particular, application of the additional macroprudential requirements should remain limited to exceptional cases with a clear supervisory rationale. Given the very low contribution of the vast majority of individual insurers to systemic risk, the potential benefits of a broader application of the extensive macroprudential requirements to financial stability would be very small and do not justify the substantial costs involved.

For comments on conditions please refer to section 3.5.2.

* Q21. Do you have comments on the section on 'Article 45: Own risk and solvency assessment - Paragraph 5: ORSA at least every two years'?

- (•) Yes
- ( ) No

Comments field

In the ORSA, scenarios are calculated that are also used to meet the requirements of the SFCR. Therefore, it would be preferable if the ORSA were conducted every three years instead of every two years. A three year interval would further allow a synchronisation with the frequency of the RSR. We therefore advocate allowing the submission of the ORSA for both SNCUs and non-SNCUs at a three-year interval, subject to supervisory approval.

For comments on conditions please refer to section 3.5.2.

* Q22. Do you have comments on the section on 'Article 77(8): Calculation of technical provisions'?

- (x) Yes
- ( ) No

Comments field

The use of overly broad wording in setting out this condition should not create additional requirements for authorisation applications for matters of actuarial technique or non-materiality.

EIOPA is asked to clarify whether there is a deadline for insurance companies to switch to a stochastic valuation if they no longer meet the set criteria and lose regulatory approval? Transitioning from a deterministic to a stochastic calculation method requires significant investment in resources and training, with long lead times.

It is also important to note that EIOPA mentions the criteria may change over time: "Given the importance of proportionality for undertakings that are not classified as small and non-complex, the Delegated Acts should include the possibility to amend the conditions after an initial application period, similar to small and non-complex undertakings pursuant to Article 52(4) of the Solvency II Directive." This implies that insurance companies may not always have full control over their ability to meet these requirements.

For comments on conditions please refer to section 3.5.2.

* Q23. Do you have comments on the section on 'Article 144a(4): Liquidity risk management'?

- (x) Yes
- ( ) No

Comments field

Due to the structural changes in the financial system, liquidity risk has increased in importance for the insurance industry. However, for many insurers, because of their business models (e.g. insurance lines / products offered) and activities (e.g. little or no use of derivatives) liquidity risks are only moderate and of little materiality. It should be ensured that these insurers do not have to draw up a liquidity risk management plan.

For comments on conditions please refer to section 3.5.2.

* Q24. Do you have comments on the section on 'Article 275(2)(c): Waiver from mandatory deferral of a significant portion of the variable remuneration'?

- (x) Yes

No

Comments field

For comments on conditions please refer to section 3.5.2.

Section 3.5.2 - Explanation of the conditions

* Q25. Do you have comments on Condition 1?

Condition 1: The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks and does not require a more frequent supervisory assessment and is not subject to on-going supervisory measures to restore material non-compliance with Solvency II.

- [x] Yes
- [ ] No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

While the German industry considers condition 1 justified, it acknowledges EIOPA's reference to the risk classification in accordance with the national risk frameworks in the further elaboration of the condition by EIOPA (paragraph 6). The German industry notes that these risk categorisations can differ substantially across Member States, and an overreliance on these categories can create inconsistencies and divergence. Rather than the national categorisation, the conditions set out in the future Delegated Regulation should determine the eligibility of undertakings/groups to apply the proportionality measures listed in Article 29d.

Condition 1 should not apply once compliance has been restored, regardless of any ongoing supervisory measures related to past non-compliance. It is noted that EIOPA stated "The risk assessment framework is at the core of Supervisors' activities and represents the starting point to develop the supervisory plan for supervised undertakings". While this may be true, these operational considerations occur entirely outside the scope of the Directive and the Delegated Regulation, making them irrelevant. Additionally, they are not standardised across the EU, with classification processes and criteria varying from MS to MS.

* Q26. Do you have comments on Condition 2?

Condition 2: The undertaking does not have a complex business model, as defined in its business strategy and business plan, having also regard to the complexity of the products sold or the investments held, and did not undergo material changes of its business model in the last three financial years, having also regard to key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

- [x] Yes
- [ ] No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

The complexity of the business model is difficult to assess. It gives the national supervisory authority a very broad scope of discretion. As part of condition 2, insurers are required to have no material changes in the business model over the last three financial years, this aspect is too restrictive and can be removed. The governance process for such changes is substantial and thorough. The German industry does not view a material change in the business model as a barrier to eligibility for proportionality measures, especially when combined with other conditions.

At the same time, the German industry expects that the supervisory review process for a material change in the business model, for undertakings applying proportionality measures, includes an assessment to determine if the continued application of the proportionality measure is justified.

* Q27. Do you have comments on Condition 3?

Condition 3: The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking into account the solvency position of the undertaking including its medium-term capital management plan.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

The requirement for "an appropriate margin" in condition 3 introduces an implicit capital requirement not specified in the directive and should be removed. NCAs' perspective on what is "an appropriate margin" might differ substantially across Member States, leading to inconsistency in the application of the framework. Condition 1 requires that there is no serious supervisory concern triggering additional supervisory assessments or measures. This condition should suffice. If introduced, guidance might be helpful what an "appropriate margin" might be.

The aforementioned concern is acknowledged by EIOPA on p26: "While this condition does not aim to introduce an additional prudential supervisory limit, having an SCR exceeded by a sufficient margin demonstrates the undertaking's robust financial health and its ability to absorb unexpected losses, ultimately ensuring policyholder protection. This margin should be regarded as a buffer against potential financial shocks, and signal prudent risk management and financial resilience." The Solvency II Directive establishes a minimum capital requirement, below which an insurer must be wound up, and a Solvency Capital Requirement (SCR), above which it is assumed the insurer can withstand unexpected losses (with expected issues covered by technical provisions). Any additional requirements even vaguely termed as "a sufficient margin," exceed the powers granted to delegated legislators. Furthermore, EIOPA links this condition to systemic risk, which seems unlikely given that it pertains to SNCUs.

* Q28. Do you have comments on Condition 4?

Condition 4: The undertaking's:

a) technical provisions from life activities, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, are not higher than EUR 15 000 000 000, and;

b) the annual gross written premium income from non-life activities is not higher than EUR 2 000 000 000,

and;
c) the undertaking does not represent more than 5% of the life market or, where applicable, non-life market in accordance with Article 35a(1), second subparagraph, of the home Member State of the undertaking.
The threshold referred to in letter a) of this condition shall be applied to life undertakings and to undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20 % or more of the total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76 of the Solvency II Directive.
The threshold referred to in letter b) of this condition shall be applied to non-life undertakings and to undertakings pursuing both life and non-life activities whose annual gross written premium income related to the non-life activities represent 40 % or more of its total annual gross written premium income.
By way of derogation to the previous paragraphs, the supervisory authority may grant proportionality measures if it is satisfied that the undertaking's business activities are of a simple nature.

- (●) Yes
- ( ) No

Comments field

The proposed quantitative thresholds for non-SNCUs (EUR 15bn technical provisions for Life and EUR 2 bn gross premium income for Non-Life) ensure a broad application but do not fit to all markets in Europe. Smaller markets would presumably be predominantly or completely below the thresholds. Therefore, we would suggest relative thresholds (e.g. 20% of the national market analogous to the current regulation on exemption from quarterly reporting). The associated reduction would lead to harmonised application across Europe, create clarity and limit the risk of supervisors granting relief to too many insurers in some markets.

The German industry particularly welcomes EIOPA's recognition that undertakings exceeding these limits can still be considered eligible if they can demonstrate to the NCA that the risks inherent in their business activities are of a simple nature (as mentioned in the last paragraph).

With respect to the quantitative criteria, the German industry suggests restricting these to already available data or published figures, and avoiding the need for new calculations, as this would counteract efforts to reduce the administrative burden.

The German industry refers to the EC's call for advice: "EIOPA provides a closed list of conditions and aims at avoiding undue administrative burden – including new reporting requirements – for undertakings and groups. Such a list should serve as the basis for the supervisory assessment." The German industry agrees with the arguments made by the EC, emphasising that these criteria should serve as guidance rather than strict requirements. Furthermore, as mentioned by EIOPA, this would allow the NSA to consider specific elements of the relevant market (e.g., local fiscal rules, local insurance product regulations, consumer preferences, etc.).

Take, for example, Article 77 (8): Suppose all criteria are met except for criterion 14, where the value TVFOG /SCR slightly exceeds the 5% limit. There should still be room for regulatory approval in such cases. Otherwise, there would be no stable situation, as companies may fluctuate above or below the limit over time. It is crucial to the German industry that there remains flexibility for regulatory assessment, especially since it is unclear how the 5% limit was determined and whether it represents a reasonable calibration for all markets and insurers.

The additional details on individual conditions, particularly the last paragraph on condition 4, raise important concerns. The German industry is concerned about the negative portrayal of cross-border activities and the use of the term "innovative use of reinsurance." EIOPA's suggestion that cross-border business is inherently riskier than domestic operations seems to conflict with the fundamental freedoms of the Single Market. The term "innovative use of reinsurance" risks unfairly labelling non-standard risk mitigation techniques as particularly risky without clear definition or assessment. Additionally, the German industry believes that point c) of condition 4 should be adjusted to reflect the proper functioning of the EU Single Market for insurance. The market share limits should apply to "any" Member State in which the undertaking operates, rather than just the "home Member State."

It is noted that the mirroring of the SNCUs creates a paradoxical situation, which could be interpreted as undermining the Directive's intent that insurers not eligible for SNCU status can still apply individual proportionality measures.

* Q29. Do you have comments on Condition 5?

Condition 5: The supervisory authority has not identified serious concerns arising from the system of governance of the undertaking in the last three financial years.

- (•) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Condition 5 The supervisory authority has not identified serious concerns arising from the system of governance of the undertaking in the last three financial years. When serious concerns have been addressed to the satisfaction of the NCA within the last three years, this should be recognised. Ideally, only unresolved governance issues should play a role. The requirement for a forced switch from a deterministic to a stochastic approach to have proper system of governance, and as such to be able to apply proportionality measures should be removed.

* Q30. Do you have comments on Condition 6?

Condition 6: There are no concerns with the last three Regular Supervisory Reports, which shall include high-quality and complete information pursuant to Article 35 (1) to (3) of Solvency II Directive and in compliance with the principles in Article 35(4).

- (selected) Yes
- No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Condition 6 refers to the last three RSRs. The German industry supports the condition; however, criterion is worded rather vaguely and a further clarity on what might constitute a concern is helpful. It is noted that these RSRs could cover a period of 2-3 years up to 6-9 years, depending on reporting frequency. Alternatively, to ensure a level playing field, a fixed timeline referring to RSRs reported in the last X years could be considered. It might also be advisable to further specify what kind of concern might exclude undertakings from the eligibility to use the respective measures. Particularly, in case that any concern might disqualify undertakings from the use of the measures. It should regard only “serious concerns” like in condition 5. Serious concerns that have been addressed in the past and are resolved should not play a role in order to reach eligibility for undertakings where past concerns have been addressed to the satisfaction of the NCA.

* Q31. Do you have comments on Condition 7?

Condition 7: No concerns have emerged with regard to decision making procedures and the organisational structure of the undertaking in the last three financial years.

- (selected) Yes
- No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Similar to condition 6, further clarity on what might constitute a concern is helpful. It might also be advisable to further specify what kind of concern might exclude undertakings from the eligibility to use the respective measures. Particularly, in case that any concern might disqualify undertakings from the use of the measures. Concerns that have been addressed in the past and are resolved should not play a role in order to reach eligibility for undertakings where past concerns have been addressed to the satisfaction of the NCA.

* Q32. Do you have comments on Condition 8?

Condition 8: The persons responsible for the key functions of risk management, actuarial and compliance possess at all times sufficient knowledge, skills and experience to effectively conduct activities related to the different functions, and the combination of functions or the combination of a function with a membership of the administrative, management or supervisory body does not compromise the person's ability to carry out her or his responsibilities by retaining sufficient time to conduct all relevant additional tasks.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

* Q33. Do you have comments on Condition 9?

Condition 9: The cost of maintaining separate functions would be disproportionate with respect to the total administrative expenses and with the total number of employees of the undertaking.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

It is not clear when the cost of maintaining separate functions will be disproportionate with respect to the total administrative expenses.

* Q34. Do you have comments on Condition 10?

Condition 10: All written policies required as part of the system of governance are complete and approved by the administrative, management or supervisory body, are aligned with each other and with the business strategy of the undertaking.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

* Q35. Do you have comments on Condition 11?

Condition 11: The information provided in the undertaking's last three own risk and solvency assessments pursuant to Article 45 (2) of the Solvency II Directive and Article 306 of the Delegated Regulation is appropriate to its risk profile.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

The German industry supports the condition; however, criterion is worded rather vaguely and a further clarity on what might constitute a concern is helpful. It is noted that these ORSA could cover a period of 1-2 years up to 4-6 years, depending on frequency. Alternatively, to ensure a level playing field, a fixed timeline referring to ORSA reported in the last X years could be considered. It might also be advisable to further specify what kind of concern might exclude undertakings from the eligibility to use the respective measures. Particularly, in case that any concern might disqualify undertakings from the use of the measures.

* Q36. Do you have comments on Condition 12?

Condition 12: There are no concerns that the reduced frequency of the ORSA affects the effectiveness of the risk management system of the undertaking pursuant to Article 44, and the undertaking maintains an effective process to monitor circumstances that require an ad hoc ORSA as well as sufficient resources to provide an ad hoc ORSA, when required.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Condition 12 states that approval should be granted following an assessment that considers the following conditions: "There are no concerns that the reduced frequency of the ORSA affects the effectiveness of the undertaking's risk management system pursuant to Article 44, and the undertaking maintains an effective process to monitor circumstances that require an ad hoc ORSA, as well as sufficient resources to provide an ad hoc ORSA when needed." As this obligation for an ad hoc ORSA exists anyway, we consider the requirement to be dispensable.

Alternatively, the adjective "materially" should be added: 'There are no concerns that the reduced frequency of the ORSA materially affects the effectiveness of the risk management system of the undertaking pursuant to Article 44, and the undertaking maintains an effective process to monitor circumstances that require an ad hoc ORSA as well as sufficient resources to provide an ad hoc ORSA, when required.'

* Q37. Do you have comments on Condition 13?

Condition 13: The insurance or reinsurance undertaking is not using a stochastic valuation of the best estimate relating to the obligations for which the undertaking seeks to apply a prudent deterministic valuation, and using a stochastic valuation would be overly burdensome in relation to the nature, scale and complexity of the risks arising from these obligations.

- (●) Yes
- ( ) No

Comments field

> The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.
>
> This condition makes the combination of stochastic valuation and deterministic valuation impossible. It is questioned if this is proportionate in all cases.

* Q38. Do you have comments on Condition 14?

Condition 14: The time value of options and guarantees, measured based on the prudent harmonised reduced set of scenarios, of the contracts where the prudent deterministic valuation is applied is below 5% of the Solvency Capital Requirement.

- (●) Yes
- ( ) No

Comments field

> The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.
>
> It is proposed to delete this criterion, as it would otherwise require regular reporting and review, adding calculation and reporting burdens—precisely what the EC seeks to avoid (see response to Q11).
>
> If EIOPA insists on assessing the size of the TVFOG, an alternative should be explored where the TVFOG value can be considered sufficiently small relative to all technical provisions, based on existing reporting. The proportion of TVFOG may also vary depending on model choices or product features prevalent in specific countries.

* Q39. Do you have comments on Condition 15?

Condition 15: There are no material exposures to liquidity risk from asset (including derivatives) and liability sides of the balance sheet, including the availability of liquid assets and the level of liquidity of insurance contracts, taking into account the potential impact of policyholders' behaviour on the liquidity position of the undertaking and the exposure to off-balance sheet items.

- (●) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Regarding condition 15 we agree with EIOPA that in determining whether an undertaking / group is exposed to material liquidity risks that require an LRMP any liquidity risks from assets (including derivatives) and liabilities must be taken into account, including the availability of liquid assets and the level of liquidity of insurance contracts. As EIOPA explains that condition 15 aims to ensure that the applicant undertaking adequately manages its liquidity risks by addressing the risk sources arising in both asset and liability sides of the balance sheet, it is important that all measures that effectively mitigate potentially material liquidity risks are also fully accounted for when deciding on the LRMP requirement.

* Q40. Do you have comments on Condition 16?

Condition 16: There is no material concentration of counterparty exposures to reinsurance undertakings.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Regarding condition 16 we suggest amending condition 16. The German industry considers not concentrations itself but concentration risk as important. The type of reinsurer (intra-group vs. external) and its liquidity under stressful conditions and the reinsurer's default risk must also be considered.

With regard to concentration risks, the default risk of the reinsurer (e.g. consideration of the reinsurer's rating) should also be taken into account. A high exposure alone should not lead to a negative assessment.

* Q41. Do you have comments on Condition 17?

Condition 17: There are no concerns in liquidity position of undertakings stemming from economic or macroeconomic market trend or the amount and quality of own funds items.

- (x) Yes
- ( ) No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Materiality should be added and the condition should read as follows: 'There are no material concerns in liquidity position of undertakings stemming from economic or macroeconomic market trend or the amount and quality of own funds items.'

* Q42. Do you have comments on Condition 18?

Condition 18: [For groups only] There are no concerns regarding the fungibility and availability of liquid funds across the group, including the ability to transfer liquidity across the group's undertakings.

- (x) Yes

- [ ] No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

Regarding this condition itself, the German industry recalls the significantly diverse treatment of intra-group transactions following the outbreak of the Covid-19 pandemic and the short-term reaction of financial markets. If such a condition is maintained in the final technical advice, more clarity is necessary to ensure a consistent application across Member States.

The availability and fungibility of funds in groups should only be relevant if there is centralized cash management or other intra-group transactions on a significant scale.

* Q43. Do you have comments on Condition 19?

Condition 19: The annual variable remuneration of the staff member shall not exceed EUR 50,000 and represents less than 1/3 of that staff member's total annual remuneration.

- [x] Yes
- [ ] No

Comments field

The following comments only apply if EIOPA does not delete the qualitative conditions (compare comment on Q16). In general, the condition should be non-binding.

The quantitative thresholds are acceptable, but the additional qualitative criteria mean that the application could be severely limited. Regarding condition 19 the ceiling of € 50,000 seems too low. The ratio to total remuneration (1/3) is too low, compared to European remuneration rules. The amount should be indexed. The German industry considers a relative threshold may be more appropriate.

* Q44. Do you consider that additional specific conditions would be needed for insurance groups that are not classified as small and non-complex?

- [x] Yes
- [ ] No

If yes, please describe which ones and the reasons why

No, each additional condition will further restrict the number of insurers that could successfully apply use of proportionality measures.

A sensible methodology for the consolidation for groups with entities qualifying as SNCUs where the group itself is not considered small and non-complex should be developed.

Any other comment

* Q45. Do you have any other comments?

- [x] Yes
- [ ] No

Comments field

Request for clarification - Scope of approval for proportionality for non-SNCUs

Reference is made to Art 29d (1) of the upcoming SII directive: "Member States shall ensure that insurance and reinsurance undertakings that are not classified as small and non-complex undertakings may use only proportionality measures provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article 144a(4) and, proportionality measures provided for in the delegated acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings in accordance with Article 29c and which measures are identified for the purpose of this Article, subject to prior approval from the supervisory authority. [...]"

The paragraph is interpreted that any use of the proportionality measures mentioned in Article 29d by undertakings that are not classified as SNCU is subject to prior approval from the supervisory authority. Where the last part of the sentence refers to proportionality measures mentioned in the article, so prior approval is required for the proportionality measures mentioned in: Article 35 (5a), Article 41, Article 45 (1b), Article 45 (5), Article 77 (7) and Article 144a (4); and the DA (which is still to be written). The German industry asks EIOPA (or the European Commission) to confirm this interpretation or clarify the article. Furthermore, EIOPA does not go into other proportionality measures that non-SNCU are currently using. It is assumed that for these, the current standard practices remain unchanged, i.e. up to the NSA.

Request for clarification - Timing for re-approval for existing proportionality measures for non-SNCUs

Reference is made to Art. 29e (2) of the upcoming SII directive: "Insurance and reinsurance undertakings applying any proportionality measure that correspond to existing measures under this Directive by [OP please insert date = entry into force of this Directive] may continue to apply such measures without applying requirements set out in Articles 29b, 29c and 29d, for a period not exceeding four financial years."

It is interpreted that Art. 29e (2) is a lex specialis and thus has a higher priority over other articles, since it is an article referring to a transitional measure. Therefore, for both SNCUs and non-SNCU that already make use of proportionality measures that exist in the current SII directive, they are exempt to ask the NSA for prior approval, up to four financial years.

The insurance companies ask EIOPA (or the European Commission) to confirm this interpretation or clarify the article.

Contact

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