

Technical advice on the implementation of the new proportionality framework under Solvency II

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EXECUTIVE SUMMARY

The European Insurance and Occupational Pensions Authority (EIOPA) adopted its technical advice on the implementation of a new proportionality framework under the Solvency II Directive.

Background and context

The review of the Solvency II Directive will introduce a new framework for proportionality in Solvency II Directive which represents a shift towards a more robust and transparent application of the proportionality principle within the insurance industry. The new framework introduces a set of objective criteria to identify undertakings (and groups) as small and non-complex (SNCUs) in relation to the nature, scale and complexity of their risks, allowing them to use specific proportionality measures. In addition, supervisory authorities are also empowered to grant or withdraw formal approval to undertakings that, while not complying with the criteria to classify as small and non-complex, have a risk profile that justifies the use of some of the proportionality measures applicable to small and non-complex undertakings.

This document is a response to the European Commission's Call for Advice of 30 April 2024, with the objective of specifying the methodology for classifying undertakings and groups as small and non-complex and detailing the conditions for granting or withdrawing supervisory approval for proportionality measures for undertakings not classified as small and non-complex.

Consultation and stakeholder engagement

EIOPA conducted a public consultation on the draft advice between 2 August and 25 October 2024. A stakeholder event was also held on 10 October to discuss the draft technical advice. Twenty-three stakeholders provided their response to the consultation paper, which are publicly available.

Advice

The technical advice is structured in two main sections: the first focuses on the methodology for classifying undertakings as SNCU, and the second addresses the conditions for granting or withdrawing supervisory approval for proportionality measures to undertakings that are not SNCUs.

On the methodology for classifying undertakings as SNCU, EIOPA is of the view that the methodology is clear and comprehensive and that further specifications will not be needed. On the conditions for granting or withdrawing supervisory approval for proportionality measures to undertakings that are not SNCU, the technical advice includes a set of proposed conditions that aim to guide supervisory authorities in their assessment of undertakings' applications for proportionality measures. The advice sets out general conditions and conditions that are specific to individual proportionality measures. The conditions are designed to ensure that the proportionality principle is applied according to the nature, scale, and complexity of the risks faced by the undertakings.

1. INTRODUCTION

1.1. CALL FOR ADVICE

On 30 April 2024 the European Commission requested EIOPA's technical advice on the implementation of the new proportionality framework under Solvency II. The deadline for the advice is 31 January 2025.

In particular, in order to support the Commission to adopt Delegated Acts, EIOPA was requested to specify:

- i) *the methodology to be used when classifying undertakings/groups as small and non-complex, and*
- ii) *the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings not classified as small and non-complex undertakings/groups.*

As far as the first aspect is concerned, EIOPA is recommended to evaluate whether the methodology for the classification of undertakings and groups as small and non-complex, as specified in the provisional agreement on the amendments to the Solvency II Directive¹, is clear and comprehensive. If not, EIOPA is encouraged to formulate clearly what should be introduced in the Solvency II Delegated Regulation². Such potential additional specifications should be as limited as possible and avoid undue administrative burden for undertakings and groups, as well as supervisory authorities

Moreover, concerning the second aspect, EIOPA is requested to provide for the proportionality measures identified in Article 29d (including their mutatis mutandis application at group level in accordance with Article 213a(5)) of the Solvency II Directive) the conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex. More specifically, the Commission requested that for each of the eight proportionality measures in the scope, EIOPA provides, when possible, a closed list of conditions and aims at avoiding undue administrative burden – including new reporting requirements – for undertakings and groups. Such list should serve as basis for the supervisory approval referred to in Article 29d (including at group level as implied by Article 213a(5)) of the Solvency II Directive.

Where appropriate, EIOPA's technical recommendations may take into account the legal form of certain undertakings and groups.

EIOPA provides this advice in accordance with Article 16a of Regulation (EU) No 1094/2010.

¹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155)

² Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1–797)

1.2. CONTEXT

With Directive (EU) 2025/2³, the European Parliament and the Council adopted amendments to the Solvency II Directive. The new framework for proportionality in Solvency II Directive represents a shift towards a more robust and transparent application of the proportionality principle within the insurance industry. This new framework aims to address concerns regarding the limited and inconsistent application of proportionality in the first years of implementation of Solvency II. By introducing clear criteria for small and non-complex undertakings (and groups) the framework seeks to enhance the application of certain proportionality measures and promote convergence across Member States.

The new framework introduces a set of objective criteria to identify undertakings (and groups) as small and non-complex in relation to the nature, scale and complexity of their risks, allowing them to use specific proportionality measures. In addition, supervisors are also empowered to grant or withdraw formal approval to undertakings that, while not complying with the criteria to classify as small and non-complex, have a risk profile that justifies the use of some of the proportionality measures⁴ applicable to small and non-complex undertakings.

1.3. BASIS FOR ADVICE

The advice is drafted to provide further clarity on two aspects.

On the one hand, the process to classify undertakings and groups as small and non-complex, as outlined in Article 29b of the Solvency II Directive, is already designed to provide clarity and transparency for insurance undertakings seeking such designation in order to benefit from certain reduced requirements by introducing more automatism through qualitative and quantitative criteria and defining the process for classification. The current advice should evaluate whether the new methodology, to be defined in the review of Solvency II Directive, requires further specification.

On the other hand, the criteria for classifying undertakings (and groups) as small and non-complex are designed as a benchmark that is expected to work as a rule, but as no assessment of individual risk profiles takes place, the approach is not necessarily able to ensure that each and every undertaking or group that is actually small and non-complex will be identified as such. For this reason, there may be certain undertakings (and groups) that do not comply with all the criteria for SNCU, but the nature, scale and complexity of whose risks still is compatible with the use of one or more proportionality measures, subject to a formal prior approval by the supervisor. To ensure a level playing field and

³ Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU.

⁴ Small and non-complex undertakings can benefit from the full range of proportionality measures, namely those specified in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 45a(5), Article 51(6), Article 51a(1), Article 77(8) and Article 144a(4) and any measure provided for in the Delegated Acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings. Undertakings that are not classified as small and non-complex may only use proportionality measures as provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(8) and Article 144a(4) and proportionality measures as provided for in the Delegated Acts adopted pursuant to this Directive that are both explicitly applicable to small and non-complex undertakings in accordance with Article 29c and identified for the purposes of this Article, with the prior approval of the supervisory authority.

enhance convergence of practices in the supervisory community, the conditions for granting or withdrawing supervisory approval on the use of proportionality measures by undertakings (and groups) that are not classified as small and non-complex would require further specification.

In drafting this advice, EIOPA considered its previous Opinion on the 2020 review of the Solvency II framework, release on 17 December 2020.

1.4. STRUCTURE OF THE ADVICE

The advice is articulated in two sections focusing on (i) the methodology to be used when classifying undertakings/groups as small and non-complex, and (ii) the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings not classified as small and non-complex undertakings/groups. The sections are structured according to the following action points:

- ▶ Extract from the call for advice
- ▶ Relevant legal provisions, previous EIOPA reports and other regulatory background
- ▶ Identification of the issue
- ▶ Analysis of the policy options and impact assessment
- ▶ EIOPA's advice

2. METHODOLOGY TO BE USED WHEN CLASSIFYING UNDERTAKINGS AS SMALL AND NON-COMPLEX

2.1. EXTRACT FROM THE CALL FOR ADVICE

A. Implementation of the new proportionality framework

With a view to assist the Commission in the adoption of Delegated Acts under Articles 29(5) and 213a(6) of Solvency II Directive, EIOPA is requested to assess whether the methodology for the classification of undertakings and groups as small and non-complex, as specified in the provisional agreement on the amendments to the Solvency II Directive, is clear and comprehensive. Where this is not the case, EIOPA is asked to indicate what should be introduced in the Solvency II Delegated Regulation. Such potential additional specifications should be as limited as possible and avoid undue administrative burden for undertakings and groups, as well as supervisory authorities. [...]

2.2. RELEVANT LEGAL PROVISIONS

Article 29b of Solvency II Directive sets out the process for classifying undertakings as small and non-complex.

2.3. IDENTIFICATION OF THE ISSUE

The process for classifying undertakings as small and non-complex foresees as a first step, that the undertaking ensures compliance with all criteria specified in Article 29a and then notifies the supervisory authority of this compliance. This notification has to be submitted to the supervisory authority of the Member State that granted authorisation to undertake insurance business, and has to include (i) evidence of compliance with the SNCU criteria, (ii) a declaration that the undertaking does not plan any strategic change that would lead to non-compliance with any of the SNCU criteria within the next three years, and (iii) an identification of the proportionality measures the undertaking expects to implement, in particular whether the best estimate simplification is intended to be used and whether the undertaking plans to use the simplified method to calculate technical provisions laid down in Article 77(8).

While EIOPA believes that the methodology for the classification of undertakings and groups as small and non-complex is clear and comprehensive, the reconciliation between the proportionality framework for solo undertakings and that for the respective group might still be of difficult implementation. Indeed, in case all (or majority of) undertakings belonging to the same group classify as small and non-complex, but the respective group does not fulfil the relevant criteria, the application of the proportionality measure at solo level may be hindered. However, while the different application of the proportionality at solo and group level may be seen as a distortion, it should be kept in mind that in general the management of the business at group level gives rise to some additional risks and complexity that are not the pure sum of the risks at solo level. For instance, insurance groups are exposed to interconnectedness and systemic risks, and they can have complex governance and risk management structures. However, when the group fulfil its reporting, disclosure and risk management

requirements, EIOPA expects that it also takes on the responsibility to obtain the necessary information from its SNCUs in a proportionate manner.

2.4. ANALYSIS

EIOPA considered the following options with regard to the structure of the methodology for the classification of undertakings and groups as small and non-complex.

Policy options

- ▶ Option 1: No specifications on the methodology for the classification of undertakings and groups as small and non-complex.
- ▶ Option 2: Specify in details certain procedural aspects for the methodology for the classification of undertakings and groups as small and non-complex.

Impact of the policy options

Option 1: No specifications on the methodology for the classification of undertakings and groups as small and non-complex		
Costs	Policyholders	No material impact.
	Insurance and reinsurance undertakings	No material impact.
	Supervisory authorities	No material impact.
	Other	No material impact.
Benefits	Policyholders	No material impact.
	Insurance and reinsurance undertakings	No material impact.
	Supervisory authorities	Supervisors would maintain the necessary flexibility to adapt the methodology to classify undertakings as small and non-complex to the specific administrative procedures in their legislation.
	Other	No material impact.

Option 2: Specify in details certain procedural aspects for the methodology for the classification of undertakings and groups as small and non-complex		
Costs	Policyholders	No material impact.

	Insurance and reinsurance undertakings	No material impact.
	Supervisory authorities	Any further specification in addition to the procedural aspects in Solvency II Directive may override the national administrative legislation.
	Other	No material impact.
Benefits	Policyholders	No material impact.
	Insurance and reinsurance undertakings	No material impact.
	Supervisory authorities	No material impact.
	Other	No material impact.

Comparison of policy options

Option 1 (No specifications on the methodology for the classification of undertakings and groups as small and non-complex) deemed to be more in line with the rationale of Article 29b of Directive 2009/138/EC. The Directive already prescribes the necessary steps that the undertakings would need to follow to be classified as small and non-complex, and how supervisors should proceed to (or not to) classify them as such. This option also ensures that the Delegated Acts do not regulate aspects that should be defined in the transposition of the Level 1 text, and will be covered under the national administrative legislation of each Member State.

Option 2 (Specify in details certain procedural aspects for the methodology for the classification of undertakings and groups as small and non-complex) would provide further details on the methodology for the classification of undertakings and groups as small and non-complex, enhancing the legal certainty of the process. However, it runs the risk of overlapping, and potentially contradicting, the administrative procedures of each Member State.

2.5. ADVICE

According to EIOPA's assessment the methodology for the classification of undertakings and groups as small and non-complex is clear and comprehensive. EIOPA does not believe that further specifications will be needed. EIOPA holds the view that any further specification will depend on the practical implementation of the framework at national level, and it should be addressed in the transposition of the amendments to the Solvency II Directive.

3. CONDITIONS FOR GRANTING OR WITHDRAWING SUPERVISORY APPROVAL TO UNDERTAKINGS AND GROUPS THAT ARE NOT CLASSIFIED AS SMALL AND NON-COMPLEX

3.1. EXTRACT FROM THE CALL FOR ADVICE

A. Implementation of the new proportionality framework

[...]

With a view to assist the Commission in the adoption of Delegated Acts under Articles 29(5) and 213a(6) of Solvency II Directive, EIOPA is requested to provide for the proportionality measures identified in Article 29d (including their mutatis mutandis application at group level in accordance with Article 213a(5)) of the Solvency II Directive, the conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex. It is expected that for each proportionality measure, when possible, 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 input to the supervisory assessment referred to in Article 29d (including at group level as implied by Article 213a(5)) of the Solvency II Directive.

Where appropriate, EIOPA's technical recommendations may take into account the legal form of certain undertakings and groups.

3.2. RELEVANT LEGAL PROVISIONS

Article 29d of Solvency II Directive envisages for undertakings not fulfilling the SNCU criteria (non-SNCUs) the possibility to apply a more limited list of proportionality measures. However, non-SNCUs that wish to benefit from such proportionality measures are required to submit a prior request to their supervisory authorities and obtain formal approval.

Non-SNCUs may use only the application of the following proportionality measures upon approval by the Supervisory Authority:

- a. Article 35(5a): Information to be provided for supervisory purposes – Regular Supervisory Report (RSR) every three years or more frequently, if deemed necessary, upon request of the supervisory authority;
- b. Article 41: General governance requirements – Combination of key functions;
- c. Article 41: General governance requirements – Update of written policies every five years (instead of annually);
- d. Article 45(1b): Own risk and solvency assessment (ORSA) – Waiver from macroprudential analysis in the ORSA;
- e. Article 45(5): Regular Own risk and solvency assessment – ORSA at least every two years (instead of annually);

- f. Article 77(8)⁵: Calculation of technical provisions – Prudent deterministic valuation of the best estimate for immaterial obligations with options and guarantees;
- g. Article 144a(4): Liquidity risk management – Exemption from liquidity risk management plan.

In addition, non-SNCUs may request approval for the application of one proportionality measure that will be introduced in the Delegated Regulation, likely to be related to the exemption of the remuneration requirement to defer a significant portion of the variable remuneration in accordance with Article 275(2)(c).

3.3. IDENTIFICATION OF THE ISSUE

Article 29d of Solvency II Directive, as drafted in the provisional agreement and in line with EIOPA Opinion, establishes that undertakings that are not classified as small and non-complex may request to use proportionality measures. A similar provision is applicable to groups (Article 213a of the Solvency II Directive). While the legislative text does not further regulate the type of undertakings that may submit an application to benefit from proportionality measures, EIOPA expect that applications for proportionality measures are submitted taking into account the Solvency II overarching principle that any use of proportionality measures must be appropriate to the nature, scale and complexity of undertakings' risks. Proportionate means that the approach is tailored to the level of risk involved. In other words, undertakings with a higher risk profile will apply more sophisticated requirements, while those with a lower risk profile can benefit from simpler requirements.

It is therefore necessary to define conditions for granting or withdrawing the use of each proportionality measures in a manner that, while ensuring appropriate convergence of supervisory practices, clarifies how the applicants' risk profile is taken into account in the supervisory assessment. As a result, within the boundaries of the conditions proposed in this advice and contained in the future Delegated Acts, supervisors are expected to apply their expert and supervisory judgement, taking into account the materiality of the risks at stake. This is an essential part of the supervisory review process and the risk assessments that supervisors are required to conduct.

By being focused on the proportionality measures identified in Article 29d of Solvency II Directive, the technical advice is issued without prejudice to the potential employment of simplifications for Pillar I calculations (such as those on the Best Estimate or the Solvency Capital Requirement), which represent an additional facet of proportionality application. 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, similarly to small and non-complex undertakings pursuant to Article 52(4) of Solvency II Directive.

For groups, the proportionality measures are intended to be applied only at the group level, meaning that they are to be implemented by the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company.

⁵ In Directive (EU) 2025/2, the proportionality measure has been moved from Article 77(7) to Article 77(8) of the Directive.

3.4. ANALYSIS

EIOPA considered the following options with regard to the structure of the conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex.

Policy options

- ▶ Option 1: No change
- ▶ Option 2: Introduce conditions based only on a qualitative approach.
- ▶ Option 3: Adopt a hybrid approach, introducing conditions based both on a quantitative and qualitative approach.

Impact of the policy options

Option 1: No Change		
Costs	Policyholders	No material impact.
	Insurance and reinsurance undertakings	Lacking the definition of common conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex, the legal certainty on the application of proportionality measures would be impaired.
	Supervisory authorities	Supervisory authorities will lack any further guidance on the application of the proportionality measures, ultimately leading to divergent practices and unlevel playing field.
	Other	No material impact.
Benefits	Policyholders	No material impact.
	Insurance and reinsurance undertakings	No material impact.
	Supervisory authorities	Any decision on the application of the proportionality measures will be entirely left to the judgement of supervisory authorities.
	Other	No material impact.

Option 2: Introduce conditions based only on a qualitative approach		
Costs	Policyholders	No material impact.
	Insurance and reinsurance undertakings	No material impact.

	Supervisory authorities	The administrative burden of supervisors may be increased as lacking any quantitative thresholds, any undertaking under their supervision may potentially apply.
	Other	No material impact
Benefits	Policyholders	All conditions are calibrated to ensure that only low risk profile undertakings may apply the proportionality measures, provided that supervisors have no concerns on the practical use of the requested measure.
	Insurance and reinsurance undertakings	No material impact.
	Supervisory authorities	Supervisors would be able to employ more supervisory judgement to assess whether the conditions are fulfilled as there will be no objective standards to anchor their assessment.
	Other	No material impact.

Option 3: Adopt a hybrid approach, introducing conditions based both on a quantitative and qualitative approach

Costs	Policyholders	No material impact.
	Insurance and reinsurance undertakings	The largest undertakings will be filtered out in case they are above the quantitative thresholds set in the Delegated Acts.
	Supervisory authorities	The discretion of the supervisors may be reduced by introducing objective quantitative thresholds that prevent them from assessing whether the measures can be granted or withdrawn.
	Other	No material impact.
Benefits	Policyholders	All conditions are calibrated to ensure that only low risk profile undertakings may apply the proportionality measures, provided that supervisors have no concerns on the practical use of the requested measure.
	Insurance and reinsurance undertakings	The advice contemplates a safeguard clause as undertakings above the thresholds, which conducts activities of simple nature, may still be allowed to use proportionality measures if they fulfil all other conditions related to their risk profile and to the specific nature of the measure they apply for.
	Supervisory authorities	The quantitative thresholds would filter out largest undertakings that are less likely to obtain an approval for the proportionality measures they apply for, ultimately reducing the administrative burden of the supervisors.

	Other	No material impact.
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Comparison of policy options

Option 1 (no change) means that no conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex are introduced. This scenario is a baseline that is only introduced as a comparison with other policy options. This option is not considered as a viable option given the specific mandate given to EIOPA in the European Commission's Call for Advice.

Option 2 (introducing conditions that are based only on a qualitative approach) would enhance the use of supervisory judgement and allow to conduct more targeted assessments considering the specific risk profile of the applicant, enabling supervisors to consider the specific circumstances of each undertaking and reflecting the unique aspects of the undertakings operating in their markets. However, without considering at all conditions based on quantitative thresholds, the degree of supervisory convergence among supervisors may be hindered, ultimately leading to unlevel playing field among Member States. Furthermore, the legitimate need of predictability by the applicant may be also not sufficiently safeguarded.

Option 3 (adopting a hybrid approach, introducing conditions based both on a quantitative and qualitative approach) would offer a fair balance between predictability/convergence in the application of the new framework, on the one hand, and allowing for supervisory judgement/risk-based supervision on the other hand.

Indeed, such approach would foster supervisory convergence, offering supervisors common standards and promote consistency in supervisory assessments, while also preserving the necessary degree of supervisory discretion to take into account the specificities of undertakings operating in the supervisors' markets. In addition, this option allows to take into account the scale of the undertakings in line with the overall principle of proportionality, establishing that requirements shall be applied in a manner that is proportionate to the nature, scale and complexity of the risks inherent in the business of the undertaking.

3.5. ADVICE

EIOPA proposes 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. Some of the conditions should be of a more general nature, aiming to ensure that the nature, scale and complexity of undertakings' risk justify a proportionate application of a certain requirement. Other conditions should be more tailored to the type of proportionality measure that the undertaking intends to apply for.

While the size of an undertaking is an important aspect in assessing its risk profile, it is crucial that the supervisory decision to grant or withdraw proportionality measures for undertakings not classified as small and non-complex is based on a holistic evaluation encompassing both

qualitative and quantitative factors. Therefore, the conditions specified in this advice for each proportionality measure carry equal weight and are subject to equal consideration in the supervisory assessment process.

Where undertaking's risk profile has changed so that undertaking no longer complies with the one or more conditions set out in this Advice and such non-compliance is expected to persist over time, the supervisory authority may withdraw the proportionality measure(s).

Section 3.5.1 provides an overview of the different conditions that are applied to each proportionality measure, as EIOPA advises the European Commission to reflect them in the Delegated Acts. For each proportionality measure, it is expected that the applicant undertaking fulfils all relevant conditions as indicated in this section.

Section 3.5.2 contains an explanation of the reasons why EIOPA deems those conditions relevant.

3.5.1.OVERVIEW OF CONDITIONS MEASURE BY MEASURE

Article 35(5a): Information to be provided for supervisory purposes

Article 35(5a) of the Solvency II Directive establishes that insurance and reinsurance undertakings submit a regular supervisory report (RSR) to supervisory authorities, encompassing detailed information on business performance, governance systems, risk profiles, solvency valuation, and capital management for the reporting period. For small and non-complex undertakings, submission occurs every three years, extendable to up to five years with supervisory approval. The undertakings not classified as small and non-complex must submit the RSR every three years, although supervisory authorities reserve the right to request more frequent reporting.

EIOPA recommends that in determining the frequency of the RSR every three years (instead of an annual and biannual frequency), supervisors should take into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.
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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion

of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

6. The supervisory authority has not identified unresolved material concerns with the last Regular Supervisory Report, 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), and is satisfied with the information in the Solvency and Financial Condition Report, and the annual and quarterly Quantitative Reporting Templates.

Article 41: General governance requirements

Paragraph 2a: Combination of key functions

Article 41(2a) of the Solvency II Directive requires that insurance and reinsurance undertakings appoint separate individuals to fulfil key functions such as risk management, actuarial, compliance, and internal audit. Each function must be performed independently from the others to prevent conflicts of interest. However, small and non-complex undertakings, or those which have obtained prior supervisory approval pursuant to Article 29d, may allow individuals responsible for risk management, actuarial, and compliance functions to also perform additional key functions (other than internal audit) or be members of the administrative, management or supervisory body, provided that potential conflicts of interest are managed effectively and that the individual's ability to fulfil their responsibilities is not compromised.

EIOPA recommends that, in processing the undertaking's application for the combination of key functions under Article 29d, supervisors should grant approval following an assessment that takes into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.
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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

7. The supervisory authority has not identified unresolved material concerns with regard to decision making procedures and the organisational structure of the undertaking.

8. The persons responsible for the key functions of risk management, actuarial and compliance possess at all times sufficient knowledge, skills and experience to perform their duties, 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.

9. The supervisory authority is satisfied that the cost of maintaining separate functions would be disproportionate for the undertaking.

Paragraph 3: Less frequent review of written policies

Article 41(3) of the Solvency II Directive requires that insurance and reinsurance undertakings must establish written policies concerning key areas such as risk management, internal control, internal audit, remuneration, and outsourcing. These policies must be implemented effectively and undergo annual review. Additionally, they require prior approval by the administrative, management, or supervisory body and must be adapted following significant changes in the relevant systems or areas. However, small and non-complex undertakings may conduct less frequent reviews, at least every five years, unless determined otherwise by the supervisory authority based on the specific circumstances of the undertaking.

EIOPA recommends that, in processing the undertaking's application to update written policies every five years under Article 29d, supervisors should grant approval following an assessment that takes into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.

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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

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 are able to support the business strategy of the undertaking.

Article 45: Own risk and solvency assessment

Paragraph 1b: Waiver from macroprudential analysis in the ORSA

Article 45(1)(e) of Solvency II Directive establishes that upon a reasoned request of the supervisory authority, an undertaking should include in its ORSA a macroprudential analysis. According to paragraph 1b of that Article, Member States shall ensure that small and non-complex undertakings and undertakings which have obtained prior supervisory approval, pursuant to Article 29d, are not obliged to conduct that analysis.

EIOPA is aware that the applicability criteria for macroprudential analysis in the ORSA will be disciplined by a dedicated Regulatory Technical Standard, in line with the mandate under Article 144d(1)(a)(i) and (ii) of the Solvency II Directive. Also, EIOPA acknowledges that this requirement is subject to a preliminary request of the supervisor and as such, 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 RTS.

Paragraph 5: ORSA at least every two years

Article 45(5) of Solvency II Directive requires that the ORSA is performed on an annual basis, and without any delay following any significant change in their risk profile. Nonetheless, the same paragraph establishes that small and non-complex undertakings may perform the assessment at least every two years and without any delay following any significant change in their risk profile, unless the supervisory authority concludes on the basis of the specific circumstances of the undertaking that a more frequent assessment is needed.

EIOPA recommends that, in processing the undertaking's application to perform the ORSA at least every two years under Article 29d, should grant approval following an assessment that takes into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.

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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

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

12. The supervisory authority has not identified unresolved material 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.

Article 77(8): Calculation of technical provisions

Article 77(8) of Solvency II Directive allows insurance and reinsurance undertakings that are classified as small and non-complex undertakings and undertakings that have obtained prior supervisory approval pursuant to Article 29d to use a prudent deterministic valuation of the best estimate for life obligations with options and guarantees that are not deemed material.

EIOPA recommends that, in processing the undertaking's application for the prudent deterministic valuation of the best estimate for life obligations with options and guarantees that are not deemed material under Article 29d, supervisors should only grant approval following an assessment that takes into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.

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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

13. The insurance or reinsurance undertaking is able to demonstrate that the use a prudent deterministic valuation is proportionate in relation to the nature, scale and complexity of the risks arising from the obligations for which the undertaking seeks to apply that valuation.

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.

Article 144a(4): Liquidity risk management

Article 144a of Solvency II Directive requires undertakings to have liquidity risk management plan covering liquidity analysis over the short term, projecting the incoming and outgoing cash flows in relation to their assets and liabilities. When requested by the supervisory authorities, the liquidity risk management plan may be extended to cover also liquidity analysis over medium and long-term.

EIOPA is aware that the applicability criteria to draw up and maintain a liquidity risk management plan covering liquidity analysis over the medium and long term will be disciplined by a dedicated Regulatory Technical Standard, in line with the mandate under Article 144a(2) of the Solvency II Directive. Also,

EIOPA acknowledges that this requirement is subject to a preliminary request of the supervisor and as such, 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 RTS.

EIOPA recommends that, in processing the undertaking's application for the exemption from the liquidity risk management plan covering liquidity analysis over the short term under Article 29d, supervisors should grant approval following an assessment that takes into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.
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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.
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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

15. The undertaking is not exposed to material 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, the exposure to off-balance sheet items, and the concentration of counterparty exposures to reinsurance undertakings.

16. The supervisory authority has not identified material concerns in liquidity position of undertakings stemming from economic or macroeconomic market trend or the amount and quality of own funds items.

17. *[For groups only]* The supervisory authority has not identified material concerns regarding the fungibility and availability of liquid funds across the group, including the ability to transfer liquidity across the group's undertakings.

Article 275(2)(c): Waiver from mandatory deferral of a significant portion of the variable remuneration

EIOPA understands that the revision of the Delegated Regulation will include the introduction of a waiver from mandatory deferral of a significant portion of the variable remuneration, as currently regulated by Article 275(2)(c) of that Regulation. This waiver will apply to undertakings that are classified as small and non-complex, and upon approval, to undertakings that do not classify as small and non-complex.

EIOPA recommends that, in processing the undertaking's application for the waiver from mandatory deferral of a significant portion of the variable remuneration under Article 29d, Supervisors should grant their approval following an assessment that takes into account the following conditions:

1. The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.

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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

3. The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

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 12 000 000 000, 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.

5. The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

18. 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.

3.5.2.EXPLANATION OF THE CONDITIONS

Condition 1

The supervisory authority expects, following the supervisory review process, that the undertaking is able to withstand its current and future risks, 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.

Applicable to Article 35(5a), Article 41(2a), Article 41(3), Article 45(5), Article 77(8), Article 144a(4) of Solvency II Directive, and Article 275(2)(c) of the Delegated Regulation.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

Supervisors should consider the outcome of their risk assessment framework (i.e. the supervisory rating), as laid down in EIOPA Guidelines on supervisory review process, to identify and assess current and future risks that insurance and reinsurance undertakings (groups) face or may face and following supervisory activities.

The risk assessment framework is at the core of Supervisors' activities and represents the starting point to develop the supervisory plan for supervised undertakings, ultimately impacting the frequency and intensity of supervisory activities for each undertaking.

It is expected that undertakings (or groups) wishing to apply proportionality are classified by their competent supervisory authorities as low or medium-low undertakings/groups, with a low or medium-low risk of jeopardising the proper operation of the reinsurance/insurance business or their capital position with an impact on the market and policyholders/beneficiaries.

Undertakings or groups that are under scrutiny or intensified supervision by their supervisory authorities, because of some material non-compliance with the applicable legal requirements or when there is risk of non-compliance in the short term, are not expected to apply for the use of certain proportionality measures.

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 the key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

In case of insurance and reinsurance groups, the supervisory authority is satisfied that the group does not have a complex structure and a complex business model, also having regard to the number of jurisdictions in which the group operates, the proportion of the group's total revenues from activities conducted outside the home Member State (especially in third countries), the proportion of non-insurance undertakings (in terms of either absolute numbers or total revenues), and the materiality of the intragroup transactions.

Applicable to Article 35(5a), Article 41(2a), Article 41(3), Article 45(5), Article 77(8), Article 144a(4) of Solvency II Directive, and Article 275(2)(c) of the Delegated Regulation.

This first sub-condition applies, mutatis mutandis, to insurance and reinsurance groups.

Supervisors should verify that the undertaking's business model is not complex and remains stable over time.

The first condition aims to ensure that the applicant undertakings do not have a complex and risky business model, as defined in its business strategy and business plan, that may jeopardize the viability and sustainability of the undertakings.

EIOPA acknowledges that the business strategy is (and must remain) a strategic choice made by the undertaking's Administrative Management Supervisory Body (AMSB) and that the business model is expected to develop over time, taking into account the undertaking's growth and other external factors (such as trends in the market or product innovations); however, a change towards a more complex and riskier business model requires an enhanced system of governance implemented by the undertaking as well as more robust process and procedures in place with adequate checks and balances. Similarly, supervisors may want to review more frequently and thoroughly the sustainability of the business model.

Secondly, it is expected that the applicant undertakings maintain a stable and sustainable business model over time, as reflected in the supervisory reporting figures and in the solvency ratios.

A stable business model means that, excluding external factors or market changes, the applicant undertaking is not expected to face additional or different risks other than those included in the outcome of the Risk Assessment Framework, as part of the Supervisory Review Process (SRP), with the reasonable expectation that the last supervisory assessment will remain relevant for the near future. In other words, a stable business model gives a reasonable assurance that the undertaking's outlook remains stable and predictable and therefore the undertaking is likely to meet its obligations over time, reducing the risks of unforeseen supervisory concerns.

On the contrary, launching new products (e.g. new line of business) or entering new geographical markets, acquisition of new portfolio, undergoing mergers or acquisitions, or changing external ownership or the key management personnel can significantly impact the undertaking's risk profile and capital adequacy. Such changes could introduce new risks or alter the existing risk landscape, potentially leading to a more intense supervisory dialogue. For the purpose of granting proportionality measures, it is important that the undertaking's business undergoes changes that are not material. If those changes are substantial enough to materially impact its risk profile, supervisors would need to conduct an *ex-post* analysis to decide whether the undertaking provides adequate reasoning and explanations for the changes, identifies and assesses emerging risks, maintains a proper governance system through internal control functions, and adopts appropriate risk mitigation techniques.

In the absence of material changes, supervisors are in a position to rely on the latest supervisory assessments of the undertaking, leveraging on the historical data already available, and to conduct a more accurate and forward-looking analysis. Constant balance sheet items also imply that the business

strategy of undertakings is well defined and up-to-date and that robust operational processes are in place, ensuring continuity of business and operations.

Supervisors are expected to consider the following quantitative and qualitative aspects:

- the material items of the undertaking's financial conditions, such as total investments (separately for assets covering unit/index linked, if any), technical provisions (gross of reinsurance), use of reinsurance (reinsurance recoverable), gross written premiums, own funds items and the SCR remained in the sense of having registered a common trend, in line with the market trend or its peers;
- the material changes of its policies (such as the investment policy, the reinsurance policy, the underwriting/reserving policy, the asset-liability management policy, the capital management policy) that may have led to material change of the key items of the balance sheet or to a different implementation of its lines of defence (i.e. risk management policy) or to a different business model (i.e. intensive use of outsourcing, extensive use of MGA);

This condition should be seen as without prejudice to Article 29d(1)(c) of the Solvency II Directive, which requires a declaration that the applicant undertaking does not plan any strategic change that would have an impact on the risk profile of the undertaking within the next three years.

Condition 3

The undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking also into account the internal target solvency position of the undertaking as defined in its medium-term capital management plan.

Applicable to Article 35(5a), Article 41(2a), Article 41(3), Article 45(5), Article 77(8), Article 144a(4) of Solvency II Directive, and Article 275(2)(c) of the Delegated Regulation.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

One of the core principles of Solvency II Directive is to ensure that undertakings hold an adequate level of capital to absorb significant losses (SCR calculation under Pillar 1), taking into account overall solvency needs, as determined according to the undertakings' own principles (as part of ORSA under pillar II). To this end, supervisors should assess that the capital adequacy position of the applicant undertaking is solid and is above the risk appetite established by the undertaking to justify the application of proportionality measures.

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.

Supervisors should assess the outcome of the ORSA in the supervisory review process, as a forward-looking tool, with a focus on undertaking's assessment of the continuous compliance with the capital requirements and the overall solvency needs, as well as its ability to perform the ORSA on a forward

looking basis (using for instance scenario analysis, stress testing, sensitivity testing, etc, including back-testing the actual results compared to past projections embedded in the ORSA).

By assessing the medium-term capital management plans, Supervisors can adopt a forward-looking approach in assessing the present and future solvency positions of the undertaking, to the extent that the risk of future solvency concerns is reduced.

Condition 4

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 12 000 000 000, 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.

Applicable to Article 35(5a), Article 41(2a), Article 41(3), Article 45(5), Article 77(8), Article 144a(4) of Solvency II Directive, and Article 275(2)(c) of the Delegated Regulation.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition ensures that only undertakings without a substantial market presence or conducting simple operational activities, can benefit from proportionality measures.

Undertakings with a limited impact on the market share of the home Member State are less likely to pose a systemic risk to the insurance sector if they encounter financial difficulties. Their limited market share means that any potential issues will have a smaller impact on the overall stability of that market.

As a result, any potential proportionality measure applied is less likely to reduce the effectiveness of the supervisor actions in this regard.

Moreover, requiring that the undertaking's activities are of a simple nature indicates that the undertaking's operations are straightforward and not overly complex. Simple activities are easier to monitor and assess, ensuring that the undertaking's risk profile remains consistent and manageable. By enhancing the predictability and stability of the undertaking's financial performance, this condition facilitates the assessment of whether to grant or withdraw the proportionality measures.

Supervisors should therefore consider the nature of the business activities, and should treat them as simple when, for instance, the undertaking has a limited number of lines of business, conducts investments in traditional assets or limited non-routine investments (e.g. no material investments in derivatives or risky assets), does not have material options and guarantees embedded in insurance contracts, does not conduct significant cross-border activities, or does not make innovative use of reinsurance as risk mitigation techniques.

Condition 5

The supervisory authority has not identified unresolved material concerns arising from the system of governance of the undertaking.

Applicable to Article 35(5a), Article 41(2a), Article 41(3), Article 45(5), Article 77(8), Article 144a(4) of Solvency II Directive, and Article 275(2)(c) of the Delegated Regulation.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition ensures that only those undertakings who established a sound and prudent management and oversight of their business as well as fit and proper key persons⁶ can benefit from proportionality measures.

The absence of material risks related to internal governance over the past three financial years indicates that the undertaking has sound and effective governance practices in place. Strong internal governance is a key factor in ensuring that the undertaking can manage its risks appropriately and maintain compliance with regulatory requirements in line with the undertakings (including their employers) long term interests and giving priority to the policyholders' interests. This includes having effective internal controls, risk management processes, and oversight mechanisms to identify, mitigate and report potential risks to the AMSB.

Condition 6

The supervisory authority has not identified unresolved material concerns with the last Regular Supervisory Report, 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), and is

⁶ Persons who effectively run the undertaking or have other key functions.

satisfied with the information in the Solvency and Financial Condition Report, and the annual and quarterly Quantitative Reporting Templates.

Applicable to Article 35(5a) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

Supervisors should conduct an assessment of the previous RSR submitted by the applicant undertaking, chiefly focusing on their quality and completeness. Such assessment would indeed offer an indication of the level of the risk management and internal control systems.

By ensuring that the RSR contains up-to-date and comprehensive information, the undertaking adheres to high standards of transparency and regulatory compliance.

An RSR is deemed of good quality and/or complete when it incorporates, for all the required elements of the RSR, as specified in the Delegated Regulation, all relevant undertaking-specific information without replicating EU or national general regulatory requirements. This demonstrates a thorough understanding of the undertaking's risk profile and governance practices and enables supervisors to conduct a more accurate assessment of the undertaking's risk management and internal control systems. To this end, supervisors may use declarations of (internal and external) auditors or make reference to other information from audited documents.

Moreover, the condition emphasises the importance of the quality and completeness of the RSR in assessing the applicant undertaking's risk profile. A good quality and complete RSR provide supervisory authorities with the necessary insights into the undertaking's operations, risk exposures, and capital management practices. Conversely, a poor quality or incomplete RSR may indicate deficiencies in the undertaking's risk management framework, governance practices, or compliance with regulatory requirements.

Condition 7

The supervisory authority has not identified unresolved material concerns with regard to decision making procedures and the organisational structure of the undertaking.

Applicable to Article 41(2a) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

Ensuring that the undertaking has effective decision-making procedures and a solid organisational structure fosters transparency and accountability within the organization. Clear reporting lines and structured allocation of functions and responsibilities reinforces the roles of the persons in charge of certain functions, ultimately promoting sound governance practices.

A structured organisational framework also ensures an effective oversight by the undertaking's management and by the supervisors. Clear reporting lines facilitate the flow of information, allowing for timely identification and resolution of issues. As a result, the undertaking implements decision-making processes that are transparent, informed, and aligned with the organisation's strategic objectives. Overall, this condition points to the existence of robust risk management practices, which ultimately allow the undertaking to effectively identify, assess, and mitigate risks more effectively.

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.

Applicable to Article 41(2a) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition ensures that these individuals possess the competencies to perform their tasks in the complex regulatory landscapes and mitigate risks of the undertaking they are working for. Moreover, by verifying that such combinations do not impede an individual's capacity to fulfil their responsibilities, this condition prevents that the combinations of roles potentially affects governance and decision-making processes.

For instance, in case of combination of AMSB, this assessment should ensure that the key function holder appointed to be member of the administrative, management or supervisory body will retain sufficient time to conduct all relevant additional tasks. In the case of the combination of key functions, supervisors should ensure that the persons assigned to the combined functions will hold sufficient expertise to effectively conduct activities related to the different functions.

Undertakings assessing the possibility of combining functions (i.e. risk management, compliance and actuarial) should evaluate that adequate weight has been given to the controls necessary to address the specific risk profile of the company, so the presence of a specific organizational unit with distinct internal owners (which are not members of the administrative body) has to be evaluated. The combination of functions in any case requires the adoption of controls aimed at ensuring compliance with the principle of segregation of duties and prevention of conflicts of interest.

Condition 9

The supervisory authority is satisfied that the cost of maintaining separate functions would be disproportionate for the undertaking.

Applicable to Article 41(2a) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition intends to avoid that the combination of functions is only performed to reduce the administrative expenses of an undertaking, ultimately endangering its overall risk profile. Indeed, in case undertakings whose risk profile is deemed low in accordance with the other conditions in this advice, this condition guarantees that efficiency gains are balanced against the potential risks of consolidating roles.

Solvency II provides undertakings with a basic structural framework for establishing a proper business organization. Specifically, it requires the appointment of four key functions with equal authority,

reporting directly to the Administrative, Management, and Supervisory Body (AMSB). These key functions serve as essential management tools, supporting the AMSB in assessing risk situations across all areas of the undertaking, thereby enabling informed decision-making. To ensure optimal implementation, a dedicated person should be appointed to each of the four key functions, without additional responsibilities. This organizational structure should remain the standard approach, with deviations only permissible under proportionality considerations. In such cases, undertakings should provide explanations why the combination of key functions is necessary in the specific circumstances.

The cost of maintaining separate functions may be disproportionate for instance with regards to the total administrative expenses or to the total number of employees of the undertaking. This assessment should be made on a case-by-case basis in order to prevent undue cost-cutting measures that could compromise the integrity of governance, risk management, and internal controls.

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 are able to support the business strategy of the undertaking.

Applicable to Article 41(3) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

By requiring complete written policies, this condition aims to ensure that these policies cover all essential aspects of risk management, internal control, internal audit, remuneration, and outsourcing. Moreover, it is expected that these policies are approved by the Board of Directors as a top-down commitment to these policies, making them a major component of the undertaking's risk culture and enhancing their enforceability across the undertaking.

These policies should also be aligned with the business strategy of the undertaking, as they would have the capacity to guide decision-making and operational activities in a manner that supports the achievement of business objectives. Furthermore, consistent policies reduce the risk of misunderstandings in informing the decision-making processes, enhancing the efficiency of undertaking's overall governance.

When the written policies abide by this condition, it may not be necessary to update them on an annual basis, ensuring certain administrative relief for the undertaking.

Condition 11

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

Applicable to Article 45(5) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

Supervisors should conduct an assessment of the previous ORSA submitted by the applicant undertaking, taking into account the type of information provided vis-à-vis the (higher or lower) risk profile of the undertaking.

An ORSA assessment is deemed of good quality if it demonstrates a thorough understanding of the undertaking's risk profile and governance practices and enables supervisors to conduct a more accurate assessment of the undertaking's risk management and internal control systems.

The ORSA assessment supports the supervisor in assessing the applicant undertaking's risk profile. It provides supervisory authorities with the necessary insights into the undertaking's operations, risk exposures, and capital management practices. It is essential for this condition that the risk profile is of a stable nature, i.e. not likely to change in the near future, so that a longer frequency between ORSAs is permissible. This should result from the ORSA.

Condition 12

The supervisory authority has not identified unresolved material 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.

Applicable to Article 45(5) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition ensures that reducing the frequency of the ORSA does not compromise the effectiveness of an undertaking's risk management system, as required by Article 44 of the Solvency II Directive. If an undertaking is allowed to perform the ORSA process less frequently, supervisors should assess that the undertaking's risk management framework remains strong and fully functional to the extent that it is able of identifying, measuring, monitoring, managing, and reporting all material risks. This includes implementing ongoing and effective risk monitoring processes.

To ensure that the reduced frequency is appropriate, undertakings should take a planning horizon of at least three years as a basis. The three-year planning horizon is necessary to ensure that the undertakings assess risks not only for the current and forthcoming year, but also consider the potential risk landscape extending into the subsequent year. This would eventually avoid a gap in risk assessment coverage between the end of the second year and the performance of the next assessment, which would typically occur sometime in the third year.

Condition 13

The insurance or reinsurance undertaking is able to demonstrate that the use a prudent deterministic valuation is proportionate in relation to the nature, scale and complexity of the risks arising from the obligations for which the undertaking seeks to apply that valuation.

Applicable to Article 77(8) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition acknowledges that the use of stochastic valuations, which involve simulating numerous scenarios, may not be necessary for undertakings with simple risk profiles. It therefore ensures that undertakings can apply a more resource-efficient valuation approach, provided the risks inherent in their business activities are adequately identified and managed.

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.

Applicable to Article 77(8) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition aims to verify that the embedded options and guarantees do not have a material impact on the overall risk profile of the undertakings. This ensures that their risk management practices are proportional to the actual risks the undertakings are exposed to, supporting sustainable and prudent financial assessments.

Condition 15

The undertaking is not exposed to material 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, the exposure to off-balance sheet items, and the concentration of counterparty exposures to reinsurance undertakings.

Applicable to Article 144a(4) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition 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.

On the asset side, supervisors should confirm that undertakings are able to transform in a relatively short time frame their assets into cash to meet their debt obligations, also taking into account stressed market conditions. Factors such as market depth and access, the time requirement, haircuts and the likelihood of forced sale losses should be taken into account. As undertakings engage in derivative transactions that could help them mitigate some of the risks in their balance sheet, they may also be exposed to higher liquidity risk.

On the liability side, supervisors should assess how the undertaking would respond to sudden, unexpected increase in claims, also considering the likelihood of lapses deriving from factors such as lapse fees, maturity dates, guarantees and customer or product type.

Considerations over the potential impact of the policyholders' behaviour (e.g. on premium inflows, policy lapses or claims outflows) may also be relevant.

High level of concentrations in the form of counterparty exposure might arise when the undertaking makes large use of risk transfer operations towards the same reinsurers. In case of potential failure or distress of the primary reinsurer, the undertaking might suffer negative impacts on the reinsurance recoverables and receivables, and ultimately affect its overall liquidity position.

Condition 16

The supervisory authority has not identified material concerns in liquidity position of undertakings stemming from economic or macroeconomic market trend or the amount and quality of own funds items.

Applicable to Article 144a(4) of Solvency II Directive.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition aims to address the undertaking's capacity to access funds without bearing additional debt costs.

This source of liquidity risk comes from the fact the undertakings might experience a deterioration of their credit rating or a reduced access to the repo market and wholesale funding in general, which might lead to the risk of shortening tenors or refusal to roll over or extend the maturity of funding. These events will lead to an increase in the funding costs of the insurer, a decrease in their capital and potential additional collateral requests.

Condition 17

[For groups only] The supervisory authority has not identified material concerns regarding the fungibility and availability of liquid funds across the group, including the ability to transfer liquidity across the group's undertakings.

Applicable to Article 144a(4) of Solvency II Directive. This condition applies only to insurance and reinsurance groups.

This condition aims to address the group's capacity to transfer liquidity between the different undertakings of the group.

This source of liquidity risk at group level comes from the fact that liquidity is not always available and freely transferable within the entities of the group, this could result from regulatory or local requirements at individual level for example.

Condition 18

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.

Applicable to the waiver from mandatory deferral of a significant portion of the variable remuneration in accordance with Article 275(2)(c) of Delegated Regulation.

This condition applies, mutatis mutandis, to insurance and reinsurance groups.

This condition aims to align to the thresholds already established in the EIOPA Opinion on the supervision of remuneration principles in the insurance and reinsurance sector⁷.

Where remuneration schemes have fixed and variable components, these components should be in such a proportion that the employees do not become overly dependent on the variable components. When employees are overly dependent on variable remuneration this could encourage behaviour that are not in line with the undertakings' business and risk management strategy, endanger sound and prudent management, and encourage risk taking in order to maximise remuneration.

⁷ [Opinion on Remuneration \(europa.eu\)](#)

ANNEX: FEEDBACK STATEMENT

This feedback statement set out a high-level summary of the consultation comments received and EIOPA's assessment of them. The full list of all the non-confidential comments provided can be found on EIOPA's website.

EIOPA received comments from its Insurance and Reinsurance Stakeholder Group (IRSG) and from 22 other stakeholders, including insurance and reinsurance undertakings and various industry associations.

As part of the consultation, EIOPA held a workshop with stakeholders to discuss the draft advice on 10 October 2024.

METHODOLOGY TO BE USED WHEN CLASSIFYING UNDERTAKINGS AS SMALL AND NON-COMPLEX

TOPIC 1: CRITERIA TO BE CLASSIFIED AS SMALL AND NON-COMPLEX UNDERTAKINGS

Stakeholder comments

While stakeholders broadly agree that the methodology to be used when classifying undertakings as small and non-complex is sufficiently clear, many comments indicated that some of the SNCU criteria may require clarification (e.g. the criterion of the average combined ratio over three years).

Assessment

The mandate from the Call for Advice is quite specific, requiring EIOPA to provide further clarity on the methodology to classify undertakings as small and non-complex. This means that the technical advice should focus on the procedure that both undertakings and supervisory authorities should follow for the classification as small and non-complex (Article 29b of Solvency II Directive). This does not extend to whether an undertaking qualifies as small and non-complex as per Article 29a of Solvency II Directive. As also agreed by the IRSG, further clarifications on the calculations of the SNCU criteria under Article 29a are not within the scope of the Delegated Acts and have thus been omitted from this advisory document.

TOPIC 2: PRACTICAL APPLICATION OF THE PROPORTIONALITY FRAMEWORK AT SOLO AND GROUP LEVEL

Stakeholder comments

Some stakeholders, including the IRSG, expressed concerns about the practical application of the framework, especially in cases where individual entities within a group qualify as small and non-complex undertakings, but the group as a whole does not meet the criteria to be considered as small and non-complex. This situation represents an issue particularly with respect to reporting, disclosure and risk management requirements at the group level, which requires consolidated data from all entities within the group. As a result, undertakings that are small and non-complex within a group would be indirectly required to continue providing data at group level.

Assessment

As a preliminary note, this aspect is not covered by the mandate of the Call for Advice as it chiefly pertains to the reconciliation of the proportionality provisions at solo and group level. Nevertheless, the technical advice acknowledges under paragraph 2.3 this potential limited benefit to undertakings that are part of a group.

The implementation of proportionality measures for groups apply solely to the ultimate parent company in charge of that group. As such, these measures cannot be automatically extended to other entities within the group or to the group as a whole, but only those undertakings that meet the SNCU criteria should be entitled to make use of the proportionality measures.

Consequently, even though a SNCU may benefit from reporting, disclosure and risk management proportionality measures, such an undertaking will still have to provide relevant up-to-date information to fulfil the group-level requirements. This is however information that the undertaking will have to gather (and analyse) anyway in order to ensure its own sound and prudent management. However, when the group fulfils its reporting, disclosure and risk management requirements, it should take on the responsibility to obtain the necessary information from its SNCUs in proportionate manner.

TOPIC 3: AUTOMATICITY OF THE PROPORTIONALITY FRAMEWORK FOR CAPTIVES

Stakeholder comments

Some stakeholders commented that captive (re)insurance companies generally have no systemic importance for the financial market, are not complex, have a simple business model and insure only one policyholder. Therefore, even if captives are of a certain size, due to the nature of their business they should be included in the definition of SNCUs in view of the principle of proportionality, without being precluded by national administrative procedures in the Member States.

Assessment

Article 29a of Solvency II Directive does not *per se* allow for automatic classification of captives as SNCUs. However, it offers two possible ways for captives to become a SNCU following compliance with specific criteria (Article 29a (1) first and second subparagraph). The Delegated Acts (and consequently, the technical advice) cannot override Solvency II (Level 1 text) and automatically consider captives as SNCUs.

Moreover, the mandate from the Call for Advice is quite specific, requiring EIOPA to provide further clarity on the methodology to classify undertakings as small and non-complex. This means that the technical advice should focus on the procedure that both undertakings and supervisory authorities should follow for the classification as small and non-complex (Article 29b of Solvency II Directive). This does not extend to whether an undertaking qualifies as small and non-complex as per Article 29a of Solvency II Directive.

CONDITIONS FOR GRANTING OR WITHDRAWING SUPERVISORY APPROVAL TO UNDERTAKINGS AND GROUPS THAT ARE NOT CLASSIFIED AS SMALL AND NON-COMPLEX

TOPIC 1: NON-BINDING VS BINDING NATURE OF THE PROPOSED CONDITIONS

Stakeholder comments

A number of stakeholders commented that both qualitative and quantitative conditions should be treated as non-binding guidance to supervisors rather than rigid criteria for supervisory authorities.

Assessment

The binding nature of the conditions for non-SNCUs is derived from the Level 1 text, which mandates the European Commission to adopt Delegated Acts on conditions for granting or withdrawing approval for proportionality measures to these undertakings. The European Commission's Call for Advice is also clear in indicating that the EIOPA's technical advice should propose a closed list of conditions for granting or withdrawing supervisory approval to undertakings and groups that are not classified as small and non-complex.

Apart from regulatory considerations, introducing binding conditions ensures a consistent application of the proportionality framework across Europe, thus fostering a level playing field among Member States. If only non-binding guidance were provided, there would be a risk of inconsistent implementation of proportionality measures. Moreover, relying solely on non-binding guidance could undermine legal certainty and prevent undertakings from better understanding the expectations of supervisory authorities.

TOPIC 2: GENERAL APPLICATION OF PROPORTIONALITY AND QUANTITATIVE THRESHOLDS

Stakeholder comments

A number of stakeholders, including the IRSG, commented that the Solvency II framework allows any (re)insurer to apply 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.

In relation to this general aspect, stakeholders commented that the quantitative condition (condition no. 4) should be deleted as this condition would prevent a certain number of undertakings from the assessment over the nature and complexity of their activities when applying for proportionality measures. If this condition is maintained, stakeholders indicated that the proposed threshold would be too complex and as such, might not fit all the markets.

Assessment

The technical advice aims to ensure that applications for proportionality measures are submitted taking into account the overarching principle under Solvency II that any use of proportionality measures must be appropriate to the nature, scale and complexity of undertakings' risks. The application of proportionality should thus be risk-based, meaning that more sophisticated requirements would apply

to undertakings with a higher risk profile, while simpler requirements could be applied to those with a lower risk profile.

However, EIOPA emphasizes that its technical advice must consider the size of the undertaking as part of the assessment, as it is a significant factor when evaluating the risk profile of an undertaking. Consequently, the technical advice introduces a quantitative threshold that filters out only the largest undertakings in Europe that have substantial market presence and are assumed to conduct more complex activities.

EIOPA has taken into account the feedback received, and the thresholds have been streamlined to ensure a better balance between the life and the non-life market. The specific threshold values (EUR 12 billion life TP, EUR 2 billion GWP or a 5% of market share) will allow differentiation between undertakings that are likely to have a more substantial market presence and those that do not.

Lastly, EIOPA reminds that the technical advice also foresees a safeguard clause for the assessment over the nature and complexity of larger undertakings that exceed these quantitative limits. This allows for the possibility that an undertaking with a larger size may still be eligible for proportionality measures if it demonstrates to the NCA that the risks inherent in its business activities are of a simple nature. This approach is deemed to effectively balance the need to allow for supervisory discretion and the objective of maintaining a harmonized framework across the European market.

TOPIC 3: CONCERNS OVER REFERENCES TO CROSS-BORDER ACTIVITIES AND INNOVATIVE REINSURANCE

Stakeholder comments

A number of stakeholders, including the IRSG, expressed concerns concerned about the negative portrayal of cross-border activities and the innovative use of reinsurance.

Assessment

The technical advice just mentions those two cases as examples under the explanatory text for condition 4. This condition filters out largest undertakings on the basis of their size, but still admits them to apply proportionality if they run activities of simple nature. The explanatory text provides examples of activities that may be considered as complex, namely significant cross-border activities or innovative use of reinsurance.

It is not the intention of the advice to consider those types of activities as precluding undertakings from applying proportionality measures. The assessment of supervisory authorities always needs to be focused on the risk profile of the undertakings.

TOPIC 4: COMMENTS TO INDIVIDUAL CONDITIONS

Stakeholder comments

Stakeholders provided various suggestions on how to amend the proposed conditions.

Assessment

EIOPA has taken into account the feedback received, and in an effort to address stakeholders' suggestions, some of the conditions have been revised. Specific explanations on how the comments have been addressed are available in the annexed resolution table.