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European Insurance and
Occupational Pensions Authority

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

Fields marked with * are mandatory.

Introduction

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

Comments are most helpful if they:

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

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

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

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

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

Data protection

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General information on the respondent

* Name of the stakeholder

Actuarial Association of Europe

* Type of stakeholder

- ○ Insurance or reinsurance undertaking
- ○ Industry association
- ○ Consumer protection association
- ○ Academic
- ◉ Other

* If other, please specify:

Professional Association

* Jurisdiction of establishment

Belgium

* Name of point of contact

Stephanos Hadjistyllis

* Email address of point of contact

stephanos@shsactuarial.com

* Please provide your explicit consent for the publication of your response

- ◉ Yes, publish my whole response
- ○ Yes, publish a part of my response
- ○ No, do not publish my response

Questions

General comments

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

- (x) Yes
- ( ) No

Comments field

We welcome the extension of proportionality measures under the Solvency II Directive, particularly for Small and Non-Complex Undertakings (SNCUs) and undertakings with non-complex business models, as this reduces the administrative and regulatory burden. However, it is critical that policyholder protection is not compromised. Individuals running these undertakings must continue to possess the appropriate skills and experience, as highlighted in condition 8.

We also appreciate the development of a more clearly defined and consistent proportionality framework, including the criteria in Article 29(a) of the revised Directive for SNCUs. The proposed extension of proportionality measures to companies with lower risk profiles, even if they do not meet the SNCU criteria, is positive. However, it is important that this framework is implemented consistently across member states, particularly in areas open to National Competent Authority (NCA) judgment. Diverging interpretations could lead to inconsistent applications of proportionality measures. We believe that an extension to undertakings not classified as SNCU without requiring prior supervisory approval should be considered - particularly when approximations result in higher capital or when risks are immaterial. For instance, the requirement for supervisory approval to carry out deterministic valuations of non-material options and guarantees (Article 77.8) seems excessive.

Additionally, it should be clarified whether supervisory approval for simplified calculations applies across all business lines or only to specific portfolios. Requiring separate approvals for different portfolios could increase bureaucracy and potentially delay business processes, especially in cases where the risk profile remains unchanged despite new product offerings.

An extension of proportionality beyond the current scope of SNCUs should be considered to cover additional areas. For example, simplified calculations for reinsurance recoverables or risk margins could be permitted in situations where such measures would not materially affect an entity's stability or solvency.
From a practical standpoint, companies will need to carefully weigh the administrative effort required to demonstrate compliance with these criteria against the long-term benefits. Supervisors may also face increased burdens when reviewing qualitative conditions, which often require judgment-based assessments.
A sound and comprehensive regulation of proportionality could reduce administrative burdens both for undertakings and supervisors, ensuring a more efficient process without compromising financial soundness.
Clarification is also needed on how proportionality measures will interact with existing local regulations. We are particularly interested in understanding whether undertakings can apply for exemptions considered in the consultation, even in cases where the local regulation currently considers these in scope, such as in areas like liquidity risk or climate ORSA.

We recommend the conduction of an analysis to evaluate the financial impact of the proposed proportionality measures, particularly for non-SNCUs. This can contribute to a reduction of complexity in the proposed 19 conditions and perhaps give more guidance regarding some vaguely worded issues. For instance, Condition 6, which references concerns in the last three Regular Supervisory Reports, lacks clear definition, and the term "concerns" is open to interpretation. Similarly, Condition 3 introduces an implicit and vague capital requirement by stating that the Solvency Capital Requirement (SCR) should be exceeded by an "appropriate margin," which lacks clarity concerning the appropriateness of such a margin.

1. Introduction

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

- ○ Yes
- ◉ No

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

- ○ Yes
- ◉ No

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

- ○ Yes
- ◉ No

* Q5. Do you have comments on Section 1.4 'Structure of the draft advice'?

- ○ Yes
- ◉ No

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

* Q6. Do you have comments on Section 2.1 'Extract from the Call for Advice'?

- ○ Yes
- ◉ No

* Q7. Do you have comments on Section 2.2 'Relevant legal provisions'?

- ○ Yes
- ◉ No

* Q8. Do you have comments on Section 2.3 'Identification of the issue'?

- ◉ Yes
- ○ No

Comments field

A key criterion for life insurers under Article 29a(i) is that the interest rate risk submodule should not exceed 5% of technical provisions, gross of amounts recoverable from reinsurance contracts and special purpose vehicles. While this threshold seems appropriate to limit volatility caused by market risks, clarification is needed on the valuation principles for calculating this threshold. Specifically, the calculation of the share of the interest rate risk module depends on the forthcoming amendments to the Delegated Regulation, and consistent valuation methods should be outlined to ensure uniform application across member states.

The consultation notes that solo undertakings within the same group may qualify as small and non-complex, while the group as a whole may not. The paper does not provide sufficient guidance on handling such situations. Additional clarity is needed on how proportionality measures should be applied to solo undertakings within larger, more complex groups.

It is essential to ensure that the application of proportionality measures is clear and consistent, particularly for life insurers seeking SNCU classification. While the interest rate risk submodule is highlighted as a key criterion, further clarification on the broader valuation principles and calculation methods would be needed in the delegated regulation.

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

- (●) Yes
- ( ) No

Comments field

We generally agree with the analysis presented and support the draft advice, in particular Option 1. It is important, in the interest of clarity and fostering a level playing field, that there is a standard and concise baseline for the classification of undertakings as small and non-complex, as laid out in the Directive. This baseline will ensure that the criteria are applied uniformly across different jurisdictions.

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

- (●) Yes
- ( ) No

Comments field

We agree with the preferred use of Option 1. This approach ensures a more consistent application of the proportionality framework across different jurisdictions, minimizing the risk of discrepancies in how undertakings are classified as small and non-complex. Option 2, while potentially useful in certain cases, raises concerns about the potential for divergent criteria being applied across Member States, given the varied nature of undertakings across jurisdictions. This could complicate the specification of a common selection procedure and hinder the goal of a harmonized approach.

In this context, we also note the statement in the draft advice that further specifications may depend on national-level implementation of the framework. It is unclear what additional national specifications are being referred to, and we are concerned that such measures could lead to inconsistent application of the proportionality framework, undermining efforts towards harmonization. A uniform approach would better serve the goal of regulatory convergence and reduce the possibility of Member States introducing divergent measures.

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

- (selected) Yes
- No

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

We have some comments on the methodology for classifying undertakings and groups as small and non-complex, particularly regarding Article 29a in the proposed amendments to the Solvency II Directive.

Firstly, under Article 29a(a)(iii), clarification is needed on whether the level of technical provisions includes unit-linked liabilities. Even relatively small and simple unit-linked books could breach the threshold, despite having a risk profile that differs significantly from other types of liabilities, such as term insurance. Therefore, it may be appropriate to consider excluding unit-linked liabilities from this condition to avoid unintended consequences.

Additionally, under Article 29a(a)(iv) and (b)(v), the term "total investments" is unclear. It is important to clarify whether this includes unit-linked assets or if it refers only to investments other than assets held for index-linked and unit-linked contracts, as defined in S.02.01.

Furthermore, under Article 29a(a)(v), the term "reinsurance accepted" requires clarification, as it is ambiguous whether it refers to gross written premiums for reinsurance business. Clear definitions of these terms would ensure consistent application of the proportionality framework.

Finally, the monetary limits specified in Article 29a are not indexed to inflation, which means they will become progressively lower over time in real terms. This could disproportionately impact undertakings as their liabilities grow, without a corresponding adjustment to the thresholds. It would be prudent to consider indexing these limits to inflation to maintain their relevance over time.

Furthermore, the criterion “SCR interest < 5% BE” used in Article 29a is not considered an appropriate measure of interest rate risk. This calculation includes free assets in the left term, which can be more punitive for undertakings with a high solvency coverage ratio. A more accurate indicator of interest rate risk could be “SCR interest/Own Funds (OF)”. Additionally, it is questionable to include unit-linked business in this ratio, as the nature of unit-linked liabilities may distort the true interest rate risk exposure of the undertaking.

In summary, while the overall framework is welcomed, we recommend further clarification and adjustments to these aspects to ensure fairness and clarity in the application of proportionality measures.

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

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

- Yes
- (selected) No

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

- (selected) Yes

No

Comments field

We agree with the general principle that SNCUs should automatically be entitled to apply proportionality measures whilst non-SNCUs should be required to submit a request to their supervisory authorities in order to obtain formal approval.

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

- (x) Yes
- ( ) No

Comments field

We agree with the issue as stated. However, it is unclear that reliance on the application of "expert and supervisory judgement" on the part of national supervisors will necessarily lead to the outcome of "ensuring appropriate convergence of supervisory practices".

It appears that there could still be significant scope for national supervisors to apply different treatments to otherwise identical undertakings.

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

- (x) Yes
- ( ) No

Comments field

We agree that Option 3 (the hybrid 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".

However, it is open to local interpretation on the part of supervisory authorities and therefore risks leading to non-convergence across Member States.

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

- (x) Yes
- ( ) No

Comments field

In general, we agree with the draft advice. However, it is potentially disproportionate to require firms to inform their supervisory authority “without delay” when the undertaking no longer complies with the conditions set out. Whilst regulatory reporting is obviously required for material issues as set out in the firm’s risk framework, this would potentially require continuous monitoring of items such as market share which would add to the administrative overhead of applying these proportionality measures. Limiting the requirement to notification of material matters would appear to be more proportionate.

Also, consideration should be given to situations where there is a disagreement between a given undertaking and its national supervisor in relation to the exercise of judgment on the application of the proposed conditions. Having in place arbitration processes at the European level could provide the necessary tools to ensure the desired level of supervisory convergence is achieved.

Section 3.5.1 - Overview of conditions measure by measure

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

- (●) Yes
- ( ) No

Comments field

We generally support the proposed conditions for the submission of the Regular Supervisory Report (RSR), with some specific suggestions for improvement.

Firstly, it is a sensible proposal to allow undertakings an extension of up to five years for RSR submissions, subject to supervisory approval. However, the drafting could be clearer. While the text explains that this is a simplification allowing undertakings to increase the RSR submission frequency from once every three years to once every five years, the phrasing in the blue box may cause confusion, as it could be interpreted as suggesting a standard submission every three years. We recommend clarifying this in the final advice.

Regarding Condition #2, it may not be appropriate to focus solely on material changes in business models over the past three financial years. This backward-looking approach could penalize undertakings that have made significant changes, such as closing to new business, which might make them eligible for proportionality measures. Instead, the condition should be more forward-looking to better reflect an undertaking's current status and potential future risks.

Condition #3, which refers to the Solvency Capital Requirement (SCR) being exceeded by an appropriate margin, is vague and open to varying interpretations. This could lead to inconsistent treatment across different Member States. Additionally, there is ambiguity in how an undertaking could satisfy Condition #1 (being able to withstand current and future risks) but fail to meet Condition #3. More precise wording is necessary to ensure a consistent application.

We also note that Condition #4 specifies monetary thresholds that are not indexed to inflation, meaning they will decrease in real terms over time. These thresholds should account for the type of business being written, as risk profiles can vary significantly. For example, €15 billion in unit-linked technical provisions presents a very different risk profile from €15 billion in fixed annuity or term assurance liabilities. Similarly, the market share criterion should consider the specific market segments in which the undertaking operates, rather than applying a blanket percentage across the entire life or non-life market.

Condition #6 may unfairly require undertakings to have operated for at least ten years before being eligible for this proportionality measure. We recommend reconsidering this condition, as newer firms are often smaller and less complex, making them strong candidates for proportionality measures.
Finally, although liquidity risk is not explicitly mentioned, we believe this should be considered within the proportionality framework.

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

- (●) Yes
- ( ) No

Comments field

We have limited comments on Article 41: General governance requirements - Paragraph 2a concerning the combination of key functions. However, we would like to highlight the following points:

Condition #8 is indeed important, but it is our view that this requirement should already be addressed through the usual fitness and probity processes operated by local supervisory authorities. Given that these processes are already in place, it seems unnecessary to impose this condition again specifically in this context.   It is noted that some of the governance provisions are already in place in some member states. In this regard, consistency of the provisions across member states would be considered helpful.

Additionally, we believe outsourcing should be considered in the proportionality framework to provide a global overview of the exercise of key functions. This is important for ensuring that governance requirements are comprehensive and align with broader risk management and operational structures.

Finally, similar comments apply in relation to Conditions #2, #3, and #4, as outlined in our response to Question 17.

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

- (x) Yes
- ( ) No

Comments field

Regarding Article 41: General governance requirements - Paragraph 3: Less frequent review of written policies, we have the following comments:

Condition #10 appears to set a baseline expectation for all undertakings, not just those seeking to benefit from proportionality measures. As such, this condition seems unnecessary, as it should be implicitly expected that all firms meet this standard at all times.

In addition to covering the Solvency Capital Requirement (SCR), we believe that liquidity risk should also be considered in the medium-term capital plan. This would provide a more comprehensive view of an undertaking's financial health and resilience.

Similar comments apply in relation to Conditions #2, #3, and #4, as outlined in our response to Question 17.

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

- (x) Yes
- ( ) No

Comments field

Regarding Article 45: Own Risk and Solvency Assessment (ORSA) - Paragraph 1b: Waiver from macroprudential analysis, we have the following comments:

Clarification is needed on whether the term "macroprudential analysis" encompasses climate ORSA and potentially other future sustainable analyses. Given the increasing importance of climate-related risks, it is essential to understand whether these are included within the scope of macroprudential analysis.

Additionally, similar comments apply in relation to Conditions #2, #3, and #4, as mentioned in our response to Question 17. These conditions should be carefully reviewed to ensure consistency and clarity across the proportionality framework.

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

- (x) Yes
- ( ) No

Comments field

Condition #11, while sensible, appears to be unnecessary. In the normal course of supervisory processes, if an undertaking fails to satisfy this condition, it should be addressed through regular supervisory dialogue. It seems inappropriate to wait until the undertaking seeks approval for a proportionality measure to identify that this condition was not met during the past three years. This issue should be resolved as part of continuous supervisory engagement.

It is noted that, conducting the ORSA every two years may present a risk. It could be more prudent to conduct this assessment annually, potentially with some simplifications, as the ORSA is a critical exercise that highlights potential risks. Furthermore, the forward-looking assessment in past ORSAs is essential. Ensuring that the ORSA takes into account future risks, as well as historical performance, is crucial to maintaining a comprehensive risk management framework.

Similar comments apply to Conditions #2, #3, and #4, as outlined in our response to Question 17.

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

- (x) Yes
- ( ) No

Comments field

We have several comments on Article 77(8): Calculation of technical provisions, particularly in relation to the simplification for life business.

1. This simplification pertains specifically to the calculation of technical provisions for life business, and as such, the size of the non-life business should not be relevant. For example, if the undertaking is a composite with a very small and simple life portfolio, the simplified approach should still be applicable to the life business, without impacting the non-life technical provisions.
2. Regarding Condition #4, the relevant measure of technical provisions should account for obligations that include options and guarantees. If these are not considered, it would result in an incomplete assessment, as options and guarantees play a critical role in the risk profile of the undertaking.
3. Condition #13 raises concerns about the requirement for an undertaking to use a stochastic valuation. Many firms may already use such an approach, even when it is burdensome, because they have not been granted approval for a more proportionate approach. This could potentially prevent undertakings from moving to a prudent deterministic valuation, which seems counterproductive to the aims of proportionality.
4. Condition #14, which requires the time value of options and guarantees (TVOG) to be below 5% of the SCR, is problematic. The 5% threshold appears arbitrary and does not reflect the potential volatility of TVOG, which can be highly dependent on the interest rate environment. The share of TVOG in the SCR can fluctuate significantly. A relative measure may not be appropriate in this context, and an absolute measure might be more suitable.

Furthermore, it should be noted that the materiality of options and guarantees evolves over time. Therefore, a revaluation process should be in place to ensure that the thresholds remain appropriate and reflective of current market conditions.

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

- (x) Yes
- ( ) No

Comments field

We have the following comments on Article 144a(4): Liquidity risk management:

1. Condition #16, while relevant to the liquidity risk profile of an undertaking, appears to be too broad. An undertaking may hold a large reinsurance asset, representing exposure to a single reinsurance entity, but the overall liability profile may not make liquidity risk a significant concern. Therefore, the application of this condition should consider the specific nature of the undertaking’s liabilities and risk profile rather than applying a one-size-fits-all approach.
2. Consideration should be given to the users of the volatility adjustment in the context of liquidity risk management. It is important to ensure that the application of liquidity risk management measures aligns with the practical use of the volatility adjustment by undertakings and does not unintentionally limit their ability to manage liquidity risks effectively.

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

- (x) Yes
- ( ) No

Comments field

1. Condition #19, as currently worded, appears to apply at an individual level rather than to the remuneration policy of the undertaking as a whole. We recommend that this condition be revised to refer to the broader remuneration policy instead of focusing on individual staff members, ensuring consistency across the entire organization.
2. Furthermore, the €50,000 threshold mentioned in the condition should be linked to inflation. Over time, inflation will erode the real value of this amount, making it less effective. Adjusting the threshold to account for inflation would ensure that it remains relevant and appropriate.
3. Fixing a uniform euro-amount across all Member States is also a concern. The economic environment varies across different countries, and what might be appropriate in one jurisdiction could be too low or too high in another. As required by Article 300 of the Directive, a revision of euro amounts every five years is necessary to maintain their relevance. This principle should also apply to delegated regulations and other texts in the Solvency II framework to ensure fairness and consistency across Member States.
4. Finally, similar comments apply to Conditions #2, #3, and #4, as outlined in our response to Question 17.

Section 3.5.2 - Explanation of the conditions

* Q25. Do you have comments on Condition 1?

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

- ○ Yes
- ◉ No

* Q26. Do you have comments on Condition 2?

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

- ◉ Yes
- ○ No

Comments field

There could be ambiguity and divergence in what is considered a more complex business model both between companies themselves and between supervisors. Whilst the principle is sound, this is an area where regulatory convergence may be challenging.

It does not seem altogether sensible to look at what has happened in the past three financial years in relation to material change in business model. It may actually be the case that because an undertaking has had a change in business plan (e.g. closure to new business) that it has now potentially become eligible for this proportionality measure. Therefore, the conditions could be forward-looking insofar as possible.

We agree that activities which can significantly impact the undertaking's risk profile and capital adequacy should lead to supervisory dialogue. The list of changes in the document should not be taken as a closed list (one could consider changes in sales-channels, legal changes affecting undertaking's business, etc.). Every measure which could introduce new risks should be considered. The materiality can be assessed by the impact on key figures.

* Q27. Do you have comments on Condition 3?

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

- (x) Yes
- ( ) No

Comments field

We have the following comments regarding Condition #3, which specifies that the Solvency Capital Requirement (SCR) must be exceeded by an "appropriate margin":

1. The phrasing of this condition is vague and open to wide interpretation. This lack of clarity could result in different supervisory approaches across Member States , leading to inconsistent treatment of undertakings that may otherwise be similar in nature. It would be helpful to specify the margin more clearly to avoid disparities in application. It is noted that in some member states supervisors already request an SCR over 125%. Additionally, there is some ambiguity regarding the relationship between Condition #1, which requires that the undertaking can withstand its current and future risks, and Condition #3. It is unclear how an undertaking could meet the requirements of Condition #1 but fail Condition #3. Clarifying the relationship between these two conditions would help ensure a more cohesive and logical assessment.
2. One possible approach to improve clarity is to explicitly reference the Board-approved risk appetite and link the margin requirement to that framework. This would provide a more structured and objective basis for determining what constitutes an "appropriate margin" for each undertaking.
3. We would also like to highlight that liquidity risk is not specifically mentioned in this condition. Since liquidity risk is an important factor in an undertaking's overall risk profile, it should be considered when assessing the SCR margin and the firm's ability to withstand risks.

* Q28. Do you have comments on Condition 4?

Condition 4: The undertaking's:

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

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

and;

c) the undertaking does not represent more than 5% of the life market or, where applicable, non-life market in accordance with Article 35a(1), second subparagraph, of the home Member State of the undertaking.

The threshold referred to in letter a) of this condition shall be applied to life undertakings and to undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20 % or more of the total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76 of the Solvency II Directive.

The threshold referred to in letter b) of this condition shall be applied to non-life undertakings and to undertakings pursuing both life and non-life activities whose annual gross written premium income related to the non-life activities represent 40 % or more of its total annual gross written premium income.

By way of derogation to the previous paragraphs, the supervisory authority may grant proportionality measures if it is satisfied that the undertaking's business activities are of a simple nature.

- [x] Yes
- [ ] No

Comments field

In relation to the derogation in the last point, we strongly support providing some level of supervisor judgement in this regard, in particular where the business may be of a very simple nature yet may exceed one of the thresholds above. Given the proposal to apply the same limits at group level, this derogation may also be invoked where you may have a group holding company that is dominated by one subsidiary and so it may be disproportionate to have separate roles at both levels.

In relation to the specific limits, the condition specifies monetary amounts that do not appear to be subject to inflation. This will lead to these thresholds becoming progressively lower over time, in real terms. There should be a process to increase these amounts.

The thresholds do not take into account the type of business written by the entity, and therefore can be much more onerous for some undertakings relative to others. For example, a company with €15bn of unit linked technical provisions would have a much different risk profile to one with €15bn of fixed annuity liabilities or €15bn of with-profits liabilities, or indeed €15bn of term assurance liabilities. It may also be the case that a given undertaking could be the dominant player in a given market segment with, say, 80% of the market share for a given line of business. However, it may have less than 5% of the entire life market (including all other lines of business). The market share criterion should be specific to the market segments in which the undertaking operates.

It would be beneficial if EIOPA was to publish details of their rationale in setting the limits in this condition.

We would recommend to consider the removal of the explicit thresholds in a) and b).

* Q29. Do you have comments on Condition 5?

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

- [x] Yes
- [ ] No

Comments field

We do not fully understand the inclusion of the phrase “including diversity and inclusion element” in the bracketed text. While promoting diversity is generally a positive objective, it may not always be feasible to ensure diversity in the profiles for key functions, especially for smaller undertakings or those operating in specialized markets. Clarity is needed on how this element should be applied in practice.

Similarly, the reference to “including their employers” is unclear. We suggest that this comment be further explained or reconsidered, as its practical application is not immediately obvious within the context of proportionality measures.

Finally, we believe that a forward-looking assessment and mid-term planning should be considered in the evaluation process for key function holders. This would help ensure that undertakings are better prepared to meet future challenges and align their governance structures with long-term strategic objectives.

* Q30. Do you have comments on Condition 6?

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

- (x) Yes
- ( ) No

Comments field

Due to the reference to high-quality and complete information pursuant to Article 35 this seems to refer to the last 3 full Regular Supervisory Reports. Given these are only produced every 3 years, with summaries in between, then this timescale would go back a considerable length of time and seems unduly onerous. It is not clear how relevant a Regular Supervisory Report produced more than 3 years ago could be in determining the current and future risks associated with a company.

* Q31. Do you have comments on Condition 7?

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

- ( ) Yes
- (x) No

* Q32. Do you have comments on Condition 8?

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

- (x) Yes
- ( ) No

Comments field

We see this condition as a core requirement when dealing with simplified valuation principles and confirm the need of appropriate skills and experience. Consideration should be given to the additional time and resources that would be required to meet these additional requirements.

* Q33. Do you have comments on Condition 9?

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

- (x) Yes
- ( ) No

Comments field

Whilst we are supportive of the pragmatism included in this condition, it should not override other conditions relating to maintaining appropriate risk governance in the firm.

Supervisors should have freedom to grant firms temporary derogations to cover circumstances such as maternity leave or other temporary absence and we feel this condition is very supportive in that regard.

* Q34. Do you have comments on Condition 10?

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

- ( ) Yes
- (x) No

* Q35. Do you have comments on Condition 11?

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

- (x) Yes
- ( ) No

Comments field

It is unclear from the proposed condition whether the assessment of an undertaking's ORSA will fully account for the principle of proportionality. In jurisdictions such as Ireland, where companies rated Low and Medium Low by the Central Bank of Ireland submit their ORSA via a template containing summarised information instead of a full ORSA report, it is important to clarify if this template submission will be considered complete and of appropriate quality for such organisations. Further guidance on how proportionality will be applied in these cases would be beneficial.

Additionally, it is critical that the ORSA includes a forward-looking assessment and incorporates suitable stress scenarios to ensure that the undertaking is prepared for future risks. These aspects are crucial for evaluating the robustness of an ORSA in alignment with the risk profile of the undertaking, which may not be adequately informed by the last three assessments.

* Q36. Do you have comments on Condition 12?

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

- (•) Yes
- ( ) No

Comments field

The Own Risk and Solvency Assessment (ORSA) process plays a critical role in allowing undertakings to reassess their risk profiles and implement strategies to mitigate emerging risks. While the reduced frequency of ORSA for small and non-complex undertakings (SNCUs) is understandable, it is essential that key risks—particularly liquidity risk and operational risk management—are still considered on an annual basis.

SNCUs, due to their smaller size and limited resources, often face heightened vulnerabilities in areas such as liquidity pressures, particularly during market disruptions (e.g., COVID-19) when they may be forced to sell assets at depressed prices. They also face challenges related to operational disruptions, cyberattacks, and internal process failures due to less advanced risk management systems. Thus, despite the reduced frequency of full ORSA assessments, risk management should remain an ongoing process, focusing on these key areas of exposure.

The necessity to for an explicit reference to regular internal audits should be reconsidered. In their text, EIOPA proposes “implementing ongoing and effective risk monitoring processes, such as regular internal audits and risk assessments”. We note that the internal audit function is independent of the risk management function and will identify and perform its audits independently. The frequency of these audits might differ considerably from the other risk management processes. In order to avoid diverging interpretation, we would suggest removing the requirement / reference to internal audits in this context.

* Q37. Do you have comments on Condition 13?

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

- (•) Yes
- ( ) No

Comments field

Condition 13 states that the insurance or reinsurance undertaking is not using a stochastic valuation of the best estimate relating to the obligations for which it seeks to apply a prudent deterministic valuation, and that using a stochastic valuation would be overly burdensome given the nature, scale, and complexity of the risks.

This condition would benefit from further clarification, particularly regarding the requirement that the undertaking must not already be using a stochastic valuation. This requirement could prove cumbersome and may lead to adverse effects for policyholders through unnecessarily burdensome administration.

It is unclear why an undertaking currently using a stochastic approach—perhaps because it has not yet received approval for a more proportionate approach—should be prevented from applying for a switch to a prudent deterministic valuation. Such a condition may unintentionally discourage firms from seeking a proportionate solution, even if their current use of a stochastic model is overly burdensome.

Additionally, if the business containing options and guarantees is in run-off, there may come a point where the stochastic valuation becomes disproportionate to the risks, particularly if these obligations are no longer material. The current wording of the condition could prevent undertakings from applying for a prudent deterministic approach simply because they are currently using a stochastic valuation, even if that approach is no longer appropriate.

The supervisory authority in some Member States (e.g., Denmark) have clearly stated that deterministic methods are not compliant with Solvency II, and that all undertakings must use a non-deterministic approach. For the undertakings in these Member States condition 13 automatically prohibits the use of proportionality measures for Technical Provisions, and article 77(8) effectively becomes non-applicable.

The AAE suggests that it should be possible to apply proportionality measures to segments of the business that fulfil the proportionality requirements so that companies with different types of portfolios are not explicitly required to use stochastic methods for the entire business.

Moreover, the prudent deterministic valuation is expected to be based on a prudent harmonised reduced set of scenarios (PHRSS). EIOPA is tasked with developing draft Implementing Technical Standards (ITS) to specify the methodology for determining the PHRSS to be used in these valuations. Although discussions on these scenarios are ongoing, it is essential to consider the consequences of applying these scenarios, including potential adjustments to management rules, policyholder behaviour, and other assumptions. These analyses are the responsibility of the actuarial function, which must ensure the appropriateness of the methodologies and models used, as well as the assumptions underlying the technical provisions.

Guidance from EIOPA on this matter would be helpful to ensure consistent application of this condition across different undertakings and Member States.

* Q38. Do you have comments on Condition 14?

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

- (●) Yes
- ( ) No

Comments field

Condition 14 requires that the time value of options and guarantees (TVOG), measured using the prudent harmonised reduced set of scenarios, must be below 5% of the Solvency Capital Requirement (SCR) for contracts where a prudent deterministic valuation is applied.

This condition also requires clarification. The TVOG is highly sensitive to the interest rate environment, and its volatility may not align with that of the SCR. The 5% threshold appears arbitrary and may not appropriately reflect the dynamic nature of options and guarantees, which tend to be more volatile than the SCR. The rationale for selecting this specific threshold is unclear, and an alternative measure, such as the technical provisions (TP), of which TVOG is a part, might be more suitable. Using the SCR as a benchmark could also favor undertakings with a relatively high SCR.

It would be useful to understand the effort required for small and non-complex undertakings (SNCUs) to demonstrate compliance with the 5% criterion. The necessary calculations, along with ongoing reporting and review requirements, could impose an administrative burden inconsistent with the European Commission’s call for advice, which aims to avoid undue administrative burden, including the imposition of new reporting requirements.

Additionally, the restriction of stochastic modelling relief to SNCUs alone may not be fully justified. Larger companies with non-material nonlinearities may also benefit from a more proportionate approach. Therefore, a more generic application of the proportionality principle to the calculation of technical provisions, considering the materiality of the risks, could be more appropriate. This could be framed as: “The complexity applied in calculating technical provisions should be proportionate to the materiality of the risks involved.”

* Q39. Do you have comments on Condition 15?

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

- (•) Yes
- ( ) No

Comments field

We would like to request further clarification regarding the possible use of the Volatility Adjustment (VA) under the proportionality framework. Specifically, it is unclear how the VA will be applied to small and non-complex undertakings (SNCUs) when proportionality measures are in use.

Further guidance on SNCU eligibility and the interaction between the VA and proportionality measures would help ensure consistent supervisory practices and support effective risk management for undertakings.

* Q40. Do you have comments on Condition 16?

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

- (•) Yes
- ( ) No

Comments field

The link here between concentration of exposure to a single reinsurance counterparty and potential liquidity issues is not absolute. It is feasible that a company could have a large exposure to a reinsurer but default would not have a significant impact on liquidity, for example under some funds withheld arrangements.

* Q41. Do you have comments on Condition 17?

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

- ○ Yes
- ◉ No

* Q42. Do you have comments on Condition 18?

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

- ○ Yes
- ◉ No

* Q43. Do you have comments on Condition 19?

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

- ◉ Yes
- ○ No

Comments field

The monetary amount (€50,000) mentioned in this condition should at least be inflation-linked, while also noting that wage inflation tends to be higher than price inflation.

As currently worded, condition #19 appears to apply at an individual level, rather than applying to the remuneration policy of the undertaking as a whole. Ideally, this condition should refer to the remuneration policy itself rather than to any individual staff member.

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

- ○ Yes
- ◉ No

Any other comment

* Q45. Do you have any other comments?

- ◉ Yes
- ○ No

Comments field

We acknowledge the importance of ensuring that individuals responsible for running an undertaking, particularly those in the actuarial function and risk management function, possess the appropriate skills and experience. These roles are critical to the effective governance and oversight of an undertaking, especially when applying proportionality measures. In this context, the exercise of professional judgment is essential to ensure that the proportionality framework is applied correctly and consistently across undertakings.

Additionally, we would appreciate clarification on whether the values associated with proportionality measures will be indexed or increased over time. Understanding the procedure for such adjustments would be beneficial in ensuring that the thresholds and criteria remain relevant in the future.

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