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Insurance Europe response to EIOPA consultation paper on mass-lapse reinsurance and reinsurance agreements' termination clauses

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General comments

Insurance Europe welcomes the opportunity to provide comments to EIOPA's consultation on the Annexes to the opinion on the use of risk mitigation techniques (**RMT**) by insurance undertakings: mass-lapse reinsurance (**MLR**) and reinsurance agreements' termination clauses.

Reinsurance, and risk mitigation techniques more generally, are fundamental capital and risk management tools. Insurance Europe welcomes EIOPA's acknowledgement that "reinsurance is an important tool" and "plays a crucial role in the insurance industry's ability to operate and provide coverage to individuals and businesses."

Insurance Europe recognises that some selective guidance can be beneficial for mass-lapse reinsurance where diverging supervisory approaches across Europe had been experienced. In this respect, the proposed Annex provides some additional material which is considered helpful in achieving supervisory convergence in the context of MLR.

However, care should be taken to avoid further overly prescriptive guidance which could render tailoring reinsurance solutions to the primary insurer's needs not feasible anymore. This may result in primary insurers having to retain risks where they currently rely on reinsurance capacity. Among other unintended consequences, this could make insurance coverage become more expensive or even not available.

Insurance Europe agrees that consideration of any basis risk is clearly an important and necessary step. It is equally important not to end up with an overly restrictive guidance. Insurance Europe calls instead for a more principle-based approach in line with the binding regulation.

Insurance Europe highlights the following key points related to the proposed Annexes on MLR and termination clauses which are further elaborated on in response to the questions below:

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1. **Need for a recalibration of the mass-lapse parameter**
   Insurance Europe has long contested that the calibration of the mass-lapse parameter of 40% (70% for group pension funds) is materially incorrect and creates a capital requirement beyond the one year 99.5% Value-at-Risk calibration, required by Solvency II.

   Some of EIOPA's commentary and analysis in the consultation paper seemingly supports the industry assertion.

   Section 3.43 also discusses the appealing cost vs. capital benefit of reinsuring above the 25% level which indicates stress levels above the 25% as being extremely unlikely, and thereby attractive to reinsure.

   Additionally, since the original calibration of the mass-lapse shock, more detailed data regarding lapses and scientific studies on the topic are available. These show that a lower calibration would be appropriate.

   This clearly indicates the miscalibration of the mass-lapse shock within the standard formula and should trigger a recalibration of the mass-lapse stress, as proposed previously by Insurance Europe. Article 111 (3) of the recently published Solvency II Directive requires EIOPA to reassess this parameter.

2. **The one-year horizon measurement period is appropriate and does not create material basis risk**
   Insurance Europe is strongly opposed to the paper's suggestion that MLR treaties with 12-month measurement periods create material basis risk.

   The use of reinsurance contracts with a roll-forward over 12 months for mass-lapse risk is sufficient to ease any supervisory concerns within the Solvency II timeframe.

   The mass-lapse shock is, by definition, a temporary increase in lapses. Any confusion between the mass-lapse shock, which is by definition an instantaneous and temporary shock and lapse-up, which is by definition a permanent raise in lapses, should be avoided.

3. **EIOPA's considerations on exclusions and termination clauses should be materially revised to reflect legal and economic consideration**
   While it is recognised that Solvency II itself does not have exclusions written in the rules for the Solvency Capital Requirement (SCR), it is noted that exclusions and termination clauses are indirectly included in the SCR.

   Firstly, the SCR and by extension Solvency II is a prudential legislative framework that does not encompass insurance products. Indeed, the legal specificities of insurance products are generally not harmonised and up to the Member States. Hence, exclusions in MLR treaties can be in line with local legislation, ie legally enforceable towards policyholders.

   Secondly, exclusions and termination clauses, rights and duties are necessary to ensure an equitable and operational contractual relationship which preserves the parties' original commercial intention and economic effect in relation to this treaty.

   To conclude, exclusions strengthen the executability of treaties and are in the interests of both cedents and reinsurers. Similarly, termination clauses contribute to insulate the treaty from litigation risk between the parties.

4. **The assessment of basis risk should be done following the legal basis provided in the Solvency II delegated regulation**
   The Solvency II Delegated Regulation (Article 210) provides a clear definition of material basis risk, the assessment of which is carried out at the BSCR level[1]. All references to material basis risk in the Annex should be to the binding regulation and not the description in the basis risk guidelines, which if interpreted as requiring a more granular assessment, goes significantly beyond the binding regulation.

Insurance Europe is providing its feedback with the hope to improve the Annex through better understanding of the legitimate risk management purposes underpinning the features and clauses discussed in this paper, most of them being necessary conditions to an equitable, operational and vibrant market which facilitates risk-sharing. When published, the Annex should provide an appropriate context for all 27 National Supervisory Authorities (NSAs) which will allow insurers to access MLR in line with the supervisory convergence goal of the EIOPA RMT Opinion.

[1] The actual definition of material basis risk per Article 210 (3) of the Delegated Act states that: "Basis risk is material if it leads to a misstatement of the risk-mitigating effect on the insurance or reinsurance undertaking's Basic Solvency Capital Requirement that could influence the decision-making or judgement of the intended user of that information, including the supervisory authorities."

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Introduction

Q1.1. *Do stakeholders see the need for detailed guidance on mass-lapse reinsurance and-or for other reinsurance structures or clauses?*

Options: No / Yes / **Yes, but less detailed (more high-level)**

Insurance Europe welcomes some guidance on mass-lapse reinsurance with the intention of creating a level playing field for insurers to use and gain credit for appropriate mass-lapse reinsurance contracts.

As noted by EIOPA, mass-lapse often creates significant capital requirements for life insurance companies which indicates that it is a key risk for these insurers (notwithstanding the question about the calibration of the mass-lapse parameters). Pooling of this risk (ie diversification across the insurance system) of mass-lapse risk on reinsurers' balance sheets, directly supports the insurance sector and indirectly enhances both financial stability and policyholder protection.

However, Insurance Europe does not agree that there is a need for more detailed guidance on other reinsurance structures or claims. Creating even more prescriptive requirements related to the use of reinsurance will discourage its use and could result in non-proportional reinsurance being unattractive for primary insurers.

Q3. *Please provide any general comments to the Annex on Mass-lapse reinsurance (section 3).*

Throughout the consultation paper, EIOPA makes a number of prescriptive statements regarding what constitutes basis risk which, in Insurance Europe's view, go beyond the legal requirements. Any assessment of basis risk should be based on Article 210 (3) of the delegated act (DA) which already specifies how undertakings should assess the effective transfer of risk.

Insurance Europe agrees that undertakings should be able to demonstrate that the treaty provides an effective risk-transfer without creating material basis risk, unless this is reflected in the calculation of the Solvency Capital requirement. This requirement is set out in Article 210 (3) of the DA and is the legal basis for the assessment of the effective transfer of risk.

The proposed Section 3.3.11, if proportionally applied, provides adequate guidance for the specific case of MLR and is appropriate for the Annex. It could be added that that when analysing the RMT effect particular attention should be paid to certain elements highlighted elsewhere in the paper.

If Section 3.3.11 is retained, the following parts of the Annex should be deleted/amended as appropriate:

Section 3.3: SCR treatment

- Insurance Europe does not support the use of the "mirroring approach" and recommends replacing it by a reference to Article 210(3) of the DA.
- This "mirroring" approach considers that to avoid basis risk, the change in the value of the RMT closely mirrors the change in the value of the risk exposure in different scenarios. This is inappropriate in the context of non-proportional reinsurance because a non-proportional treaty **responds to the claims when they attach.**
- In particular, the wording in "risk mitigating capacity" in Paragraph 3.19 (understood to mean a change in the proportion of the gross-of-MLR mass-lapse risk covered by the MLR since the inception of the MLR contract) is not considered to be a basis risk. Diversification with other risks should be considered in the assessment of material basis risk in line with Article 210(3) of the DA.

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Section 3.3.3: Definition of lapse risk

- Insurance Europe disagrees with the expectation that all mass-lapse treaties should copy the definition of "lapse" found in Solvency II, irrespective of the underlying risk and cedents' policy wording being reinsured.

Section 3.3.3: Exclusions

- Insurance Europe disagrees with the blanket statement that exclusions create *per se* basis risk.
- This simplistic assessment fails to consider the purpose of exclusions, ie to ensure that the treaty responds solely to risks that the parties intended to cover (and the reinsurer price), to reduce litigation risk by making the treaty clearer, and, crucially, to align interests between parties.
- Insurance Europe supports a more balanced messaging on exclusions and, at minimum, the removal of the list of examples.

Section 3.3.5: Fixing parameters

- In Paragraph 3.37, the consultation states that materiality of basis risk should be set before considering diversification after aggregation. This is not consistent with the DA description of materiality in Article 210 which refers to a misstatement of the SCR influencing the decisions or judgement of the users of the information. This needs to be corrected in line with the binding regulation.

Section 3.3.10: special termination clauses

- Special termination clauses serve a legitimate risk management purpose to safeguard the interests of each party against unforeseen circumstances. For example, if a cedent would actively work towards their policyholders to cancel contracts, or if a cedent would act fraudulently, fail to pay the amount due under the treaty or lose its authorisation to operate.
- Section 3.3.10 is detrimental to sound risk management practices and should be removed. Termination clauses are addressed more generally in Section 4, thus limiting the impact of this removal.

Q2.1. *Would any of the options have any impact in your case? Please briefly describe the reasons why.*

Insurance Europe highlights that a measurement period of 12 months is not in itself creating basis risk.

- The Solvency II SCR captures the 1 in 200 chances in basic own funds over a one-year period resulting from a mass-lapse event. The SCR does not, and should not, anticipate mass-lapse risks which extend beyond that one-year period.
- An extension of the measurement period beyond 12 months would unnecessarily blur the lines between the instantaneous and temporary shock risk (mass-lapse) and the long-term trend risk "lapse-up" (permanent increase in lapse rates) and create potential double-counting of risks in the SCR. These are two distinct risks which are already appropriately captured and managed in the existing rules, including in both SCR (Article 142) and own risk and solvency assessment (ORSA) where necessary.

Q2.2. *Which additional pros, cons or additional considerations (if any) would you like to highlight for one or both options?*

- Insurance Europe does not believe that option 1 is a viable solution as the assumption on which it is based (ie emergence of basis risk) is not justifiable. In addition, it undermines the principles and practical application of the standard formula for one specific circumstance. In so doing it risks creating significant regulatory uncertainty for the insurance industry regarding the future direction and interpretation of the standard formula, beyond the specific point under consideration in this paper.
- Beyond what is justifiable, there is also the question of what is possible, and it should be noted that longer than 12 month measurements periods may have negative consequences on the timeliness of

reinsurance claim payments, as reinsurers would need additional best estimate lapse rates to be calculated.

- There is a range of plausible scenarios for a real-world mass-lapse event which could differ from the Mass-Lapse SCR shock set out in the DA. Section 3.10 of the consultation paper questions the appropriateness of MLR cover for one variation from the Standard Formula definition, ie the "*material basis risk as the cover provided by the MLR treaty **would not mirror** the losses of a multiyear mass-lapse event*". When assessing the adequacy of the risk mitigation technique, consideration should be given to a wider set of plausible real-world mass-lapse events, including concentrations by product line, lumpiness of lapse experience, and the settlement/liquidity risk arising from short-term mass-lapse events covered by longer measurement periods. Section 3.10 appears to envisage a standard for MLR cover to "**mirror**" such variations of loss, which is impractical, as the contractual claim event and loss cover definitions must be set out in a single measurable and unambiguous way in the MLR treaty. A more appropriate approach would be to consider a range of plausible mass-lapse events, with the adequacy and performance of the cover assessed as part of the ORSA exercise taking into account the company's appetite for mass-lapse risk. Furthermore, the assessment of the adequacy of capital relief for MLR, and whether that relief is commensurate with the overall level of risk transfer, should utilise the outcome of the ORSA analysis and feed into a broader consideration of Standard Formula appropriateness, which looks at the overall capital held by the company.
- The risk of a misestimation of (or a permanent change in) lapse rates as described in Section 3.4 is the driver behind lapse-up (and lapse-down) shocks. This risk event occurs through the emergence of lapse experience data over time, informing long-term lapse assumptions. Typically, lapse experience investigations will place a greater emphasis/credibility on recent lapse experience. Hence, it could be argued that a lengthening mass-lapse event over a period of two years, as envisaged in Section 3.13, is approaching the point of convergence into a lapse-up event as it begins to form evidence of a shift in longer term trends.

Q5.2. *Section 3.3: SCR treatment*

Paragraphs 3.17 to 3.21

Insurance Europe invites EIOPA to clarify Paragraphs 3.17 and 3.18.

It is unclear what EIOPA means with a "specific risk management assessment" and the content of this assessment. It also seems counterintuitive to expect more assessment when an undertaking buys reinsurance than if did not.

Furthermore, in Paragraph 3.18, it is unclear how other financial factors but mass-lapse ought to influence the reinsurance mass-lapse agreement.

Finally, Insurance Europe opposes reporting in the Regular Supervisory Report. NSAs in some markets, such as Belgium, already require the consistency between the effectively transferred risk of reinsurance and the capital reduction in the SCR to be demonstrated in the ORSA. The ORSA leaves insurance companies sufficient leeway to perform an entity specific assessment based on the company's risk profile, as EIOPA points out in Paragraph 3.17.

Q7.1. *Section 3.3.2: Lapse definition and basis risk.*

Comments to the blue box

Insurance Europe supports the removal or revision of this section.

- The proposed guidance is setting disproportionate expectations and risks creating unnecessary operational burdens in terms of requiring a comprehensive definition including for the case of discontinuances which do not create solvency risks. In addition, these disproportionate expectations deviate from the underlying assumption of the mass-lapse SCR since the DA refers only to *"the type of discontinuance which most negatively affects the basic own funds of the undertaking on a per policy basis"*.
- The definition of "discontinuance" in the Solvency II DA is descriptive but not indicative of a risk. A discontinuance as defined in Solvency II does not necessarily equate to a loss of basic own funds, and, if it does, the magnitude of the loss can vary. This is recognised by Article 142(6) of the DA, namely: "the undertaking shall base the calculation on the type of discontinuance which most negatively affects the basic own funds of the undertaking on a per policy basis". In other words, there cannot be a material basis risk if certain types of discontinuances, while not covered by the treaty, have limited or no impact on the solvency of the cedent. Definitions of "lapse" in treaties, on the other hand, aim at covering those discontinuances which, in the context of the cedent, represent a risk that therefore needs to be transferred.

Q8.1. *Section 3.3.3: Exclusions*

Comments to the blue box

See response to question 3.

Q8.2. *Section 3.3.3: Exclusions*

Paragraphs 3.26 to 3.30

- Insurance Europe believes that EIOPA should support reinsurance agreements whereby moral hazard is minimised and alignment of interests between the insurer and the reinsurer is supported. A clear distinction should be made between what is within the cedent company's control. There should be a strong preference for exclusions to only apply as a result of actions within the control of the insurance company.
    - It is recognised that Solvency II itself does not have exclusions written in the rules for the SCR. However, insurance companies are allowed to take into account exclusions in MLR treaties as long as these are in line with local legislation, ie legally enforceable towards policyholders. It is also noted that Member States have important tax incentives, which makes certain lapses very unlikely because policyholders would incur significant fiscal penalties.
- Specifically in relation to the examples presented in the consultation paper:
    - It is not clear how a reinsurance, or any other contract, can continue to function if the insurer is unable to maintain its operations.
    - It would be inappropriate for an insurer to benefit from its own actions in recommending lapsation, including via third parties it contracted with.
    - It would be inappropriate and likely unnecessary for an insurer to claim on the MLR in the event policyholders are retained under an alternative product not in scope of the MLR (switching).
    - For instance, MLR is designed to cover mass-lapses occurring outside of the control of the cedent, and not mass-lapses instigated by the cedent itself to encourage its policyholders to lapse their policies as part of a strategy to shift its product mix. In this example, the exclusion does not create any (material) basis risk. An explicit exclusion that clearly reflects the intention of the party is better than no written exclusions in terms of predictability and executability of the treaty (cf. EIOPA's liquidity risk considerations stemming from poor wording in Paragraph 3.50).

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Q9.3. *Section 3.3.4: Basis for the calculation of the claim.*
Example of different basis for calculation

It is not clear what the merit of this example is because it is not clear that there is a basis risk resulting from an alternative but equivalent claim definition ("best estimate (5%) + 20%" versus fixed "25%"), recognising that this feature can be adequately reflected in the insurer's SCR calculations simply by modelling the reinsurance claim amount under the SCR mass-lapse stress.

Q10.2. *Section 3.3.5: Fixing parameters*
Paragraphs 3.35 to 3.37

See response to Q3.

EIOPA mentions in Paragraph 3.35: "Mass-lapse events typically are not instantaneous events, but lapses grow over a variable period of time and, as the mass-lapse event arises, the expected lapse rate might also increase."

Insurance Europe does not agree with this statement and does not see the basis risk mentioned in the fixing of the parameters. Insurance Europe sees a risk of confusion between lapse-up and mass-lapse concepts (cf. supra Q2.2). Moreover, if the attachment point is defined as a percentage above best estimate, the effect mentioned in this section will be captured when best estimates are updated (which is not expected to happen each quarter).

Q12.1. *Section 3.3.7: Attachment / Detachment point.*
Comments to the blue box

Insurance Europe supports a revision or deletion of Section 3.3.7.

- Attachment points are decided based on the risk appetite. EIOPA seems to insist that reinsurance attachment points are too high and that, in practice, no redemptions above these attachment points are observed. It is noted that it is normal that a shock calibrated on a value at risk of 1 over 200 years has not been observed. Companies decide how much risk appetite they are prepared to take. The attachment point therefore already takes into account the characteristics of the product, as requested by EIOPA.
- As such, the Annex should be revised to align the description on attachment/detachment point with the binding regulation, in particular Article 45 of the Solvency II directive and Article 210 of the DA.
- Heightened expectations singling out attachment points would be disproportionate as what matters is whether the standard formula SCR properly reflects the risk profile after reflecting the entirety of the risk mitigation technique (as opposed to each component of the treaty). EIOPA should rather encourage undertakings to keep in mind the requirement to perform the SCR adequacy and standard formula appropriateness assessment per Article 45 of the directive when setting the attachment point.
- Insurance Europe recommends replacing the blue box and Paragraphs 3.44 and 3.45 as follows: "An undertaking's assessment of the adequacy of the standard formula for its risk profile in the ORSA should have regard to the underlying mass-lapse risk profile and the mass-lapse reinsurance in place where they are material for the aggregate required capital of the firm. The level at which the attachment point is set is relevant for this analysis."

Q12.2. *Section 3.3.7: Attachment / Detachment point.*
Paragraphs 3.42 to 3.45

Insurance Europe supports the removal or, at the very least, significant revision of this section, in line with the comments below.

- EIOPA’s considerations on attachment point are not risk-based. As EIOPA puts it, “If an undertaking only reinsures mass-lapse events for insurance products with low lapse risk”, it should conclude that the 40% mass-lapse scenario is too high in the context of assessing the overall adequacy of the standard formula for the firm’s risk profile.
- It is not clear why regulatory oversight of the attachment point is needed because it is already considered for any assessment of risk transfer and associated capital relief. If the inbound risk is to be quantified at 40% then it must follow that any attachment point below 40% is reducing the risk of the insurer, as defined by Solvency II, and as such should qualify as capital relief.
- EIOPA seems to imply that the attachment points in MLR are too high and in practice no surrenders above these attachment points are observed. Insurance Europe notes that the mass-lapse shock is particularly heavily calibrated, which is a reason for this type of reinsurance in the first place and the attachment point already takes into account the characteristics and risk profiles of the product. **It is further insisted that if a heavy shock, ie above the risk appetite/attachment point were to occur, it would be reinsured in line with good risk management practices.**

Q15.1. *Section 3.3.9: Early termination clauses*

Comments to the blue box

Insurance Europe understands that "early terminations" are either (i) those clauses that allow for either party of an MLR to bring an open-ended agreement to an end or (ii) those clauses that allow the cedant to avoid entering a final year of a fixed term agreement.

As such, Insurance Europe understands the consultation is describing the current market practice and not proposing a change to such practice. Insurance Europe understands, however, that EIOPA focuses here on a specific early termination clause that would be only available to the reinsurer to terminate the contract at will (ie without the occurrence of specific events or the triggering of conditions) and at short notice. Therefore, we would suggest clarifying the text in the blue box as follows: “Where the contractual arrangement provides solely to the reinsurer the option to unilaterally terminate the contract early without any prior conditions, the residual measurement period and the residual duration of the treaty should be sufficient to ensure an effective risk transfer.”

- Insurance Europe notes that the use of the terms "residual duration" and "residual measurement period" is somewhat confusing since both would have an equal time period based on footnote 17.

Q15.2. *Section 3.3.9: Early termination clauses*

Paragraph 3.51

- Insurance Europe disagrees with EIOPA’s description of early termination clauses, which seem to be in total contradiction to the spirit of a reinsurance treaty concluded in good faith between knowledgeable parties.
- Early termination clauses usually allow reinsurers and cedants to benefit from the same clauses. They ensure a balance of contractual rights and obligations in specific pre-agreed situations. An insurer may for example be able to terminate a mass-lapse reinsurance contract early if it decides to discontinue the reinsured line of business. Some triggers could be aimed at a renegotiation of calibration of the treaty in a way that preserves the parties' original commercial intention and economic effect in relation to this treaty. Therefore, the goal is not to impede the execution of the transfer of risks but to ensure it happens as originally intended. See also Q15.1.

Q16.1. *Section 3.3.10: Special termination clauses.*
Comments to the blue box

Insurance Europe recommends the deletion of Section 3.3.10 in its entirety.

- There is no sound risk-based justification nor legal basis to require treaties to stipulate that termination should not apply before the end of the measurement period.
- Special termination clauses are generally in favour of both parties, and they serve a legitimate risk management purpose by ensuring the sustainability of the contract and safeguarding the interests of both parties against unforeseen circumstances, ultimately contributing to the contract's stability and risk-sharing effectiveness.
- Special termination clauses are therefore necessary for reinsurance business, such as clauses that allow for termination if a cedent would actively work towards their policyholders to cancel contracts, or if a cedent would act fraudulently, fail to pay the amount due under the treaty or lose its authorisation to operate. Such clauses should not imply that the respective reinsurance contract creates substantial basis risk and thus should not impair the ability of such contracts to mitigate risks.
- Insurance Europe considers this section to be detrimental to sound and legitimate risk management practices for both parties. As such, we urge EIOPA to remove Section 3.3.10. Termination clauses are addressed more generally in Section 4, thus limiting the impact of this removal.

Q16.2. *Section 3.3.10: Special termination clauses.*
Paragraphs 3.52 to 3.55

- Special termination rights act to both: 1) provide safety for reinsurers with regard to the consequences of extraordinary severe events or breaches and 2) protect cedants from being tied to a reinsurer unable to meet its obligations.
- The purpose of the termination clauses is aligning interests of both the insurer and (re)insurer, minimising the risk of anti-selective behaviour, eg through service standards or a cedent's obligation of full disclosure to the reinsurer of all information and data that are material to the risks being assumed by the reinsurer. They ensure the sustainability of the contract and safeguard the interests of both parties against unforeseen extraordinary circumstances, ultimately contributing to the contract's stability and risk-sharing effectiveness.
- In practice, special termination clauses can serve primarily as a trigger for renegotiation of the calibration of the treaty in line with the original intent of the parties. This is a lever to ensure that the treaty stays fit-for-purpose over time. For example, special termination in case of material changes in regulation and/or applicable laws are particularly important to trigger the review of the treaty terms and find a solution which preserves the parties' original commercial intention and economic effect in relation to this treaty in the new regulatory environment.

Q17.1. *Section 3.3.11: Estimating the risk-mitigating effect*
Comments to the blue box

Insurance Europe agrees with this statement. Insurance Europe would recommend keeping Section 3.3.11, adding that when analysing the RMT effect particular attention should be paid to certain elements highlighted elsewhere in the paper.

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Q20. *Please provide any general comments to the Annex on reinsurance agreements' termination clauses (section 4).*

- It should be made clear that this section (similarly to the rest of the paper), only applies to standard formula users, recognising internal model users' capacity to model specific treaty features where appropriate and as provided for in Article 235 of the Solvency II DA.
- Insurance Europe agrees that the use of termination clauses in reinsurance contracts should target specific purposes like the elimination of moral hazard, ensuring that they do not materially undermine risk transfer in the normal run of events.
- However, **Insurance Europe is concerned about the potential scope of this section.** It is the understanding of Insurance Europe that EIOPA wants to set guidance on very specific and rare termination clauses where the reinsurer is released of its obligation to pay "legitimate" claims upon the occurrence of predefined events.
    - Because this concept of "legitimate claims" can be misinterpreted or misconstrued, Insurance Europe urges EIOPA to add in Paragaphs 4.2, 4.3, 4.8 and 4.9 the following clarification:
        - "However, termination clauses that stipulate that premiums, claims, expenses and fees (as applicable) related to the period prior the occurrence of the event are to be settled at the point of the event, per the reinsurance arrangements, are considered to be in line with the conditions in the delegated regulation regarding the effective transfer of risk."
- While EIOPA's proposed restrictions on termination clauses aim to ensure the effective transfer of risk, Insurance Europe notes that overly strict limitations are not needed and could conflict with standard business practices that have been established over decades to ensure contractual balance and fairness between the parties.
- Insurance Europe does not agree that termination clauses for insolvency events may compromise the "effective transfer of risk for the purposes of the SCR calculation". The effective transfer of risk should be assessed on a going concern basis for the SCR calculation. Reinsurance should be recognised in the SCR when risks are transferred effectively in the scenarios of the standard formula.

Q21. *Section 4.1: Description of the case.*

Paragraphs 4.1 to 4.4

Insurance Europe supports the removal of Paragraph 4.3, the reference to "insolvency".

- Insolvency event termination clauses are standard market practices which are usually bilateral, ie both the reinsurer and the cedent benefit from one. The existence of an insolvency event clause in treaties does not bar them to effectively transfer risks.
- The fact that the risk transfer may stop when one of the parties is taken over by a liquidator is not unreasonable and does not invalidate the fact that risk transfers are effectively happening in most scenarios including the 1-200 scenarios of the Solvency II frameworks. The insolvency event clause would be triggered by the liquidation of the cedent on a gone-concern basis whereas Article 101(2) of the Solvency II directive sets out that "*The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will pursue its business as a going concern*". Therefore, the credit for reinsurance in the standard formula cannot be challenged by the existence of a clause to be applied outside of the scope of the standard formula.

Insurance Europe is the European insurance and reinsurance federation. Through its 39 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe’s economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.