Response to EIOPA's consultation on the new proportionality regime under SII

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Introduction

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

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

Proportionality and application beyond SNCUs

- The insurance industry emphasises that the Solvency II framework allows any (re)insurer to apply to its National Supervisory Authority (NSA) for the use of proportionality measures suited to its specific risk profile. This flexibility is a fundamental part of the framework and must be preserved to accommodate a variety of business models.
- EIOPA's draft states proportionality measures can only be approved for undertakings whose risk profile is not materially different from the risk profile of SNCUs (paragraph 3.3), which is more restrictive than the Directive. The Directive references the risks affecting the undertaking and strategic changes affecting the risk profile over the next three years. This restriction fails to recognise the dynamic nature of business models and strategic evolution within the insurance sector, potentially limiting the flexibility that the proportionality principle is intended to offer.
- The principle of proportionality is essential for accommodating the diversity of the European insurance market, helping avoid unnecessary costs and operational complexities, for SNCUs as well as for non-SNCUs.
- EIOPA's paper seems to focus on insurance undertakings or portfolios as a whole. However, it is important to allow for proportionality based on materiality, such as for technical provisions or Solvency Capital Requirement (SCR) calculations, where the total size of an undertaking is less relevant, and the materiality of a specific portfolio should be considered.

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Regarding both aspects of the draft advice:

- **Proportionality approach for non-SNCUs -** While the industry takes note of EIOPA's hybrid approach, combining quantitative and qualitative criteria for supervisory assessment, these criteria should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market. That would avoid restricting supervisory judgement and would allow proportionality measures beyond undertakings fulfilling the criteria. Finally, the conditions should not be embedded in the text of the Delegated Regulation.
  - **Quantitative conditions:** While the industry acknowledges the idea of quantitative criteria to ensure broad applicability of proportionality measures for non-SNCUs, at the same time it is essential that these thresholds serve as non-binding guidance to National Competent Authorities (NCAs) rather than fixed thresholds. A sufficient share of the national market should benefit from proportionality measures. For example, a 20% condition in line with the current threshold for limitations and exemptions could be considered.

    While the proposed thresholds (€15bn Technical Provisions (TP) for life, €2bn in gross premium income for non-life) are noted, the industry believes that a minimum relative threshold would ensure that, regardless of the specific quantitative thresholds, a sufficient number of non-SNCUs in each market can benefit from proportionality measures.
  - **Qualitative conditions:** The large number of qualitative conditions create complexity and ambiguity. While it is recommended that they be used as guiding principles, not strict eligibility criteria, to avoid bureaucratic burdens, the conditions need to be updated in line with the feedback below.
- **Methodology for classifying undertakings and groups as small and non-complex**: While the industry acknowledges EIOPA's advice that no further specifications may be required regarding the methodology for classifying undertakings and groups as small and non-complex, given the volatility of interest rates and insurers' susceptibility to interest rates, the industry suggests adding a multi-year stabilisation mechanism (eg three years) for interest rate-related criteria (Article 29a(1)(a)(i) and (a)(iii)). Additionally, the reinsurance limit (Article 29a(1)(a)(v) and (b)(vi)) should not apply to reinsurers.

Additional comments

- **SNCU groups:** the practical implementation of proportionality measures in groups, particularly where one or more entities qualify as SNCUs, remains challenging. Further clarification is recommended on how such measures can be implemented at the group level to avoid excessive administrative burden, for example by allowing exempted entities to be excluded from consolidated reports or permitting the use of historical data.
- **Market impact and cost analysis:** EIOPA is encouraged to conduct a comprehensive market impact and cost analysis of the proposed proportionality framework, including the number of SNCUs, and how many (re)insurers would be eligible according to the proposed conditions by EIOPA. It is essential to evaluate the broader economic effects on the European market and individual Member States, as well as the potential cost implications for insurers and supervisory authorities. This analysis will help ensure that the measures do not inadvertently introduce disproportionate financial burdens on smaller undertakings and are applied in a way that supports the effective functioning of the insurance market.

Specific comments on the qualitative conditions

The industry highlights that the qualitative conditions should be non-binding, and as such, they should not be embedded in the text of the Delegated Regulation. At the same time there are a number of concerns regarding the specific conditions, which include:

- **Condition 3**: The requirement for "an appropriate margin" introduces an implicit capital requirement not specified in the Directive, leading to inconsistency across Member States and should therefore be removed.
- **Condition 4:**

- **The proposed thresholds (€15bn TP for life, €2bn in gross premium income for non-life) are noted**. The Level 1 text provides thresholds for SNCUs, and, because proportionality has to work for all (re)insurers, the industry believes that a minimum relative threshold would ensure that, regardless of the specific quantitative thresholds, a sufficient number of non-SNCUs in each market can benefit from proportionality measures. (for example, a 20% condition in line with the current threshold for limitations and exemptions could be considered).
- **Concerns regarding EIOPA's views on cross-border activities and innovative reinsurance:** The additional details on individual conditions, particularly the last paragraph on condition 4, raise important concerns. The industry is concerned about the negative portrayal of cross-border activities and the use of the term "innovative use of reinsurance." EIOPA's suggestion that cross-border business is inherently riskier than domestic operations seems to conflict with the fundamental freedoms of the Single Market and the changes in home-host rules introduced by the Amended SII Directive. Additionally, the term "innovative use of reinsurance" risks unfairly labelling non-standard risk mitigation techniques as particularly risky without clear definition or assessment. If a supervisor cannot, according to existing rules, disapprove of a reinsurance arrangement for use towards the SCR, it cannot serve as a restriction on the proportionality measures. **The reference to cross-border business and the use of innovative reinsurance should be removed.**

- **Conditions 5** (*regarding no serious concerns arising from the system of governance*) and **condition 6** (*regarding no concerns regarding the latest three RSRs*) could benefit from further clarity.
  - Only material concerns should be relevant here. The Regular Supervisory Report (RSR) contains a vast amount of information for the supervisor, making it unreasonable to use the RSR as a condition limiting eligibility for proportionality status. The conditions must be clearly defined, as the RSR is broad and comprehensive rather than specific.
  - It should focus solely on existing conditions that remain unresolved. Past issues that have already been addressed are not relevant.
- **Variable Remuneration** - the industry is critical of the proposed requirements for remuneration. It is considered premature to assume that the waiver for exempting a significant portion of deferred variable remuneration, as introduced in the Delegated Regulation, will be contingent on several quantitative and qualitative criteria. Such an approach would add unnecessary complexity.
- **Condition 16** is redundant as the objective (to address entity exposure to the same reinsurance undertaking) is already covered by condition 15 (material exposures from the asset and liability sides of the balance sheet). A material concentration of counterparty exposures to a reinsurance undertaking is only relevant for proportionality if it could give rise to a material liquidity risk or exposure. Singling out reinsurance is unnecessary, as this risk is already captured by condition 15.

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

As the Call for Advice also covers group related aspects, the insurance industry recommends **focusing additionally on the implementation of simplifications in groups.** Currently, many **proportionality measures for SNCUs in non-SCNCU-groups are impractical, particularly regarding reporting and planning requirements** at group level. These requirements involve consolidated information and data from all group entities. Although the SNCU may be exempt from such requirements at the entity level, it must still comply with them from the group perspective. For example, a five-year interval for the provision of the Regular Supervisory Report (RSR) is not very useful if the group has to submit an RSR for the entire group annually. Similarly, exempting the Solvency II balance sheet from external auditing adds little value if the auditor must still audit the consolidated version at the group level (see also comment on Q8).

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

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

The industry also shares the concern regarding the application of the framework where one or more entities belonging to a group are SNCUs but the group itself does not qualify as a SNCU group. Many groups in the EU have entities in more than one Member State and consistent application of the proportionality framework is crucial for the effective functioning of the EU Single Market for insurance.

Against this background, as the Call for Advice also covers group related aspects, the insurance industry recommends **focusing additionally on the implementation of simplifications in groups.** Currently, many **proportionality measures for SNCUs in non-SCNCU-groups are impractical, particularly regarding reporting and planning requirements** at group level. These requirements involve consolidated information and data from all group entities. Although the SNCU may be exempt from such requirements at the entity level, it must still comply with them from the group perspective. For example, a five-year interval for the provision of the Regular Supervisory Report (RSR) is not very useful if the group has to submit an RSR for the entire group annually. Similarly, exempting the Solvency II balance sheet from external auditing adds little value if the auditor must still audit the consolidated version at the group level

These challenges apply to most proportionality measures for SNCUs, particularly in areas such as RSR frequency (Art. 35(5a)), exemption from Quantitative Reporting Template (QRT) and item-by-item reporting (Art. 35a(2)), Own Risk and Solvency Assessment (ORSA) frequency and simplifications (Art. 45(1b, 5) and Art. 45a(5)), Solvency and Financial Condition Report (SFCR) frequency (Art. 51(6)), external audit of the Solvency II balance sheet (Art. 51a(1)), liquidity risk management plans (Art. 144a(4)), and sustainability reporting (Art. 19a(6) of the Accounting Directive). **To enable a more effective approach, it should be permissible at the group level to either use historical data for exempted insurers or exclude them from consolidation in the reports or plans.**

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

The analysis related to Option 1 seems to overlook the costs for (re)insurers. The added flexibility for NSAs may introduce a level of uncertainty that could adversely affect the undertakings. A more balanced approach would include a thorough assessment of the financial impact on (re)insurers, ensuring that any increased supervisory discretion does not disproportionately burden the insurers or create an unpredictable regulatory environment.

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

- While the industry acknowledges EIOPA’s advice that no further specifications may be required regarding the methodology for classifying undertakings and groups as small and non-complex, given the volatility of interest rates and insurers’ susceptibility to interest rates, the industry suggests adding a multi-year stabilisation mechanism (e.g., three years) for interest rate-related criteria (Article 29a(1)(a)(i) and (a)(iii)).
- Additionally, the reinsurance limit (Article 29a(1)(a)(v) and (b)(vi)) should not apply to reinsurers.
- In more detail this implies:
    - **Art 29a (1) lit a i) and c i):** Regarding the criterion of interest rate risk, a stabilisation mechanism should be introduced over several (e.g. three) years, as the fluctuations in the interest rate risk module are significantly influenced by interest rate trends and can only be controlled by the insurance undertaking to a limited extent - unlike the development of gross premium income.

- **Art. 29a (1) lit a iii):** A stabilisation mechanism should also be introduced here, as the fluctuations in technical provisions are also largely determined by interest rate trends.
- **Art 29a (1) lit a v) and b vi):** The reinsurance limit (not exceeding 50 % of total annual gross written premium income) should not apply to reinsurers, as otherwise reinsurers could not become SNCUs. This would contradict recital 18, according to which a proper implementation of the proportionality principle is crucial to avoiding an excessive burden on insurance and reinsurance undertakings.
  The same clarifications are necessary regarding SNC-groups (Art 213a).

- Furthermore, the industry notes that classification criteria already impose rather conservative thresholds, such as for technical provisions and premium income and also, the lines of business allowed under these criteria are quite restrictive. As such, the scope of undertakings qualifying as SNCU is limited both in terms of the number of undertakings and their overall market share. Given that the criteria are already restrictive, there is no need for further restrictiveness.
- Finally, the EC call for advice emphasises the importance of avoiding 'undue administrative burden'. Option 2 would introduce additional procedures and administrative requirements and is therefore not a suitable path.

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

See response to Q10

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

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

- It is highlighted however that nowhere in the (amended) Directive is there any provision mandating additional provisions in the Delegated Regulation to regulate further conditions on non-SNCUs applying proportionality measures defined in Art 13. Art. 29d(1) provides: "*Member States shall ensure that insurance and reinsurance undertakings that are not classified as low small and non-complex undertakings may use only proportionality measures provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article 144a(4) and proportionality measures provided for in the delegated acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings in accordance with Article 29c and which measures are identified for the purpose of this Article (…).*" This means that the Delegated Regulation could make additional proportionality measures eligible for non-SNCUs. However, it does not mandate the Delegated Regulation to provide further conditions on those measures or on any other proportionality measure.
- It is noted that the current legislative provisions regarding proportionality clearly allow non-SNCUs to implement multiple proportionality measures in a proportionate manner.
  This is supported by Article 29d(1), which states: "*The insurance or reinsurance undertaking shall submit a request in writing for approval to the supervisory authority. That request shall include all of the following: (a) the list of the proportionality measures intended to be used and the reasons why their use […]*". The use of the term "measures" in the plural, both in Article 29d(1) and (2), indicates that more than one proportionality measure can be employed, and it does not preclude a non-SNCU from implementing all relevant measures.
  Furthermore, since Article 29d(1) refers to "*proportionality measures […] explicitly applicable to small and non-complex undertakings in accordance with Article 29c*", while at the same time the proportionality principle continues to apply to all provisions of the Directive and the Delegated Regulation, as highlighted in Recital 10 of the Amended SII Directive.

- Regarding remuneration requirements:
    - **The industry is critical of the proposed requirements for remuneration.** It is considered premature to assume that the waiver for exempting a significant portion of deferred variable remuneration, as introduced in the Delegated Regulation, will be contingent on several quantitative and qualitative criteria. Such an approach would add unnecessary complexity. Furthermore, it is questionable to adopt such complex conditions for granting or withdrawing supervisory approval regarding remuneration developed for areas regulated in the Solvency II Directive for provisions stipulated in the Delegated Regulation.
    - EIOPA's opinion on the supervision of remuneration principles in the insurance and reinsurance sector does not apply to individuals whose annual variable remuneration is EUR 50,000 or less and represents no more than one-third of their total annual remuneration. By imposing an exemption limit without further conditions, EIOPA is effectively implementing the proportionality principle in this regard. The industry strongly believes that this approach should serve as the benchmark for the Delegated Regulation.
- **The industry proposes to expand the list of proportionality measures with the following actions**:
    - Temporary exemption from or reduction in the frequency of including the results of stress tests in the ORSA, specifically regarding natural disaster, macroeconomic, or long-term scenarios. Directive Article 45(1)(d) and (e)
    - Reduction in the frequency of preparation or limitation of the scope (in terms of detail) of reports concerning the list of assets, i.e., QRT S.06.02 and S.06.03. Directive Article 35
    - Temporary exemption from or limitation of the scope of reports related to sustainable development. (*COMMISSION DELEGATED REGULATION (EU) 2021/1256 of April 21, 2021, amending Delegated Regulation (EU) 2015/35 with regard to the inclusion of sustainability risks in the management of insurance and reinsurance undertakings*).

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

Proportionality and application beyond SNCUs

- The insurance industry emphasises that the Solvency II framework allows any (re)insurer to apply to its NSA for the use of proportionality measures suited to its specific risk profile. This flexibility is a fundamental part of the framework and must be preserved to accommodate a variety of business models. As such, they should not be embedded in the text of the Delegated Regulation.
- EIOPA's draft states proportionality measures can only be approved for undertakings whose risk profile is not materially different from the risk profile of SNCUs (para 3.3), which is more restrictive than the Directive, without adequate motivation for such new limits. The Directive references the risks the undertaking is exposed to and strategic changes affecting the risk profile over the next three years. This restriction fails to recognise the dynamic nature of business models and strategic evolution within the insurance sector, potentially limiting the flexibility that the proportionality principle is intended to offer.
- The principle of proportionality is essential to accommodating the diversity of the European insurance market, helping avoid unnecessary costs and operational complexities, especially for non-SNCUs.

Regarding both aspects of the draft advice:

- **Proportionality approach for non-SNCUs -** While the industry takes note of EIOPA's hybrid approach, combining quantitative and qualitative criteria for supervisory assessment, these criteria should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market. As such, they should not be embedded in the text of the Delegated Regulation.
    - **Quantitative conditions:** While the industry acknowledges the idea of quantitative criteria to ensure broad applicability of proportionality measures for non-SNCUs, at the

same time it is essential that these thresholds serve as non-binding guidance to NCAs rather than fixed thresholds. A sufficient share of the national market should benefit from proportionality measures (for example a 20% condition in line with the current threshold for limitations and exemptions could be considered)

While the proposed thresholds (€15 Bn TP for life, €2 Bn in gross premium income for non-Life) are noted, the industry believes that a minimum relative threshold would ensure that, regardless of the specific quantitative thresholds, a sufficient number of non-SNCUs in each market can benefit from proportionality measures.

- **Qualitative conditions:** The large number of qualitative conditions create complexity and ambiguity. It is recommended that they be used as guiding principles, not strict eligibility criteria, to avoid bureaucratic burdens. As such, they should not be embedded in the text of the Delegated Regulation.
  - The large number of undefined legal terms (e.g. no concerns, no serious concerns, appropriate margin, complex business model) does not help the NCAs and does not create legal certainty for the non-SNCUs.
  - It also does not make sense to require an "appropriate" SCR margin with regard to the combination of key functions.
  - As Solvency II is well-implemented across Europe since the year 2016 NCAs have so far authorised proportional measures based on the assessment of the insurer's risk profile. This approach should remain supplemented and guided by the quantitative threshold.

Avoid creation of a second 'tier' SNCU category

Furthermore, **the industry disagrees with the notion that only undertakings meeting these conditions should be eligible to use the measures.** This would create a "second tier" SNCU category. Instead, the additional conditions set out in the delegated act should facilitate, not prescribe, NCAs in their assessments. When an undertaking can demonstrate that a proportionate application of Solvency II measures is justified by the nature, scale, and complexity of its risk, the NCA should assess the individual case.

Proportionality beyond SNCUs

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

Overly narrow interpretation of proportionality

The definition of proportionality should consider not only risk profile but also the nature and scale of undertakings. Limiting proportionality solely to risk profile overlooks important factors such as the size and complexity of operations (or lack thereof), which are crucial for determining appropriate measures. It is highlighted that the directive does not limit non-SNCUs to applying just one proportionality measure, as Article 29d(1) refers to "measures" in the plural, confirming that multiple measures can be applied.

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

With regard to the analysis:

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

- The administrative costs for the undertakings and potential number of affected insurers in the EU and each Member State should be included in the analysis.

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

Regarding both aspects of the draft advice:

- **Proportionality approach for non-SNCUs -** While the industry takes note of EIOPA's hybrid approach, combining quantitative and qualitative criteria for supervisory assessment, these criteria should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market. As such, they should not be embedded in the text of the Delegated Regulation.
  - **Quantitative conditions:** While the industry acknowledges the idea of quantitative criteria to ensure broad applicability of proportionality measures for non-SNCUs, at the same time it is essential that these thresholds serve as non-binding guidance to NCAs rather than fixed thresholds. A sufficient share of the national market should benefit from proportionality measures (for example a 20% condition in line with the current threshold for limitations and exemptions could be considered)
    While the proposed thresholds (€15 Bn TP for life, €2 Bn in gross premium income for non-Life) are noted, the industry believes that a minimum relative threshold would ensure that, regardless of the specific quantitative thresholds, a sufficient number of non-SNCUs in each market can benefit from proportionality measures.
  - **Qualitative conditions:** The large number of qualitative conditions create complexity and ambiguity. It is recommended that they be used as guiding principles, not strict eligibility criteria, to avoid bureaucratic burdens.
- The new framework should assist in increasing consistency and certainty about the proportionate application of Solvency II and reduce the regulatory burden for SNCUs and non-SNCUs. It should not hinder the application of any specific measure which undertakings might apply for with their respective NCA.

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

- EIOPA's recommendation to set the RSR frequency at three years, instead of annually or biennially, appears to suggest that undertakings must meet certain conditions to use the 3-year term, even though the directive establishes this as the default. Therefore, the focus should be on defining the conditions under which supervisors can require annual or biennial RSRs, and the criteria for allowing an extension to five years for SNCUs.
- EIOPA only refers to part of the text of Article 35(5a) and it provides only recommendations on (a), but not on (b).
  The full text of Art 35(5a) is as follows: "*Taking into account the information required in paragraphs 1, 2, and 3 and the principles set out in paragraph 4, Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities a regular supervisory report that comprises information on the undertaking's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period. The frequency of the regular supervisory report shall be:*
    (a)every three years, for small and non-complex undertakings, or, where permitted by the supervisory authority, up to five years;
    (b) every three years for insurance and reinsurance undertakings other than small and non-complex undertakings

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

- Finally, it is noted that, for example, in one Member State, a three-year RSR has been in place since 2016, and it is highlighted that the workload for a five-year RSR would not be significantly reduced.

The industry notes the following regarding the specific conditions:

These are general comments on each condition and therefore applicable to all of the following questions.

- **Condition 1** (*not subject to on-going supervisory measures to restore material non-compliance*) should not apply once compliance has been restored, regardless of any ongoing supervisory measures related to past non-compliance.
- **As part of condition 2** (*no complex business model*), insurers are **required to have no material changes in the business model over the last three financial years, this aspect is too restrictive and should be removed.**
  - The proposed requirement for no material business model changes in the last 3 years would be in addition to the directive requirement for no such changes planned within the next 3 years, giving rise to a requirement for 6 years with no material changes in the business model. It is not practical to require 6 years of no material changes in the business model to benefit from proportionality measures and could increase risk if it disincentivises insurers from making necessary business model changes over such a long period.
  - The backward-looking criterion on business model changes is not tailored to the directive requirement to consider risk profile. A business model change could have been made in the last 3 years to considerably reduce or simplify risk profile; such risk profile reductions or business model simplifications could involve the use of reinsurance. **The forward-looking criterion of the directive is sufficient, and the proposed backward-looking requirement makes the proposal overly restrictive and not appropriately targeted.** The prohibitive nature of increasing the condition in the Directive from the "next three years" to effectively "the last three years AND the next three years" effectively sets disincentives to innovate and adjust business models for a considerable long period.
  - The governance process of such a change is substantial and very diligent. The industry does not see a barrier to the eligibility to use proportionality measures in a material change in the business model, particularly if applied in conjunction with the other conditions.
  - It is important to ensure that the condition relating to the absence of changes in key financial elements does not hamper the development capacity of insurers subject to proportionality, nor unduly restrict their management of reinsurance treaties.
  - Furthermore, the exact meaning of a 'complex business model' remains unclear. It should be further elaborated. As it stands now it risks introducing more uncertainty than it provides guidance. This, in turn, creates a risk that different NCAs will interpret this condition differently, leading to different applications and ultimately an uneven playing field between member states.

- **Condition 3** (*SCR exceeded by an appropriate margin*)**: The requirement for "an appropriate margin" in condition 3 introduces an implicit capital requirement not specified in the directive and should be removed.**
  - NCAs' perspective on what is "an appropriate margin" might differ substantially across Member States, leading to inconsistency in the application of the framework.
  - Condition 1 requires that there is no serious supervisory concern triggering additional supervisory assessments or measures. This condition should suffice.
- **Condition 4** (*quantitative criteria*)

- **Proportionality approach for non-SNCUs -** While the industry takes note of EIOPA's hybrid approach, combining quantitative and qualitative criteria for supervisory assessment, these criteria should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market. As such, they should not be embedded in the text of the Delegated Regulation.
  - **Quantitative conditions:** While the industry acknowledges the idea of quantitative criteria to ensure broad applicability of proportionality measures for non-SNCUs, at the same time it is essential that these thresholds serve as non-binding guidance to NCAs rather than fixed thresholds. A sufficient share of the national market should benefit from proportionality measures (for example a 20% condition in line with the current threshold for limitations and exemptions could be considered)

    While the proposed thresholds (€15 Bn TP for life, €2 Bn in gross premium income for non-Life) are noted, the industry believes that a minimum relative threshold would ensure that, regardless of the specific quantitative thresholds, a sufficient number of non-SNCUs in each market can benefit from proportionality measures.
- **The additional details on individual conditions, particularly the last paragraph on condition 4, raise important concerns.** The industry is concerned about the negative portrayal of cross-border activities and the use of the term "innovative use of reinsurance." EIOPA's suggestion that cross-border business is inherently riskier than domestic operations seems to conflict with the fundamental freedoms of the Single Market and ignores the changes to the home-host rules introduced by the Amended SII Directive. The term "innovative use of reinsurance" risks unfairly labelling non-standard risk mitigation techniques as particularly risky without clear definition or assessment. If a supervisor cannot, according to existing rules, disapprove of a reinsurance arrangement for use towards the SCR, it cannot serve as a restriction on the proportionality measures.
- **Reinsurance and cross border -** The explanation that an undertaking's activities should be considered simple if they do not make "innovative use of reinsurance" is overly broad and open to interpretation. This term should be removed, and supervisory authorities should assess during the approval process whether an undertaking's use of reinsurance affects the simplicity of its activities. Reinsurance has long been a proven tool to simplify and stabilise the risk profile of small to medium-sized insurers, and it is often essential in meeting EIOPA's proportionality conditions. Therefore, the use of reinsurance should not be discouraged. If a supervisor cannot, according to existing rules, disapprove of a reinsurance arrangement for use towards the SCR, it cannot serve as a restriction on the proportionality measures. **The reference to cross-border business and the use of innovative reinsurance should be removed.**
- It is noted that the mirroring of the SNCUs undermines the Directive's intent that insurers not eligible for SNCU status can still apply individual proportionality measures.
- With respect to the quantitative criteria, the industry suggests restricting these to already available data or published figures, and avoiding the need for new calculations, as this would counteract efforts to reduce the administrative burden.

- **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*).
  - This condition should only consider unresolved concerns over the past three years. So, the condition should read: "*The supervisory authority has not identified serious concerns arising from the system of governance of the undertaking in the last three financial years, **that are still unresolved at the time the application for non-SNCU- proportionality status** is received.*"

- The use of the term *"has not identified serious concerns"* needs further clarification as it leaves substantial room for interpretation, particularly, in contrast to the use of the term *"no concerns"* in condition 6.

- **Condition 6** (*refers to the last three RSRs*)
  - The industry does not support the condition, because it is far too broad and overlaps with most other conditions EIOPA proposes. Only material concerns are relevant as the RSR requires reporting of every item that is relevant in the context of Solvency II.
  - It is noted that these RSRs could cover a period of 2-3 years up to 6-9 years, depending on reporting frequency. Alternatively, to ensure a level playing field, a fixed timeline referring to RSRs reported in the last X years could be considered.
  - It should be further specified what kind of concern might exclude undertakings from the eligibility to use the respective measures. Particularly, in case that any concern might disqualify undertakings from the use of the measures.
    The RSR contains so much information by the insurer to the supervisor, that it is not reasonable to propose the RSR as a condition limiting eligibility for non-SNCU-proportionality status.
  - Concerns that have been addressed in the past and are resolved should not play a role in order to reach eligibility for undertakings where past concerns have been addressed to the satisfaction of the NCA.
- **Condition 16**:
  - This condition is not necessary as the objective (to address firm exposure to the same reinsurance undertaking) is already covered by condition 15 (material exposures from the asset and liability sides of the balance sheet). A material concentration of counterparty exposures to reinsurance undertaking is only relevant for the purpose of this proportionality measure if it could potentially give rise to a material liquidity risk / exposure. It is not necessary to single out reinsurance in this way as such a potential risk or exposure is already captured in condition 15

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

- The industry is supportive of the option to combine key functions and highlights it should also be effectively allowed by NCAs in practice.
- Although not mentioned directly in the amended Article 41(2a) of the S2 directive, it would be helpful with further guidance on whether or not these conditions should also be used to determine whether (the NCA believes) it's appropriate for an undertaking to outsource a key function to an external party. If not clarified, there is a risk that some NCAs use these criteria for assessing the appropriateness of such outsourcing arrangements while other NCAs do not.
- The application of Article 35(5) remains at the discretion of the NSA, even for (re)insurers classified as SNCUs. Initial analysis in one market shows that the rules regarding the combination of key functions do not lead to significant changes.

The industry notes the following regarding the specific conditions:

- **For comments on condition 1, 2, 3, 4, 5, 6 please refer to Q17**

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

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

The industry notes the following regarding the specific conditions:

- **For comments on condition 1, 2, 3, 4, 5, 6 please refer to Q17**

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'?*

- The industry supports the option for a waiver from macroprudential analysis in the ORSA and agrees with EIOPA's assessment that applicability criteria for macroprudential analysis in the ORSA will be disciplined by a dedicated Regulatory Technical Standard (RTS).
- With respect to macroprudential considerations and the pertaining RTS, it is stressed that in implementing the new requirements, a proportionate and risk-oriented approach is crucial. In particular, application of the additional macroprudential requirements should remain limited to exceptional cases with a clear supervisory rationale. Given the very low contribution of the vast majority of individual insurers to systemic risk, the potential benefits of a broader application of the extensive macroprudential requirements to financial stability would be very small and do not justify the substantial costs involved.

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

The industry notes the following regarding the specific conditions:

- For comments on condition 1, 2, 3, 4, 5 please refer to Q17

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

The industry highlights the following:

- Some markets will not make use of this provision as they already spent already considerable effort and financial resources in switching to stochastic models. Insurers would be prevented from using stochastic models due to condition 13.
- The use of overly broad wording in setting out this condition should not create additional requirements for authorisation applications for matters of actuarial technique or non-materiality.
- Regarding the criteria for Article 77(8) (use of deterministic rules) the following is noted:
  - EIOPA is asked to clarify whether there is a deadline for insurance undertakings to switch to a stochastic valuation if they no longer meet the set criteria and lose regulatory approval? Transitioning from a deterministic to a stochastic calculation method requires significant investment in resources and training, with long lead times.
  - It is also important to note that EIOPA mentions the criteria may change over time: "*Given the importance of proportionality for undertakings that are not classified as small and non-complex, the Delegated Acts should include the possibility to amend the conditions after an initial application period, similar to small and non-complex undertakings pursuant to Article 52(4) of the Solvency II Directive.*" This implies that insurance undertakings may not always have full control over their ability to meet these requirements.

The industry notes the following regarding the specific conditions:

- **Condition 13** prevents insurers with a stochastic model from applying the deterministic approach.
- **Condition 14** for the application of this proportionality measure seem to be meaningful
- **For comments on condition 1, 2, 3, 4, 5 please refer to Q17**

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

- **In view of the elements recommended, it appears that qualifying for this exemption will be nearly impossible, except possibly through the existence of a Group plan.**
- It would be beneficial to add a provision exempting small insurance undertakings from Liquidity Risk Management Plan (LRMP) requirements if they are significantly smaller than the group.
- Due to the structural changes in the financial system, liquidity risk has increased in importance for the insurance industry. However, for many insurers, because of their business models (e.g. insurance lines / products offered) and activities (e.g. little or no use of derivatives) liquidity risks are only moderate and of little materiality. It should be ensured that these insurers do not have to draw up a liquidity risk management plan.

The industry notes the following regarding the specific conditions:

- The specific **conditions 13 and 14** for the application of this proportionality measure seem to be meaningful
- **For comments on condition 1, 2, 3, 4, 5, 16 please refer to Q17**

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'?*

The industry notes the following regarding the specific conditions:

- **Condition 19:**
  - the ceiling of € 50,000 seems too low, and to captures too many individuals. The ratio to total remuneration (1/3) is too low, compared to European remuneration rules.
  - The amount should be indexed.
  - The industry considers a relative threshold may be more appropriate.

- **For comments on condition 1, 2, 3, 4, 5 please refer to Q17**

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.

- While the industry takes note of EIOPA's hybrid approach, combining quantitative and qualitative criteria for supervisory assessment, these conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- The industry acknowledges EIOPA's reference to the risk classification in accordance with the national risk frameworks in the further elaboration of the condition by EIOPA (paragraph 6).
  - The industry notes that these risk categorisations can differ substantially across Member States, and an overreliance on these categories can create inconsistencies and divergence. **Rather than the national categorisation, the conditions set out in the future Delegated Regulation should determine the eligibility of undertakings/groups to apply the proportionality measures listed in Article 29d**.
- Condition 1 should not apply once compliance has been restored, regardless of any ongoing supervisory measures related to past non-compliance
- It is noted that EIOPA stated "*The risk assessment framework is at the core of Supervisors' activities and represents the starting point to develop the supervisory plan for supervised undertakings*".
  - While this may be true, these operational considerations occur entirely outside the scope of the Directive and the Delegated Regulation, making them irrelevant. Additionally, they are not standardised across the EU, with classification processes and criteria varying from MS to MS.

Q26. *Do you have comments on Condition 2?*
Condition 2: The undertaking does not have a complex business model, as defined in its business strategy and business plan, having also regard to the complexity of the products sold or the investments held, and did not undergo material changes of its business model in the last three financial years, having also regard to key figures on the undertakings' financial condition, such as investments, technical provisions, written premiums, own funds items, or the Solvency Capital Ratio.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- **As part of condition 2**, insurers are **required to have no material changes in the business model over the last three financial years, this aspect is too restrictive and should be removed.**
    - The governance process of such a change is substantial and very diligent. The industry does not see a barrier to the eligibility to use proportionality measures in a material change in the business model, particularly if applied in conjunction with the other conditions.
    - Material changes in the business model over periods in the past are not relevant to applications for non-SNCU status, which would only have effect in the future.
    - The proposed extension of the requirement for no material business model changes from the <u>next</u> three years to include the <u>last</u> three years results in a six-year restriction, which conflicts with the forward-looking nature of Solvency II. This backward-looking criterion is impractical and disincentivises necessary business model adjustments that could improve or simplify an insurer's risk profile. The existing forward-looking criterion is sufficient, and extending the requirement would create unnecessary barriers to innovation, potentially increasing risk by discouraging timely adjustments to evolving business conditions.
    - Furthermore, the exact meaning of a 'complex business model' remains unclear. It should be further elaborated. As it stands now it risks introducing more uncertainty than it provides guidance. This, in turn, creates a risk that different NCAs will interpret this condition differently, leading to different applications and ultimately an uneven playing field between member states.
- In its draft technical advice, EIOPA suggests that no material change in the business model should have occurred in the last three years. The governance process for such changes is substantial and thorough. The industry does not view a material change in the business model as a barrier to eligibility for proportionality measures, especially when combined with other conditions.
- At the same time, the industry expects that the supervisory review process for a material change in the business model, for undertakings applying proportionality measures, includes an assessment to determine if the continued application of the proportionality measure is justified.
- It is noted that the interpretation of 'changes in key persons' as instability in the business model could discourage insurance undertakings from seeking approval.

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.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- **Condition 3: The requirement for "an appropriate margin" in condition 3 introduces an implicit capital requirement not specified in the directive and should be removed.**

- NCAs’ perspective on what is “an appropriate margin” might differ substantially across Member States, leading to inconsistency in the application of the framework.
- Condition 1 requires that there is no serious supervisory concern triggering additional supervisory assessments or measures. This condition should suffice.

- The aforementioned concern is acknowledged by EIOPA on p28: “*While this condition does not aim to introduce an additional prudential supervisory limit, having an SCR exceeded by a sufficient margin demonstrates the undertaking’s robust financial health and its ability to absorb unexpected losses, ultimately ensuring policyholder protection. This margin should be regarded as a buffer against potential financial shocks, and signal prudent risk management and financial resilience.*”
  - The Solvency II Directive establishes a minimum capital requirement, below which an insurer must be wound up, and a Solvency Capital Requirement (SCR), above which it is assumed the insurer can withstand unexpected losses (with expected issues covered by technical provisions). Any additional requirements even vaguely termed as “a sufficient margin,” exceed the powers granted to delegated legislators.
  - Furthermore, EIOPA links this condition to systemic risk, which seems highly unlikely given that it pertains to individual SNCUs.

Q28. *Do you have comments on Condition 4?*

Condition 4: The undertaking’s:

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

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

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

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

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

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

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- **Condition 4** (*quantitative criteria*) **reflecting quantitative criteria:**
  While the industry takes note of EIOPA’s hybrid approach, combining quantitative and qualitative criteria for supervisory assessment, these criteria should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
  - **Quantitative conditions:** While the industry acknowledges the idea of quantitative criteria to ensure broad applicability of proportionality measures for non-SNCUs, at the same time it is essential that these thresholds serve as non-binding guidance to NCAs rather than fixed thresholds. A sufficient share of the national market should benefit from

proportionality measures (for example a 20% condition in line with the current threshold for limitations and exemptions could be considered)

While the proposed thresholds (€15 Bn TP for life, €2 Bn in gross premium income for non-Life) are noted, the industry believes that a minimum relative threshold would ensure that, regardless of the specific quantitative thresholds, a sufficient number of non-SNCUs in each market can benefit from proportionality measures.

- **With respect to the quantitative criteria, the industry suggests restricting these to already available data or published figures, and avoiding the need for new calculations, as this would counteract efforts to reduce the administrative burden.**
    - The industry refers to the EC's call for advice: "EIOPA provides a closed list of conditions and aims at avoiding undue administrative burden – including new reporting requirements – for undertakings and groups. Such a list should serve as the basis for the supervisory assessment." The industry agrees with the arguments made by the EC, emphasising that these criteria should serve as guidance rather than strict requirements. Furthermore, as mentioned by EIOPA, this would allow the NSA to consider specific elements of the relevant market (e.g., local fiscal rules, local insurance product regulations, consumer preferences, etc.).
    - Take, for example, **Article 77 (88)**: Suppose all criteria are met except for criterion 14, where the value TVOG/SCR slightly exceeds the 5% limit. There should still be room for regulatory approval in such cases. Otherwise, there would be no stable situation, as insurance undertakings may fluctuate above or below the limit over time. It is crucial to the industry that there remains flexibility for regulatory assessment, especially since it is unclear how the 5% limit was determined and whether it represents a reasonable calibration for all markets and insurers.

- **The additional details on individual conditions, particularly the last paragraph on condition 4, raise important concerns.**
- **The industry is concerned about the negative portrayal of cross-border activities and the use of the term "innovative use of reinsurance."**
    - EIOPA's suggestion that cross-border business is inherently riskier than domestic operations seems to conflict with the fundamental freedoms of the Single Market. The term "innovative use of reinsurance" risks unfairly labelling non-standard risk mitigation techniques as particularly risky without clear definition or assessment. **The reference to cross-border business and the use of innovative reinsurance should be removed.**
    - The reference to "innovative use of reinsurance" in EIOPA's proposal is problematic as it lacks clear definition and creates a stigma around any non-standard use of reinsurance as being inherently risky. This is concerning, as reinsurance has been a proven risk mitigation tool for decades, particularly for small to medium-sized insurers, helping to simplify and stabilise their risk profiles. The term "innovative" is too broad and open to subjective interpretation, which could deter entities from utilising valuable risk management techniques. Additionally, reinsurance is often key to meeting the proportionality conditions set out by EIOPA. Therefore, the assessment of whether reinsurance impacts the simplicity of an entity's activities should be left to supervisors during the approval process, rather than being constrained by an ambiguous, generalised criterion. **The proposal should remove the reference to "innovative" reinsurance** to avoid deterring its appropriate use and ensure the focus remains on its actual impact on the undertaking's risk profile. If a supervisor cannot, according to existing rules, disapprove of a reinsurance arrangement for use towards the SCR, it cannot serve as a restriction on the proportionality measures.
- Additionally, the industry believes that point c) of condition 4 should be adjusted to reflect the proper functioning of the EU Single Market for insurance. The market share limits should apply to "any" Member State in which the undertaking operates, rather than just the "home Member State."

- It is noted that the mirroring of the criteria undermines the Directive's intent that insurers not eligible for SNCU status can still apply individual proportionality measures.

Q29. *Do you have comments on Condition 5?* *Condition 5: The supervisory authority has not identified serious concerns arising from the system of governance of the undertaking in the last three financial years.*

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- **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.
    - However, the condition is formulated too broadly.
    - The use of the term *"has not identified serious concerns"* needs further clarification as it leaves substantial room for interpretation, particularly, in contrast to the use of the term *"no concerns"* in condition 6.
    - Additionally, when (serious) concerns have been addressed to the satisfaction of the NCA within the last three years, this should be recognised. Ideally, only unresolved governance issues should play a role.
    - The requirement for a forced switch from a deterministic to a stochastic approach to have proper system of governance, and as such to be able to apply proportionality measures should be removed.

Q30. *Do you have comments on Condition 6?* *Condition 6: There are no concerns with the last three Regular Supervisory Reports, which shall include high-quality and complete information pursuant to Article 35 (1) to (3) of Solvency II Directive and in compliance with the principles in Article 35(4).*

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- **Condition 6** refers to the last three RSRs
    - The industry takes note of the condition; however the criterion is worded rather vaguely and further clarity on what might constitute a concern is helpful.
    - Only material concerns should be relevant here. The RSR contains a vast amount of information for the supervisor, making it unreasonable to use the RSR as a condition limiting eligibility for proportionality status. The conditions must be clearly defined, as the RSR is broad and comprehensive rather than specific.
    - It is noted that these RSRs could cover a period of 2-3 years up to 6-9 years, depending on reporting frequency. Alternatively, to ensure a level playing field, a fixed timeline referring to RSRs reported in the last X years could be considered.
    - It might also be advisable to further specify what kind of concern might exclude undertakings from the eligibility to use the respective measures. Particularly, in case that any concern might disqualify undertakings from the use of the measures.
    - Concerns that have been addressed in the past and are resolved should not play a role in order to reach eligibility for undertakings where past concerns have been addressed to the satisfaction of the NCA.

Q31. *Do you have comments on Condition 7?* *Condition 7: No concerns have emerged with regard to decision making procedures and the organisational structure of the undertaking in the last three financial years.*

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- The industry takes note of this condition. Similar to condition 6, further clarity on what might constitute a concern would be helpful.
- It might also be advisable to further specify what kind of concern might exclude undertakings from the eligibility to use the respective measures. Particularly, in case that any concern might disqualify undertakings from the use of the measures
- Concerns that have been addressed in the past and are resolved should not play a role in order to reach eligibility for undertakings where past concerns have been addressed to the satisfaction of the NCA.

Q32. *Do you have comments on Condition 8?*
Condition 8: The persons responsible for the key functions of risk management, actuarial and compliance possess at all times sufficient knowledge, skills and experience to effectively conduct activities related to the different functions, and the combination of functions or the combination of a function with a membership of the administrative, management or supervisory body does not compromise the person's ability to carry out her or his responsibilities by retaining sufficient time to conduct all relevant additional tasks.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- The industry takes note of this condition.

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.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- Further, condition 9 is of subjective nature. The proportionality of the costs for maintaining separate functions compared to the total administrative expenses could be considered reasonable but is not risk-based. Further, clarity would be needed on how the "total administrative expenses" are determined and what would mean proportionality as part of these overall expenses. The industry suggests abandoning this condition.

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.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.

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.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- It seems natural for supervisors to evaluate the ORSA and engage in dialogue with the insurance undertaking if its quality is inadequate, so the need for this condition is unclear.

- Furthermore, "material" should be added: '*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 **and material** to its risk profile.*'

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.*

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- Condition 12 states that approval should be granted following an assessment that considers the following conditions: "There are no concerns that the reduced frequency of the ORSA affects the effectiveness of the undertaking's risk management system pursuant to Article 44, and the undertaking maintains an effective process to monitor circumstances that require an ad hoc ORSA, as well as sufficient resources to provide an ad hoc ORSA when needed." **As this obligation for an ad hoc ORSA exists anyway, we consider the requirement to be redundant**.
- If kept, the adjective "materially" should be added: '*There are no concerns that the reduced frequency of the ORSA **materially** affects the effectiveness of the risk management system of the undertaking pursuant to Article 44, and the undertaking maintains an effective process to monitor circumstances that require an ad hoc ORSA as well as sufficient resources to provide an ad hoc ORSA, when required.*'

Q37. *Do you have comments on Condition 13?* *Condition 13: The insurance or reinsurance undertaking is not using a stochastic valuation of the best estimate relating to the obligations for which the undertaking seeks to apply a prudent deterministic valuation, and using a stochastic valuation would be overly burdensome in relation to the nature, scale and complexity of the risks arising from these obligations.*

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- This condition makes the combination of stochastic valuation and deterministic valuation impossible. It is questioned if this is proportionate in all cases.

Q38. *Do you have comments on Condition 14?* *Condition 14: The time value of options and guarantees, measured based on the prudent harmonised reduced set of scenarios, of the contracts where the prudent deterministic valuation is applied is below 5% of the Solvency Capital Requirement.*

These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.

Regarding this criterion the industry notes the following:

- It is proposed to delete this criterion, as it would otherwise require regular reporting and review, adding calculation and reporting burdens—precisely what the EC seeks to avoid (see response to Q11).
- If EIOPA insists on assessing the size of the Time value of Options and Guarantees (TFOG), an alternative should be explored where the TFOG value can be considered sufficiently small relative to all technical provisions, based on existing reporting. The proportion of TVFOG may also vary depending on model choices or product features prevalent in specific countries. For example, in

Belgium, products with temporarily guaranteed interest rates under SII impact the proportion of TVFOG relative to SCR.

EIOPA is kindly requested to:

- The reasoning behind the 5% limit, which seems arbitrary. Specifically:
  - Should the average be lower than 5% of the SCR, or should each scenario be lower than 5% of the SCR?
  - Why is the SCR used in the ratio instead of the entire TP, of which TFOG is a part? Does this not favour insurers with a relatively high SCR?

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.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- As EIOPA explains that condition 15 aims to ensure that the applicant undertaking adequately manages its liquidity risks by addressing the risk sources arising in both asset and liability sides of the balance sheet, it is important that all measures that effectively mitigate potentially material liquidity risks are also fully accounted for when deciding on the LRMP requirement.

Q40. *Do you have comments on Condition 16?*
Condition 16: There is no material concentration of counterparty exposures to reinsurance undertakings.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- This condition is redundant as the objective (to address firm exposure to the same reinsurance undertaking) is already covered by condition 15 (material exposures from the asset and liability sides of the balance sheet). A material concentration of counterparty exposures to reinsurance undertaking is only relevant for the purpose of this proportionality measure if it could potentially give rise to a material liquidity risk / exposure. It is not necessary to single out reinsurance in this way as such a potential risk or exposure is already captured in condition 15.
- With regard to concentration risks, the default risk of the reinsurer (e.g. consideration of the reinsurer's rating) should also be taken into account. A high exposure alone should not lead to a negative assessment.

Q41. *Do you have comments on Condition 17?*
Condition 17: There are no concerns in liquidity position of undertakings stemming from economic or macroeconomic market trend or the amount and quality of own funds items.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- Material should be added and the condition should read as follows: '*There are no **material** concerns in liquidity position of undertakings stemming from economic or macroeconomic market trend or the amount and quality of own funds items.*'

Q42. *Do you have comments on Condition 18?*
Condition 18: [For groups only] There are no concerns regarding the fungibility and availability of liquid funds across the group, including the ability to transfer liquidity across the group's undertakings.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- Regarding the condition itself, the industry recalls the significantly diverse treatment of intra-group transactions following the outbreak of the Covid-19 pandemic and the short term reaction of financial markets. If such a condition is maintained in the final technical advice, more clarity is necessary to ensure a consistent application across Member States.
- The availability and fungibility of funds in groups should only be relevant if there is centralised cash management or other intra-group transactions on a significant scale.

Q43. *Do you have comments on Condition 19?*
Condition 19: The annual variable remuneration of the staff member shall not exceed EUR 50,000 and represents less than 1/3 of that staff member's total annual remuneration.

- These conditions should serve as non-binding guidance, not rigid thresholds, ensuring flexibility and a broad risk-based application of proportionality across the diverse European market.
- **Condition 19:**
  - the ceiling of € 50,000 seems too low. The ratio to total remuneration (1/3) is too low, compared to European remuneration rules.
  - the amount should be indexed.
  - the industry considers a relative threshold may be more appropriate.

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

- A new and specific condition 19a on cross-border activities in Article 29a (1) (a) (ii), Article 29a (1) (b) (ii), Article 29a (1) (c) (v) and Article 213a (c) should be established applying across all proportionality measures. Where an undertaking carrying out cross-border activities is part of a group which is subject to group supervision in accordance with Article 213 Solvency II, it should be able to make use of the proportionality measures. Such a condition would reflect the benefits and enhanced level of group supervisory governance and control mechanisms, college processes and peer control in group supervisory contexts. **This condition should replace the reference in the explanatory text in condition 4 on cross-border activities.**
- A sensible methodology for the consolidation for groups with entities qualifying as SNCUs where the group itself is not considered small and non-complex should be developed.

Q45. *Do you have any other comments?*

1. **Request for clarification - Scope of approval for proportionality for non-SNCUs**
   Reference is made to Art 29d (1) of the upcoming SII directive: "*Member States shall ensure that insurance and reinsurance undertakings that are not classified as small and non-complex undertakings may use only proportionality measures provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article 144a(4) and, proportionality measures provided for in the delegated acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings in*

accordance with Article 29c and which measures are identified for the purpose of this Article, subject to prior approval from the supervisory authority. [...]"

The paragraph is interpreted that any use of the proportionality measures mentioned in Article 29d by undertakings that are not classified as SNCU is subject to prior approval from the supervisory authority. Where the last part of the sentence refers to proportionality measures mentioned in the article, so prior approval is required for only the proportionality measures mentioned in:

- Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article 144a(4); and
- The Delegated Acts (DA) (which is still to be written).

The industry asks EIOPA (or the European Commission) to confirm this interpretation or clarify the article.

Furthermore, EIOPA does not go into other proportionality measures that non-SNCU are currently using. It is assumed that for these, the current standard practices remain unchanged, i.e. up to the NSA.

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

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

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

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

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