Position Paper

Insurance Europe response to the European Commission's call for evidence on the Capital Markets Union (CMU)

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AREA A: Rules affecting the ability of the economy to finance itself and growth

Issue 1 –Unnecessary regulatory constraints on financing

(ECOFIN) EXAMPLE: Exaggerated volatility of the prudential framework for insurers

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC ("Solvency II"): Title I, Chapter VI (valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirement, and investment rules)
- Commission Delegated Regulation (EU) 2015/35 (Delegated Act on Solvency II): Title I, Chapters I-VII.

2. Please provide us with an executive/succinct summary of your example

Especially in the case of long-term insurance business, the valuation framework for assets and liabilities can create significant balance-sheet volatility when the asset/liability management is not fully reflected in the valuation approach. In the insurance case, the link between assets and liabilities is key. Where cash flows of assets and liabilities are matched but discount rates for asset and liability cash flows are different, the differences in discount rates create a valuation mismatch between assets and liabilities and, in periods of market stress, this mismatch amplifies and creates so-called artificial balance-sheet volatility. This type of volatility is referred to as artificial because it does not stem from a change in the true economic situation for the company.

The issue is most easily shown in the case of bonds and other fixed income assets that match liabilities. These assets have fixed cash flows and repayment values, which the insurer will get unless there is an actual loss due to default. A trader is exposed to every fluctuation in the value of assets created by changes in spreads or interest rates. An insurer buying assets to back a predictable portfolio of liabilities is only exposed to the risk of actual losses on defaults and is not exposed to the price volatility. Some insurance companies can be exposed to faster than expected liability payments or to early surrenders, but for most companies these are small in

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comparison to the entire portfolio of assets and insurers have significant liquid assets, new premiums providing cash and choice of which assets to sell if needed. Therefore, forced selling would be very rare and limited. In addition, to cover such potential extreme situations to which some insurers may be exposed, Solvency II requires companies to hold capital for extreme surrender scenarios (40% of all liabilities for retail liabilities and 70% for corporate liabilities) and requires them to carry out liquidity planning, management and reporting.

Solvency II has an underlying assumption that, for the purpose of balance-sheet valuation, assets and liabilities can and should be valued separately. The Omnibus II LTG package of measures introduced important improvements which recognised that insurers' assets and liabilities are usually managed together, allowing insurers to reduce or even eliminate their exposure to credit-spread volatility. However, the two key measures introduced to reflect this, the Volatility Adjustment (VA) and the Matching Adjustment (MA) only partially address the issue and the overall framework continues to exaggerate insurers' exposure to temporary market volatility. Both measures are overly conservative in their calibrations and design, and in addition:

- The MA mechanism can deal with the issue very well but is overly restrictive, so only a very small portion of the market will be able to make use of it.
- The VA is designed to only partially address the volatility and its effectiveness can vary across companies.

Exaggerated balance-sheet volatility translates directly into exaggerated volatility of solvency capital (Own Funds), which is defined as the value of assets less the value of liabilities.

In the case of bonds, the problem is directly linked to the maturity of the bonds because long-term bond values vary much more with changes in spreads than short-term bonds. The problem is also worse for the lower credit-quality assets (eg credit quality step 3 or BBB) because market volatility in spreads is far greater for such bonds. Infrastructure and SME loans, which are long-term and/or not of the highest credit quality, will be particularly impacted.

Exaggerated assessment of volatility in solvency capital leads to the need to hold unnecessarily large solvency buffers in excess of the actual Solvency Capital Requirements (SCR). This can have a combination of unintended and undesirable consequences for the ability of insurers to help finance long-term growth and market stability, including the following:

- It creates pressure to shift to short-term products and investments.
- It creates pressure to avoid anything but the highest quality liquid assets.
- It instigates barriers to infrastructure and SME investment.
- It creates an upward pressure on yields required in order to justify investment.
- It incentivises pro-cyclical behaviour.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Evidence of the excessive volatility of Solvency II was first identified in EIOPA's QIS 5 Report (https://eiopa.europa.eu/Publications/Reports/QIS5_Report_Final.pdf) and further evidenced in EIOPA's LGTA Study (https://eiopa.europa.eu/Publications/QIS/EIOPA_LTGA_Report_14_June_2013_01.pdf).

The Annex attached provides additional evidence. Chart 1 therein shows three simplified insurance companies with portfolios of AA-rated assets and liabilities of different maturities to highlight the artificial and unmanageable volatility that would arise if there were no LTG measures. This provides evidence of the importance of the LTG measures and shows that they should be designed and calibrated appropriately to deal with this volatility issue.

Chart 1 shows that even a company with a 15-year portfolio of AA bonds, perfectly cash-flow matched to their liabilities and with an extremely strong initial solvency ratio of 185%, would have found themselves with a -212% ratio for a short period of time. A company holding a portfolio of BBB bonds would have had a –460% ratio, which highlights why such volatility would create disincentives to invest in infrastructure. Actual losses from defaults during this period were about 0.4% for a portfolio of AA bonds.

Full evidence of the efficacy will only be available once Solvency II reporting is in place, and even the potential problems may only be understood with the help of simulations that test how the LTG measures work in periods of more extreme market volatility. However, analysis of the criteria, design and calibration of the MA and VA and modelling of how they would have worked during the last crisis provides evidence that they will only partially address the issue. Charts 2 and 3 in the attached document provide estimations of the impact of the current VA on the extreme volatility shown in Chart 1 for the companies with portfolios of AA bonds or BBB bonds.

Matching Adjustment

- It is acknowledged that the MA is very effective in addressing the volatility issue where it can be applied. This is because it uses the actual yield on the bonds backing liabilities to determine the discount rate. So when spreads on the assets change, leading to a change in market value of the assets held by the insurer, the discount rate for liabilities also changes in a similar way, avoiding artificial volatility in the balance-sheet measurement. The "fundamental spread" — a very conservative adjustment for the average credit losses that can be expected on those assets — is deducted from the spread used in the discount rate, although significant solvency capital is required to cover credit risk. Due to the restrictive criteria for application, the MA will only be applied to a very small portion of liabilities across Europe. In a recent survey of Insurance Europe members, only five countries indicated they had companies able to apply the MA and of those only two had more than 10 companies hoping to apply it.

*Key restrictions ar*e:

- *Hold-to-maturity requirement.* This is overly restrictive and against the spirit of the prudent person principle — an insurer cannot commit to holding an asset no matter its risk, concentration or potential contribution to portfolio returns. The insurer must have the possibility to modify the assets backing the liabilities not only for the purpose of maintaining the matching of expected cash flows between assets and liabilities, but also for the reduction or mitigation of credit risk or for improving the diversification of the portfolio of assets. The key constraint should not be to "hold to maturity" but rather to be able to demonstrate as part of the liquidity reporting that there is minimal risk of exposure to "forced sales" of assets backing liabilities.
- *Exclusion of portfolios with any risk other than longevity risk, expense risk, revision risk and very limited mortality risk.* As noted above, the only important test should be exposure to forced sales. The list of risks allowed is somewhat arbitrary and, for example, there is no reason for portfolios with disability risk to be excluded or to exclude the entire portfolio if the risk of mortality changes by more than 5% under the SCR mortality risk stress.
- *Matching criteria.* The MA may only be applied where the cash flows of the assets replicate the expected cash flows of the liabilities. This does not allow for incentives to improve the matching where this is only partially achieved. The criterion is therefore unnecessarily restrictive. Risks stemming from partial mismatches should be captured in the capital requirement and not exclude the insurer from application of this measure.
- *Portfolios with assets with any repayment risk are excluded.* Insurers can only use assets where the cash flows are fixed. This represents a significant restriction for the universe of assets that can be used in a matching portfolio. This can lead to a concentration of the investments in certain asset classes. Regulation should avoid such incentives and allow for a more flexible use of assets in the matching portfolio.

Volatility Adjustment

The vast majority of liabilities will only have the potential to use the VA due to the restrictive conditions for the MA. A recent survey of Insurance Europe members indicates that a large majority of respondents (representing 73% of European gross written premiums (GWP)) reported that the VA is either important or very important for companies in their market, The VA is designed and calibrated with the intention to only partially address the volatility issue. The VA does not use spread movements on the actual assets backing liabilities to adjust the discount rate but spread movements on a "representative portfolio". The spread movements on this representative portfolio are reduced in a number of ways including: by subtracting the "fundamental spread" — the same very conservative estimate for credit default losses used for the MA — and by applying a 65% reduction

factor to the spread changes in the representative portfolio. For the euro area, an additional country-specific adjustment is made if spreads of the country's representative portfolio are above 100 bps and where this spread is at least twice the spread of the representative portfolio for the whole euro area. Concerns about the VA include:

- Some companies may not be allowed by their supervisor to apply it, because member states have an option to require supervisory approval.
- Where applied, the VA will leave significant volatility in the balance sheet, especially for longer maturity bonds and those of credit. Chart 2 and Chart 3 in the attached document show that the VA will reduce the volatility so that during the crisis the solvency ratio would have dropped to -23% for the AA 15-year portfolio and to -303% for the BBB 15-year portfolio. While this is significantly better than without any LTG measure, there remains significant volatility. This is especially the case for the BBB portfolio, which would typically include infrastructure-type debt. The volatility for portfolios longer than 15 years would even be significantly greater.
- The country-specific adjustments do not appear to work as expected or required. Further evidence on this point is provided in the annex.
- Some member states have prevented companies from applying the VA in their internal models. The VA would, however, compensate losses in a scenario where market spreads increase. In the spread risk module of the capital requirement, insurers should be allowed to reflect this loss-compensating effect of the VA ("dynamic volatility adjustment"). It has to be noted that the EC, following a request for clarification from the industry, has stated its position that the dynamic volatility adjustment could be used for SCR calculations with internal models.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

In the short term, the EC should discuss with EIOPA and member states how to avoid an overall conservative interpretation of the current rules to allow the existing measures to be applied in a reasonable and effective way, including:

- A more realistic estimation of the fundamental spread.
- More flexible application of the matching adjustment.
- Review of the calculation of the country-specific VA for the euro area.
- Insurers applying internal models or the standard formula for the calculation of their capital requirements should be allowed to use the dynamic volatility adjustment in the calculation of the spread risk.

Articles 77b, 77c and 77d of the Solvency II Directive should be revised to achieve a better and ideally simpler approach to addressing the volatility issue. Other changes may also be necessary. However, Insurance Europe does not believe these would be very extensive.

The EC's 2018 review set out in Recital 150 of the Solvency II Delegated Act currently includes only a review of the Standard Formula. It should be expanded to cover also a review of the Articles 77b, 77c and 77d of the Solvency II Directive so that improvements can be made no later than 2018.

In the meantime, potential improvements should be developed, discussed and then tested alongside the current LTG measures. The tests should use simulations to improve understanding of how the measures would work under different and extreme market scenarios. The actual application and impact of the LTG measures will be assessed and reported by EIOPA as required by Article 77f of the Solvency II Directive. Together this information will allow appropriate improvements to be identified and designed ahead of the 2018 Review deadline.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

Annex to Issue 1: Evidence of unnecessary regulatory constraints on financing

(ECOFIN) EXAMPLE: Exaggerated Solvency II capital charges for market risks making investment in a range of assets, including those supporting long-term stable investment in the economy, unnecessarily expensive

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II)
- Commission Delegated Regulation (EU) 2015/35 (Solvency II Delegated Act), Title I, Chapters V (Solvency capital requirement standard formula).
- Regulation (EU) No 575/2013 (CRR)
- Implementing Regulation (EU) 2015/2011 (Implementing Regulation on regional governments and local authorities/RGLA)

2. Please provide us with an executive/succinct summary of your example

Solvency II capital charges on a range of asset classes and specific assets are significantly in excess of the actual risks these assets create for insurers, particularly for insurers who have long-term and/or predictable liabilities and who can therefore avoid the risk of forced selling and have considerable flexibility over if and when they chose to sell. This is because Solvency II generally assumes that insurers are always and fully exposed to market volatility and it therefore looks at the worst-case fall in market prices.

The industry fully supports a risk-based approach, but this requires that capital requirements are calibrated to reflect whether the insurer is exposed to short-term volatility in the market value or longer-term risks. In the case of bonds, which have contractual interest payments, maturity dates and repayment values, investors who can avoid forced sales are exposed to losses on actual defaults and not changes in price due to spread movements. In the case of assets without contractual values and maturity, such as property and equities, investors who can avoid forced sales and who can choose when and if to sell are exposed to long-term risks and not shorter-term value shocks. Long-term investors in these assets, such as insurance companies, can also collect dividends/rental income, which can offset long-term losses in value that may occur.

The EC aims to build a Capital Markets Union. In order to reduce dependency on banking lending and allow insurers to play their role in diversifying the sources of funding growth in Europe, unnecessary regulatory obstacles in the form of excessive capital charges must be avoided. The unnecessary impacts of excessive capital charges include:

- an increase in the required yield to justify investment
- certain asset classes becoming unattractive to insurers and reducing insurers' ability to invest in long-term assets
- a reduced ability to provide long-term guarantees and take a long-term stable approach to investment
- a reduced ability to include appropriately yielding assets to meet policyholders' needs
- higher costs for policyholders

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

We provide evidence below that Solvency II capital charges on a range of asset classes and specific assets are significantly in excess of the actual risks these assets create for insurers.

Fixed income assets (bonds, private placements, securitisations)
Due to the nature of their liabilities, insurers with long-term business can often avoid forced sales and instead choose whether or not to sell the assets and where applicable the timing of a sale. Especially in the case of insurers with long-term business, as described in the previous example, Solvency II leads to artificial volatility due to inconsistent approaches to discounting on the asset and liability side. Where assets can be held for the long term, the valuation should reflect changes to the discounting of assets induced by spread movements in the discounting of liabilities. The ability to hold assets for the long term and to avoid forced sales leads to a

reduced exposure to risk and is mainly driven by the risk of a default. This reduced risk should be better reflected in the methodology for calibrating capital requirements.

The issue is particularly important for illiquid assets such as infrastructure, private placements and SME loans, which have no market price, generally lower credit ratings and in the case of infrastructure can be particularly long in duration. Furthermore, these assets are bought on the basis of their default risk and recovery characteristics.

The EC has signalled its intention to look into the Solvency II calibrations of private placement debt. Without proper consideration of the actual risk (default vs spread) the EC will find it challenging to arrive at appropriate calibrations for these assets. The same issues will also apply to securitisations and SME loans when the EC comes to review these calibrations.

Infrastructure
Insurance Europe has welcomed the EC's work to remove barriers to greater infrastructure investment and the changes to the Solvency II Delegated Act adopted on 30 September 2015. These recognise infrastructure as an asset class and provide a tailored capital treatment. However, the exclusion of all corporate structures from the definition would leave major existing and potential projects with significant barriers. Insurance Europe therefore also welcomed the Call for Advice from the Commission to EIOPA and hopes that it will lead to the inclusion of appropriate corporate infrastructure into the scope of the Solvency II definition of the infrastructure asset class.

In addition, the basis for calibration remains the Spread Risk Module and therefore the calibrations, while more tailored than the corporate bond ones, still exaggerate the risk and should instead be based on a counterparty default approach. Insurance Europe developed for its contribution to EIOPA's consultation on infrastructure investment a methodology for calibrating the SCR for infrastructure debt credit risk based on defaults and recoveries which should be considered as a potential extension to the Counterparty Default Risk Module. This methodology is attached, together with the other evidence provided for Issue 1. This methodology indicated that default- and recovery-based calculations would on a very conservative basis result in capital charges a half to a third of the Corporate Bonds Standard Formula charges based on spreads.

Insurance Europe also wishes to point out that the ability of annuity funds to invest in infrastructure was hampered by the proposed changes to the Solvency II Delegated Acts, which excluded matching adjustment portfolios from using the lower infrastructure spread stresses.

Property and equity
Property and equity investments have been key assets in many insurers' portfolios, helping to provide long-term, above-inflation returns for policyholders. While investing in a portfolio of equity or property clearly can present significant risk, there are a number of reasons why Solvency II calibration of 25% for all property and 39% for Type 1 equity and 49% for Type 2 equity can exaggerate the real risk for insurers, including:

- A single calibration for the entire European property market has been used based on information from the London property market. Markets are local markets and for many local or regional markets the uniform risk charge will not be appropriate as measured by actual price volatility across markets.
- The ability and intention of most insurers to hold these assets as long-term investments and the flexibility they can have over if and when to sell and which assets to sell is not taken into account in the calibrations. However, this flexibility can have a significant impact on the actual risk compared to the underlying Solvency II assumption that the entire portfolio would have to be sold at the worst time. In addition, rental or dividend income accumulated during the long-term holding period would help offset falls in the value of the asset itself. Finally, insurers often hold such investments within collective investment pools where losses and gains are averaged over time and across different policyholders, providing smoothing that can further reduce the risk exposure of the insurance company to significant losses. Insurance Europe has conducted an initial analysis of over 100 years of equity data available for the US market to investigate whether the points made above can have a significant impact. This analysis is attached as an annex under section 5 of this example and indicates significant reduction in risk by

moving from short term to long term and adding smoothing. However, further work should be done to verify the findings and test other equity markets.

Loans supported by a guarantee from a regional government or local authority (RGLA)
In Solvency II, exposures to regional governments and local authorities (RGLAs), as well as exposures that are guaranteed by member states' central governments, are granted the same zero risk factor as exposures to central governments, in recognition of the impact such guarantees have on the credit risk of the assets. However, guarantees given by RGLAs to other public sector entities such as hospitals, universities, schools or social housing are ignored and the bonds treated like normal corporate debt. This issue of guarantees provided by RGLAs is particularly relevant for countries such as federal states, where the central government has transferred significant (fiscal) powers to RGLAs.

While these bonds are usually unrated, the government guarantees lead to low credit spreads at the issuance of the instruments and consequently relatively low (but stable) returns. Because they are often unrated and of long duration, they have very high Spread Risk Module capital charges. If such fixed income assets were calibrated in the Counterparty Default Risk Module then the guarantees could be taken into account as a form of collateral, which means that recoveries could be expected to be 100%, justifying the zero risk factor. Some companies made significant investments in such assets with the understanding that their treatment would be consistent and the real economic value of the guarantee would be appropriately recognised by Solvency II. An example that illustrates the impact of this issue is given below:

- Belgium submitted a list of 162 projects requesting financing to the Juncker investment plan at the end of 2014. 81% of the projects proposed by Belgium are carried out by RGLAs. Furthermore, in 15 of 24 public-private partnerships signed in Belgium between 2005 and 2015, the public authority involved was an RGLA. The volume of RGLA guarantees has increased from approximately €8bn in 2011 to approximately €11bn in 2014.

Equity transitional measures
The transitional measure for the solvency capital requirement for the equity module, as agreed by the EU co-legislators, refers to the application of a progressive capital charge (from 22% to 39% (type 1) or 49% (type 2) during 7 years) to equities purchased before 1 January 2016. These transitional measures are important mechanisms to allow insurers time to adapt their investment portfolios to Solvency II requirements and avoid strong incentives for many insurers to all sell off their equity assets at the same time when Solvency II comes into force. The Solvency II Directive (Article 308b (13)) states that the equity transitional should apply to equities and leaves it to the Commission and EIOPA to specify the way this transitional is applied.

There are two key issues to address here. One is that the equity transitional needs to be extended to type 2 equities, which often represent a significant portion of many insurers' portfolios. An application of this measure to both type 1 and type 2 equity would help ensure an implementation in line with the initial intention of the transitional. The second issue relates to investments. The condition on the acquisition date should apply by looking at the date of acquisition of units of a fund, and not at acquisition of the equities underlying the fund. This is because companies invested in collective investment undertakings (CIU) usually do not control the buying and selling of the individual equity positions, only the fund. An insurer becomes exposed to equity risk underlying a fund at the acquisition date of the units of the fund, prior to the application of Solvency II, and remains exposed to equity risk after the application of Solvency II, to the extent of the weight of equity in the fund. The exposure to equity risk is independent of potential decisions by the fund manager to replace an equity participation with another equity participation in order to avoid sudden disposals of funds triggered by a sudden spike in equity capital charges. Where the collective investments contain a mix of asset types, the equity transitional should focus at fund level on the proportion of equity held by the fund on the calculation date of the solvency capital requirement.

The industry asked the EC to clarify in its update of the Solvency II Delegated Act, the way the equity transitional should be applied to ensure that the aim of the Directive could be achieved. The EC, in its proposal of 30

September 2015, extended the scope of the equity transitional to type 2 equities and this was welcome by the industry, but its application to investments funds did not address the key issue identified above.

Securitisations
The current capital charges for securitisations under Solvency II effectively disincentivise insurers from investing in this asset class. Insurance Europe therefore welcomes the Commission's intention to review capital charges for STS securitisations under Solvency II. However, it appears from some of the EC communications that only junior tranches would be looked at. Insurance Europe believes that in order to encourage insurers to invest in this asset class, the EC should extend its intention to review the capital charges not only to junior tranches of STS securitisation but to all tranches. The prudential treatment of senior tranches remain punitive when compared to similarly rated corporate holdings. A look-through approach aimed at aligning capital charges for securitisations to those of corporate bonds of the same credit quality is a simple way to address the current barriers. Insurance Europe believes that the Commission should amend Solvency II capital charges for securitisation as soon as possible in order to avoid a permanent move by insurers away from the securitisation market.

Capital treatment of infrastructure assets within European Long-Term Investment Funds (ELTIFs).
Solvency II recognises that type 2 equities (eg unlisted equities) held within ELTIFs justify the same capital charge as type 1 equities (eg listed equity). We agree this is justified by the rules governing ELTIFs. However, identical investments held in funds under a national framework but designed with a similar purpose as ELTIFs cannot benefit from this treatment under Solvency II. Such a different treatment is not justified and leads to unnecessarily high capital charges for assets held within national fund structures.

4. *If you have suggestions to remedy the issue(s) raised in your example, please make them here.*

The above concerns are important to address, given the role of insurers as the largest institutional investors and the need to ensure the success of the CMU project. They should be looked at as soon as possible, with those representing more involved solutions and analysis included as a key focus within the Solvency II review to be finalised by 2018.

5. *Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.*

Annex to Issue 1: Evidence of unnecessary regulatory constraints on financing

(ECOFIN) EXAMPLE: Achieving a significant increase in the pipeline of suitable infrastructure projects/ Crowding-in private investors including through EFSI

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

Regulation (EU) 2015/1017 on the European Fund for Strategic Investments (EFSI Regulation).

2. Please provide us with an executive/succinct summary of your example

To support the pipeline of infrastructure projects, it is crucial that tools are available to facilitate the matching of insurers' investment needs with suitable projects, and many recent initiatives will help with this including the European Long Term Investment Funds (ELTIFs), the European Fund for Strategic Investment (EFSI) and the European Investment Advisory Hub (EIAH). Services such as the Advisory Hub will play a key role in identifying investable infrastructure projects, of which there is a shortage, and ensuring a clear and transparent process in the matching of investors and projects. It is therefore important that the momentum for these projects is not lost and that the Commission will follow soon with the launch of the European Investment Project Portal.

With the Investment Plan for Europe the Commission will, through its European Fund for Strategic Investment (EFSI), mobilise at least €315 billion in private and public investments across the European Union. The EFSI provides significant potential to crowd in private investment by further increasing the pipeline of available and investable projects with support for projects that would otherwise not be attractive. However, based on past and also more recent experience, insurers see a risk that the EFSI will crowds out private investment by targeting projects which would anyway attract private investment, even without EFSI involvement.

There are many instances of past deals of infrastructure investment, which were heavily oversubscribed by private investors, showing the high appetite for suitable infrastructure projects. Even in such instances, multilateral or national development banks (MDBs) such as the European Investment Bank (EIB) have provided senior debt financing and thereby crowded out private investors. There are also many instances of projects (including investment grade projects) that were granted credit enhancement or senior loans from MDBs, even though institutional investors deemed the project investable without any MDB support.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Infrastructure investment has been a topic of several recent insurance surveys. The surveys clearly underscore the increasing appetite by insurance undertakings for investing in infrastructure assets and other asset classes targeted by the EFSI guarantee.

- Goldman Sachs Asset Management recently conducted a worldwide survey of 267 insurance CIOs and CFOs, presenting the following results: of 21 asset classes listed, EMEA respondents indicated that they were most likely to increase allocation towards infrastructure debt above all other assets. 34% of respondents indicated an intention to increase allocation. (see Goldman Sachs Insurance Asset Management, April 2015, Too Much Capital, Too Little Return – GSAM Insurance Survey, http://www.goldmansachs.com/gsam/worldwide/insurance/thought-leadership/cio-strategy/index.html)
- BlackRock recently surveyed 243 insurers worldwide and presented the following statistics: "The two leading asset classes to which investors plan to increase their allocation over the next year are real estate (36%) and infrastructure (34%)." and "Three years ago nearly two in five respondents (42%) had between 6% and 10% of their investment portfolios invested in private market assets(Private market assets comprise investments such as infrastructure debt and equity, real estate debt and equity and private equity.). Today, this has risen to between 11% and 15% allocated in this area, and within the next three years the same percentage anticipates it will be between 16% and 20%." (see BlackRock, 2014, Driving returns: global insurers reconsider fixed income and private assets https://www.blackrock.com/institutions/en-us/literature/whitepaper/driving-returns-full-report-us-eng.pdf)

- Insurance Europe and Oliver Wyman surveyed thirteen of the largest European insurance companies, with around 40% (€3trn) of total European insurers' assets under management. This survey presents the following statistics: "Insurers' appetite for providing funding to this sector is also demonstrated by our survey of European insurance companies, in which 11 out of 13 of those surveyed confirmed they wish to increase investment in this asset class." (see Insurance Europe and Oliver Wyman , June 2013, Funding the future - Insurers' role as institutional investors, http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/files/archive/2013/Oliver_Wyman_-_Funding_the_Future_12.06.2013.pdf)
- Regarding evidence of specific projects which would have attracted private investment without EFSI support we highlight as examples: the "Primary care centres PPP" in Ireland and "Vienna hospital PPP". Both projects are warehoused for EFSI financing. The "Primary care centres PPP" comprises the design, build, finance, maintenance and facilities management of 14 primary care centres on greenfield and brownfield locations owned by the Irish Government. The "Vienna hospital PPP" involves the construction and refurbishment of three hospitals. Given these are investment grade, availability-based PPP loans, intervention of the EIB is not needed. These projects were already attractive for European insurers.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The EFSI should only be used for projects, which cannot meet their funding needs from private sector investors. Some clear rules of thumb provide guidance regarding whether EFSI support is needed for a project or not:

- The role of the EFSI should be limited to guarantees, credit enhancement and equity. The EFSI should not provide senior debt.
- If a project is investment grade (rated BBB- or higher), there will be demand from insurance companies and EFSI support is not needed.
- Insurance companies have a considerable appetite for availability-based PPP projects. EFSI support is therefore not needed.
- Parallel to applying for EFSI financing, the projects should seek financing solely from private sources. EFSI financing should only be used when the projects cannot attract private funding on reasonable terms.

Such guidelines could be included for example in the EFSI agreement in order to provide a legal basis.

5. *Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.*

Annex to Issue 1 –Evidence for unnecessary regulatory constraints on financing

(ECOFIN) EXAMPLE: Insurers' use of Tier 2 and 3 own funds allowed by the Directive is unnecessarily restricted by Delegated Acts through application of tiering limits and eligibility criteria

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC ("Solvency II"), Title I, Chapter VI (valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirement, and investment rules), article 98.
- Commission Delegated Regulation (EU) 2015/35 (Delegated Act on Solvency II), Title I, Chapter IV, article 82

2. Please provide us with an executive/succinct summary of your example

Article 98 of the Framework Directive 2009/138/EC sets limits on levels of Tier 1 own funds to be higher than 1/3 of the total eligible own funds and Tier 3 to be less than 1/3 of total eligible own funds. However, the Delegated Act applies the limits based on the Solvency Capital Requirement (SCR). Besides, it increases the minimum proportion of Tier 1 to 50% of the SCR and decreases the maximum proportion of Tier 3 to 15% of the SCR instead. The Delegated Act therefore creates significant additional constraints on the levels of Tier 2 and Tier 3 items that can be included as eligible own funds and so understates the capital ratio and increases the need for Tier 1 capital above the requirements set by the Directive.

Capital is a scarce and expensive resource for insurers and so the result is a significant and unnecessary increase in the cost of capital with a range of unintended and unnecessary consequences for policyholders.

In addition, Article 82(3) of the Delegated Act creates a sub-limit not mentioned in the Directive, adding further limit on paid-in subordinated debt, preference shares and grandfathered items which meet the criteria for Tier 1: together those items must not exceed 20% of all Tier 1. This causes problems particularly for mutuals, which rely on paid-in subordinated debt to cover their solvency requirements.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

As shown in the evidence below, in a simple example based on two insurers, this deviation from the Directive can reduce reported solvency capital ratio from 200% to 150% and does not reflect the economic reality of the two insurers.

Let us consider an insurer A with an SCR of 100 and an eligible own funds structure such that tier1, tier2 and tier3, respectively make for 100, 80, and 30 of total eligible own funds. According to the Framework Directive requirements (i.e. Tier1 should be higher than 1/3 of eligible own funds and Tier3 should be lower than 1/3 of eligible own funds), the solvency ratio (i.e. the ratio of Total Own Funds to SCR) of that company should be 210%. In contrast, as per the Delegated Acts requirements, tier2 + tier3 will have to be restricted to 50% of SCR. This means that 80 (tier1) + 30 (tier3) will be capped at 50 (i.e. 50% of the 100 worth SCR) and the whole of tier1 can be accounted for (it needs to be at least 50% of the SCR). Therefore, the eligible own funds amount to 100+50 and hence the solvency ratio equals 150%.

Furthermore, let us consider an insurer B with an SCR of 100 and an eligible own funds structure such that tier1, tier2 and tier3, respectively make for 100, 50, and 0 of total eligible own funds. According to both the Framework Directive and the Delegated Acts requirements, the solvency ratio of insurer B should be 150%. Hence, the Delegated Acts requirements do not reflect the idiosyncrasy of Insurer A insofar as they penalise insurer A relative to an insurer B, the eligible own fund structure of which is of lower quality.

Thus, the requirement set out in the Delegated Act on Solvency II means that although undertaking A has total own funds of €210, eligible own funds to meet the SCR would only be €150. This does not represent fairly the actual own funds the undertaking holds.

4. *If you have suggestions to remedy the issue(s) raised in your example, please make them here.*

The basis used for the limits on the application of Own Funds should be eligible Own Funds, rather than the SCR, in line with Article 98 of the Solvency II Directive.

We urge the Commission to establish eligibility criteria consistent with the Solvency II Directive because there is no reason why the tiering limits (min 50% Tier1, max 15% Tier3) should not be applied to all Eligible Own Funds. Tier 2 and Tier 3 items should also be allowed for the coverage ratio above 100% of the SCR, provided that they are still in the proportions defined by the tiering limits.

The 20% limitation for paid-in subordinated mutual member accounts and some other "restricted" Tier 1 items (Article 82(3) of the Delegated Regulation) is not in line with the Directive, which it does not provide a legal basis for introducing sub-limits. Indeed, the limits referred to in Article 99(a) if the Framework Directive are meant to relate only to Tier 1, Tier 2 and Tier 3 and their respective proportions within the eligible own funds to cover the Solvency and Minimum Capital requirements. Therefore the sub-limit should be deleted.

5. *Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.*

Annex to Issue 1 –Evidence for unnecessary regulatory constraints on financing

(ECOFIN) EXAMPLE: Own funds- Treatment of net deferred tax assets

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC ("Solvency II"), Title I, Chapter VI (valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirement, and investment rules), Section 3.
- Commission Delegated Regulation (EU) 2015/35 (Delegated Act on Solvency II), Title I, Chapter IV, article 76

2. Please provide us with an executive/succinct summary of your example

Article 76 of the Delegated Regulation on Solvency II states that the amount equal to the value of net deferred tax assets should be classified as Tier 3 Basic own-funds. Insurance Europe disagrees with the treatment of deferred taxes as Tier 3 eligible own funds by default as there are situations wherein deferred tax asset would meet Tier 2 or Tier 1 classification criteria.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example

This classification of deferred tax assets as tier 3 seems to be based on the assumption that their utilisation breaches the criteria of being fully paid up because it is contingent to the ability of the company to demonstrate that that there will be future taxable profits. However, this is not the only case of deferred tax asset utilisation and in particular, under a transfer assumption to a third party for example, the company that takes over can use deferred tax assets to effectively offset tax liabilities. Therefore, where deferred tax assets can be transferred to another entity, we suggest that the expected transfer value may be classified as Tier 1 or Tier 2 eligible own funds.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Tier 1 and Tier 2 classification criteria should also apply to net deferred tax assets and as a result, depending on the features of each DTA, this items could be classified as Tier 1, Tier 2 or Tier 3. For example, in the case where deferred tax assets can be converted into cash according to the respective tax legislation, this own fund item should be deemed to substantially possess the characteristics set out in the Delegated Act on Solvency II to be classified in Tier 2.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(ECOFIN) EXAMPLE: Longevity risk sub-module. Annuities.

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Commission Delegated Regulation (EU) 2015/35 (Delegated Act on Solvency II) Article 138: Longevity risk sub-module.

2. Please provide us with an executive/succinct summary of your example

The Longevity shock under the SCR standard formula overstates the real longevity risk which will have adverse consequences for the annuities business. The current calibration applies an immediate and permanent decrease of 20% in the mortality rates used for the calculation of technical provisions. This results in:

- A calculation which does not reflect the real nature of the risk or the risk profile over time.
- A simplification that requires higher longevity risk capital than the generally intended 99.5% confidence level over one year.

An exaggeration of the real longevity risk will make these products more expensive than necessary, leading to lower than necessary income for policyholders. In the longer run, this will mean that longevity risk increasingly moves outside of the EU, with concerning consequences for counterparty risk. Already a substantial proportion of longevity reinsurance is leaving the EU; ca. 72% of longevity risk transferred is ceded to North America (taken from data on public longevity risk transfer transactions 2014-15) (*Source: Artemis deal database (http://www.artemis.bm/library/longevity_swaps_risk_transfers.html)*.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Relevant and verifiable empirical evidence on this matter can be found in "UNESPA Longevity Risk Investigation", a study by Towers Perrin released on 21 January 2009. This calibration exercise is also mentioned on page 32 of EIOPA´s report on the underlying assumptions in the standard formula for the SCR calculation (25 July 2014).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Increasing the granularity of the longevity shock will contribute to the development of this business in the future, so that the European insurance sector can keep on financing the long-term assets backing those liabilities. EIOPA should undertake an EU-wide benchmarking exercise of longevity/mortality shocks, to ensure a consistent understanding of the size of a 1-in-200 year shock. This could also include other material risks, such as credit spread risk, in scope. These results should be made public for consideration by industry and regulators.

An alternative and more granular approach can be found in page 5 of the aforementioned study by Towers Perrin "UNESPA Longevity Risk Investigation". It consists of a single one-off shock, which varies by combination of age range and coverage duration.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

UNESPA Longevity Risk Investigation, Towers Perrin, 21 January 2009. (see http://s3.amazonaws.com/zanran_storage/www.cea.eu/ContentPages/19326750.pdf)

(ECOFIN) EXAMPLE: Qualifying the issuance of subordinated debts in own funds under Solvency II

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Commission Delegated Regulation (EU) 2015/35 (Delegated Act on Solvency II), Article 73
- EIOPA guidelines on own funds classification.

2. Please provide us with an executive/succinct summary of your example

When complying with EIOPA's guidelines on the eligibility of own funds, some supervisors are considering that the contractual clauses for subordinated debts specifying support by the company of a potential financial loss to the investor due to future tax changes is an incentive to redeem. As such subordinated debt cannot be considered as eligible Tier 1 or Tier 2 own funds. This interpretation is too restrictive as on the one hand the support by the company of potential financial effect (for example loss to the investor) due to future tax changes is not considered by the delegated acts nor EIOPA guidelines on own funds as an incentive (limited or not limited) to redeem.

On the other hand, such a clause is not designed to provide an option to redeem, but is rather a pure standard clause found in the most contracts to protect investors against tax changes. Subordinated debt has to be at least 10 years at issuance, therefore such a restriction in interpretation will create initial problems, unnecessarily reducing the solvency ratio and make it more difficult for insurers to use subordinated debt as part of their capital structuring. This raises the cost of capital as it will have a knock-on effect on pricing and availability of products for consumers.
Hence, the Delegated regulation should make it clear that such a standard clause is not to be interpreted as an incentive to redeem.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

The Solvency II Delegated Regulation (Article 73: Tier 2 Basic own-funds — Features determining classification) introduces the notion of incentive and limited incentive to repay or redeem debts for qualifying own funds items but without giving a clear definition of the notion of "incentive to redeem":

- Article 73(1)(c) reads: "the basic own-fund item is undated or has an original maturity of at least 10 years; the first contractual opportunity to repay or redeem the basic own-fund item does not occur before 5 years from the date of issuance;"

- Article 73(1)(e) reads: " the basic own-fund item may include limited incentives to repay or redeem that basic own-fund item, provided that these do not occur before 10 years from the date of issuance;"

In addition, the Delegated Regulation and EIOPA guidelines are specifying that:

- Own funds Tier 1 items must not have any incentive to repay or to redeem (Article 71(1)(i) of delegated acts and EIOPA guideline 7 on the classification of own funds),
- Own funds Tier 2 items may have limited incentives to repay or redeem provided that the repayment or the redemption happens not before 10 years after issuance of the debt (Article 73(1)(e)) and that the own funds Tier 3 items may have limited incentives to repay or to redeem (Article 77(1) (e)).

However, some supervisors are applying a restrictive interpretation of contracts for subordinated debt that includes a clause stating that the company will cover any financial effects of changes in tax systems, equating it with an infringement of the "no incentive to redeem" criteria. These supervisors are specifying that the debts including this kind of contractual clauses would not in all cases be allowed for Solvency II own funds Tier 1 nor Tier 2 if they occur during the first ten years after issuance of debt.

Such contractual clauses are standard in cases of hybrid debt issuance in the bond markets and are considered to protect investors in case of tax changes. Such strict consideration will exclude all debts stating such clauses

from Solvency II own funds Tier 1 and Tier 2 when the repayment occurs before 10 years. By doing this, the supervisors are penalizing insurers in their emissions of hybrid debts by excluding them from their own funds.

Considering past exchanges with the Commission, Insurance Europe is aware that when the Delegated Regulation was drafted the main incentives to redeem were coupon step-ups (cf. Article 73(4) in the Delegated Regulation). In general, call options due to regulatory, tax, and rating agency changes are not considered incentives to redeem because these standard clauses require the company to "make whole"(to compensate) the investor. Therefore, the investor does not take the call option into account when pricing the instrument.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

We ask the European Commission to ensure that the interpretation by EIOPA and national supervisors of the Delegated Regulation requirements and the application of Solvency II directive should not create additional restrictions against the spirit of the directive and potential unlevelled playing field across Europe. Furthermore, in comparison to the banking regulation, the subordinated debt clearly has a different treatment with less restrictive conditions to be eligible own funds. A clarification of the application of this Solvency II requirement on subordinated debt contracted by insurers should be done in the Delegated Regulation to avoid any gold plating or additional unexpected requirement.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(COB) EXAMPLE: Information overload including information duplication (PRIIPs, SII, IDD)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

This example refers to:

- Solvency II Directive 2009/138 and particularly Article 185 (information for policyholders) under subsection 2 (life insurance) **(Solvency II)**
- Insurance Distribution Directive (IDD), including Article 18 (general information provided by the insurance intermediary or insurance undertaking), Article 19 (conflict of interest and transparency), Article 20 (advice, standards for sales where no advice is given), Article 23 (information conditions), Article 24 (cross-selling), Article 28 (conflicts of interest), Article 29 (information to customers) and Article 30 (assessment of suitability and appropriateness and reporting to customers) **(IDD)**
- PRIIPs Regulation 1286/2014 and particularly Articles 3, 8 and 14 **(PRIIPs Regulation)**
- e-Commerce Directive 2000/31 and particularly Article 5 (general information to be provided) and Article 10 (Information to be provided)
- Distance marketing Directive 2002/65 and particularly Article 3 (information to the consumer prior to the conclusion of the distance contract)

2. Please provide us with an executive/succinct summary of your example

Well-informed consumers are better equipped to compare products and make informed decisions. In order to empower and protect consumers effectively, the information provided must respond to consumers' needs. For information to effectively meet the needs of consumers, several elements must be considered, eg the content, clarity and amount of information along with the presentation and timing of delivery of the information.

The provision of high-quality rather than high-quantity information is a basic principle of consumer protection. Indeed, consumer behavioural theories widely recognise that it is essential that information sent to consumers is meaningful and clear, rather than for the sake of simply providing documents to fulfil regulatory requirements. The disclosure of too much information is counterproductive and has the effect of limiting consumers' ability to make appropriate decisions when comparing and purchasing products.

Insurance Europe welcomes the Commission's statement in the call for evidence that '*given the large amount of legislation in place and the interactions between them, there is a need to understand their combined impact and whether they give rise to any unintended consequences*'.

Regrettably, several pieces of EU legislation, applicable to insurance, have been developed and adopted recently by the European regulators in silos. This will dramatically increase the amount of pre-contractual information that insurers will be required to provide to consumers. As a result, consumers risk being overloaded with information that potentially provides very limited benefit to them when choosing insurance products. This information overload risks confusing consumers and distracting them from paying attention to important information, such as the insurance coverage and exclusions. Moreover, behavioural insight studies show that information overload has a demotivating effect on consumer engagement.

In addition, not enough attention has been paid to the combined effects and potential unintended consequences of these regulations. This results in numerous duplicative requirements in EU legislation regarding the information that needs to be disclosed to insurance consumers. In practice, it means that consumers risk receiving the same type of information twice, but with different wording and a different format. This would have a negative impact on consumers' understanding of a product's features. Such an approach could, in turn, hamper consumers' ability to compare products effectively and to shop around to find the best product that meets their needs. It risks ultimately undermining their confidence in the products and industry concerned.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Insurance Europe is and has always been supportive of a high level of transparency and has always emphasised that pre-contractual information should be useful, relevant and timely.

When looking, for example, at the rules that will be applicable to the sale of insurance-based investment products, it becomes clear that (1) the cumulative effect of the legislation on the disclosure of pre-contractual information and (2) the interaction between all disclosures (including potential duplications) have never been properly assessed by policymakers.

As far as the cumulative effect is concerned, currently 75 different pieces of pre-contractual information are applicable under existing EU legislation to the case of a consumer purchasing an insurance-based investment product online from an intermediary (this also includes provisions under the e-Commerce and Distance Marketing Directives). With the new PRIIPs Regulation, the Solvency II Directive and the IDD, this number will increase to 148 different pieces of pre-contractual information. When broken down into its component parts, the number of pre-contractual product disclosures will increase from 20 under the Life Directive, to 66 under the Solvency II Directive and the PRIIPs Regulation, or 330% of what it used to be, while the disclosure requirements for sales rules would rise from 9 under IMD 1 to 36 under IDD, or 400% of what it used to be.

As far as duplication is concerned, Solvency II and the PRIIPs Regulation require the cumulative disclosure of fully or partially equivalent information to consumers, as per Article 3 of the PRIIPs Regulation. Fully equivalent information that needs to be provided under Solvency II and the PRIIPs Regulation includes the insurer's identity, the duration of the contract, the description of the underlying instruments, the description of the surrender/cooling-off periods, the risks and the existence and details of procedures for complaints. In addition, partially equivalent information also needs to be provided, including the product benefits, the costs/payment and the tax arrangements.

Another example illustrating such duplication of equivalent requirements under different pieces of legislation is related to the disclosure of a product's costs under Article 29 of the IDD, as well as under Article 8 of the PRIIPs Regulation.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Excessively burdensome and prescriptive rules on product disclosure must be avoided. Insurance Europe calls on the EC to consider the cumulative impact of the potential information overload on consumers and duplicative disclosures and take steps to remove them where they exist.

For instance, as regards the overlap between Solvency II and the PRIIPs Regulation, we suggest that the Key Information Document (KID) should also satisfy the duplicative disclosure requirements under Solvency II. Consumers would benefit from receiving relevant information only once through the KID, instead of disclosing it a second time to consumers, in a different format, under Solvency II, which would do nothing more than confuse consumers.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

See COB-15-110: "CMU call for evidence _ Information overload and duplicative requirements"

Issue 2 – Market liquidity

(ECOFIN) EXAMPLE: market liquidity and volatility

1. To which Directive(s) and/or Regulation(s) do you refer to in your example?

- Directive 2013/36/EU (Capital Requirements Directive/CRD IV)
- Regulation (EU) 575/2013 (Capital Requirements Regulation/CRR)
- Regulation (EU) 236/2012 (Short Selling Regulation/SSR)

2. Please provide us with an executive/succinct summary of your example:

Liquidity related to the availability of assets for purchase, ability to sell and the reliability of the market price has become a subject of debate and concern over the last months and years. Following the financial crisis, European legislators have put in place a number of financial regulations that aim to improve the resilience of financial institutions. These changes however have also had an impact on the liquidity of capital markets. Insurers as investors are more and more concerned about the lack of liquidity of certain capital markets, such as bond markets. This should not be confused with the increased liquidity created by central banks' measures of monetary policy.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example:

The drop in liquidity and increase in volatility is of real concern to the insurance industry. For example, between 2010 and 2015 European corporate bond trading volumes have declined by rates up to 45% (see eg PWC, August 2015, Global financial markets liquidity study, p. 7, url: http://www.pwc.com/gx/en/industries/financial-services/publications/financial-markets-liquidity-study.html). A lack of liquidity leads to higher liquidity premiums, which affects the cost and availability of funding and returns on investment, and reduces the degree to which capital markets can act as an alternative source of funding for the real economy. To add to this, the current monetary policies may hide the full extent of illiquidity, which may soon become known with the prospect of an interest-rate rise and the end of QE in the near future.

Since the financial crisis, two particular areas of legislation that have had impacted on liquidity, namely capital or liquidity requirements and structural changes. First, capital and liquidity requirements have led market makers to de-risk and focus on other activities. High capital requirements may reduce probabilities or impacts of failures but they can also reduce liquidity (either directly or indirectly as a result of the withdrawal of market participants). This approach encourages a decrease in overall trading activities and the reduction or withdrawal of market makers from activities with high risk charges or inadmissibility for liquidity requirements.

Second, structural changes have limited the operation and activities of market makers. For instance, the 2012 Short Selling Regulation (SSR) and the requirement to have secured a security before short sale has impacted on trading activity in sovereign debt and credit default swaps markets. This is caused by the prohibition of short sales of sovereign bonds unless there is a strong likelihood that the settlement can be made when expected.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Insurance Europe's priority would be to address structural changes. To counteract the effects on liquidity, policymakers should take steps to facilitate trading activity. In order to do this, they should review the market structure and how to work with market participants to build up market-making capacity. Alternative options should be considered, for example creating a regime where a certain number of entities are licensed to perform a defined role in the market, provided with special privileges and responsibilities.

When formulating regulation, for instance in the area of capital and liquidity requirements, the Commission should proactively consider the trade-off between the reduction of a market participants' idiosyncratic risk and the impact on market liquidity. Subsequent to the enactment of legislation, they should monitor liquidity levels carefully. Should liquidity start to weaken, they should have mitigation plans in place to avert further deterioration.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(ECOFIN) EXAMPLE: Administrative requirements for administrators of fund-like structures

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2011/61/EU (Alternative Investment Fund Managers/AIFM Directive)

2. Please provide us with an executive/succinct summary of your example

Insurance Europe considers the rules of the AIFM Directive a serious obstacle for enabling insurers to invest jointly.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

The AIFM Directive sets out a range of administrative requirements for managers of alternative investment funds seeking to market an AIF or to raise capital inside the EU and this has a direct impact on insurers who decide to pursue joint investments via a fund structure. Requirements include: appointment of a depositary, fit and proper assessment of AIFM, requirements regarding investment expertise, remuneration policy and authorisation by the supervisory authority.

The requirements seem to be aimed in particular at consumer protection. Although important, consumer protection is required in situations where an AIF is directed towards institutional investors.

The way the rules are set up, two life insurance companies investing jointly in, for example, commercial property are obliged to comply with the AIFM Directive even though the fund structure is merely a legal vehicle for the joint investment. This creates significant unnecessary costs, reduces the co-investment taking place and therefore impedes the diversification of capital market funding.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Since many provisions of the AIFM Directive are targeted at consumer protection, which is only relevant for retail investors, institutional investors, such as insurance companies and pension funds, should be exempted from the AIFM Directive.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(ECOFIN) EXAMPLE: Application of the proportionality principle in practice/ Disproportionate burden for small insurers

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II): In particular Articles 29, 35, 36, 42, 49, 51, 53, 54 and Article 254
- Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II): Articles 275 and 314
- EIOPA Guidelines on system of governance (EIOPA-BoS-14/253)

2. Please provide us with an executive/succinct summary of your example

Proportionality – a key principle of SII is not always being applied in practice and could make SII unworkable for smaller companies.

One of the key principles of the Solvency II Directive is that in addition to be applicable in a way that is proportionate to the nature, scale and complexity of the risks that arise from insurance business (Article 29(3) of the Solvency II Directive), its requirements should be applied as well to the size of the undertaking. Indeed, Article 29(4) of the Solvency II Directive expressly sets out the particular relevance of the proportionality principle for small undertakings. The intention of the regulators of this Article is also confirmed in Recital 19 of the Solvency II Directive which acknowledges that the consistent application of the principle is particularly important for small and medium sized companies to prevent excessive and disproportionate burden on them. Moreover, Recital 19 stipulates that the principle should apply both to the requirements imposed on the insurance and reinsurance undertakings and to the exercise of supervisory powers.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

It is difficult to provide concrete evidence at this stage as Solvency II only came into force on the 1 January 2016. Many member states have not yet finalised implementation of the new regime nor have all decisions that will impact how Solvency II is implemented, been agreed yet. Hence, the true impact and application of the principle of proportionality can only be judged once Solvency II has had a chance to "bed down".

However, Insurance Europe has identified specific examples of emerging concerns for one or more of our members:

- Article 35 of the Solvency II Directive allows reporting requirements to be reduced for "smallest undertakings" to be reduced. Proportionality is more generally intended as a mechanism to allow simplifications for smaller companies.
- Care must be taken in how supervisors assess whether a specific company can be deemed smaller. In particular the EC's definition (Recommendation 2003/361/EC) which is used for a number of purposes is based on balance sheet size thresholds which is not appropriate for insurers because they have larger balance sheets than other sectors. Applying the EC definition would be inappropriate in the context of Solvency II because almost no small insurer would meet the criteria and the proportionality principle would become ineffective and not work as intended.
- For the requirements on remuneration in Article 275 of the Solvency II Delegated Regulation, there is no distinction between different types of insurers making application of proportional requirements problematic.
- In many instances, provisions that actually allow for flexibility in the Directive are standardised, restricted and very detailed at subordinate levels, in particular by EIOPA guidelines, limiting the principle-based approach. Striking examples are the reporting provisions under Solvency II such as

Articles 35 and 36 as well as Articles 51, 53, 54 of the Directive for which the flexibility granted by the Solvency II Directive is undermined by further specifications and requirements on subordinate regulatory levels. The same applies to various governance provisions. For instance, undertakings are allowed to outsource key functions (recital 31 and Article 49 of the Solvency II Directive). In addition, guideline 14 of the EIOPA guidelines on System of Governance requires the outsourcer (ie the insurance company) to designate a special person within the undertaking that should be considered as the person responsible for the key function according to Article 42 (2) of Solvency II Directive. This person also needs to be fit and proper assed by notifying the supervisory authority. This contradicts the purpose of outsourcing and is furthermore not required by Article 49 Solvency II directive.

- The EIOPA guidelines on methods for determining the market share for reporting repeat what is stated in the Solvency II Directive and the Delegated Regulation. However, it is unclear how the proportionality criteria in Article 35 (8) of the Solvency II Directive (assessment of whether submission of information will be overly burdensome) will be applied by national supervisory authorities in a transparent manner.
- The ITS on regular supervisory reporting contains many changes compared to previous EIOPA consultations in reporting formats, log files and formulas to be validated although Solvency II has been applicable since 1 January 2016. Irrespectively of their size companies have to implement these requirements into their reporting system, which does not reflect the proportionality principle for SMEs. The same concern applies to several provisions in the field of Governance which are inappropriate and highly impracticable for small companies. They are not able to implement them without the help of simplifications and it is for example, virtually impossible to introduce four independent key functions in a company with seven or less employees.
- The EIOPA guidelines on reporting and public disclosure should be confined to those reporting and information requirements that need to be specified further following the Delegated Regulation. It is not clear why the requirements are not fully aligned with the quantitative reporting requirements and with the structure provided in the Delegated Regulation in general. Hence, the following differences between the Delegated Regulation and guidelines have been identified (not exhaustive):
    - Guideline 3 on governance structure duplicates requirements from the Delegated Regulation and appears to have limited added value.
    - Guideline 12 on own funds defines a separate valuation of the reconciliation reserve necessary which goes against the requirements in Article 70(3) of the Delegated Regulation
    - Differences in valuation between local GAAP and Solvency II are insufficiently solved
- The proportionality principle in the context of groups: Supervisory authorities can apply Article 254 of the Solvency II Directive to exempt insurance undertakings from certain reporting requirements as part of the quarterly reporting. There are no provisions which allow the application of the proportionality principle to apply to group reporting even in cases where the reporting requirements for all the individual affiliated companies are waived.
- Undertakings which use fully owned and controlled corporate entities as vehicles to own investment assets backing liabilities are required to apply capital charges intended for strategic investments. Under Solvency II, the look through approach to the underlying investments is not applicable for the purpose of calculating the SCR at the level of the insurance company. The reason seems to be that on a legalistic basis these corporate entities are under the control of the undertaking and therefore meet the requirements of being a strategic investment. However, for valuation purposes and from a risk (ALM) perspective, insurance companies apply a look through approach to the underlying investments in the related undertakings. In this way, the market values of the underlying assets and liabilities and the related risks are duly considered. Indeed, from a risk management perspective a look through approach to the underlying assets of the subsidiary more faithfully represents the real risks the insurance company is exposed to. Hence, it seems disproportionate that, in case of related undertakings that are used as investment vehicles, the look through approach is not allowed for the calculation of the SCR at the level of the undertaking.

Furthermore, Insurance Europe recently conducted a survey concerning the implementation of Solvency II amongst its members. The survey widely covers the European insurance market as the response rate amounts to approx. 92 % of the gross written premiums across Europe. One of the focus areas of the survey was to gain

a better understanding of how the principle of proportionality is or is intended to be applied at national level and its relevant findings are highlighted below.

- 69% of the respondents replied that the principle of proportionality was applied for Solvency II to work in practice. However, out of the 69 %, 48 % of the respondents believed that the principle was not applied enough or to the extent possible by supervisors (too cautious).
- 63% of the respondents were concerned about the application of the proportionality principle for the governance requirements (eg fit & proper requirements for key functions and the separation of the internal audit function from other key functions).
- 42 % of the respondents were concerned about proportionality in the SCR calculations and 26 % were concerned about the quantitative reporting for groups (eg credit rating reporting and look-through approach).
- There were countries where the proportionality measures of Article 35 (6) and 35 (7) are omitted in the transposition of the Directive into national law. This causes significant impediments regarding the access for the NSA to apply the principle of proportionality to reporting requirements.

4. If you have suggestions to remedy the issue (s) raised in your example, please make them here.

The proportionality principle is an overarching principle of the Solvency II. Therefore, in implementing the Solvency II Directive the proportionality principle must not only be applied at single points, but also in general.

As a general solution to this very important issue it is recommended that the Commission organises a series of workshops, starting as soon as possible, including EIOPA, national supervisors and industry stakeholders in order to discuss specific proportionality issues and general principles in order to clarify how proportionality can work in practice.

However, in the meantime, Insurance Europe has the following suggestions to remedy some of the specific examples identified above:

- The SME definition in Recommendation 2003/361/EC may be suitable for many purposes such as public programs targeted at SMEs. However, for the purposes of Solvency II, it should be clarified that the definition from the EC Recommendation should not be used because it is not reasonable to define SMEs in the insurance industry based on the current balance sheet size thresholds.
- Similar to the upcoming European-wide Solvency II review process of Pillar I, provisions concerning governance and reporting should also be reviewed to analyse the sufficient implementation of the proportionality principle by the supervisory authorities. Guidelines that are too extensive or detailed should be deleted. It should also be critically verified whether the current Governance requirements are sufficiently practice-oriented, especially for small companies. Requirements that turn out to be unfeasible without providing any added value to companies and supervisors should be adapted to better reflect the reality of business.
- In general, it should be assessed whether the current reporting requirements are too extensive and detailed, taking into account the experience gathered from the implementation of Solvency II.
- The EIOPA guidelines on methods for determining the market share: It is important for the application of the proportionality principle to insurance undertakings, that a transparent process is established for the way exemption rules are applied. Such a process could establish the following:
    - Rules concerning the annual publishing of market share thresholds
    - If, how and until when supervisory authorities inform insurance undertakings about the application of exemption rules.
    - Appropriate transition period if exemptions are ceased.
- The EIOPA guidelines on reporting and public disclosure: The EIOPA guidelines on reporting and public disclosure should be confined to those reporting and information requirements that need to be specified further following the requirements in the Delegated regulation.
- Proportionality principle in the context of groups: Supervisory authorities can apply Article 254 of the Solvency II Directive to exempt insurance undertakings from certain reporting requirements as part of

the quarterly reporting. Insurance Europe believes that if all individual insurance undertakings affiliated to the same group are exempted, then the insurance group itself should automatically receive an exemption as well as reporting at group level seems onerous and obsolete.

5. ***Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.***

-/-

(COB) EXAMPLE: Insurance specificities (eg insurance premium vs investment costs in PRIIPs)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

This example refers to the PRIIPs Regulation 1286/2014 **(PRIIPs Regulation)**

2. Please provide us with an executive/succinct summary of your example

The Commission's call for evidence raises the question of to whether EU rules are adequately suited to the diversity of financial institutions in the EU.

In the context of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, Insurance Europe is concerned that the features of insurance-based investment products have not sufficiently been taken into account.

Insurance Europe supports the aim of the PRIIPs Regulation to ensure that retail investors are provided with accurate, fair and clear pre-contractual information to allow them to compare different investment products. In order to compare investment opportunities, it is important that retail investors are provided with information that enables them to compare both the similar and the distinctive features of the products on the market. In this context, it is of the utmost importance that the features of insurance-based investment products are taken into account appropriately. Insurance-based investment products and pure investment products cannot be substituted for one another given their differences. Insurance-based investment products have an investment element and an insurance element, whereas pure investments products only have an investment element.

Unlike other PRIIPs, insurance-based investment products provide additional benefits and protection, in addition to offering an investment opportunity, such as:

- guarantee of a given investment performance or a given level of benefits (ensured through solvency requirements)
- protection against biometric risks (death benefits, occupational disability income, surviving dependants' provisions, etc.)

These features should be presented in a prominent manner in the Key Information Document (KID), ensuring that the total picture of a PRIIP is balanced. The insurance specificities, including the insurance cover and the biometric risk premium must be presented fairly in the KID.

For instance, should the premium for the insurance cover of insurance-based investment products be considered as a cost, then the information in the KID would be distorted and a proper comparison of PRIIPs would not be possible. A correct definition of the cost term of an insurance-based PRIIP is essential. It should sharply and clearly distinguish between costs and premiums.

If premiums are included in costs, it would lead to the appearance of systematically higher costs for insurance-based investment products when compared to other products and would create an unlevel regulatory playing field. This would, in turn, give the consumer a distorted view of the product.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.
(please give references to concrete examples, reports, literature references, data, etc.)

In practice, an aggregated single cost indicator that includes the biometric risk premium would be non-transparent and lead to confusion. Different PRIIPs will not be comparable should both the costs and the risk premiums for insurance-based investment products be included in one indicator.

For instance, an insurance-based investment product, which includes an investment element and insurance cover, would be presented as:

- The contribution is €100 with:
    - €75 invested
    - €25 for costs

What is presented to retail investors should rather be:

- The contribution is €100, with:
    - €20 is the premium for insurance cover
    - €80 for the investment component, with:
        - €75 invested
        - €5 for costs

In the distorted presentation of the product, the costs for the product would suddenly be five times higher (€20 + €5 = €25 instead of €5). With such a presentation, a meaningful comparison would be possible with neither a pure investment PRIIP nor with another insurance-based investment product.

Therefore, the inclusion of the premium for insurance benefits in the cost indicator of PRIIPs potentially disadvantages insurance products in comparison to other non-insurance PRIIPs and may also have a detrimental effect on the design of insurance products, as companies may opt to remove risk benefits in order to better compete.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe thus strongly believes that it is in the interest of the retail investor that the draft Regulatory Technical Standards related to article 8 of the PRIIPs Regulation on the presentation and content of the KID, which are due to be submitted to the Commission in March 2016, establish that the insurance premium is presented in a separate insurance section in the KID. This separate section would detail the insurance cover, benefits and biometric risk premium.

In addition, and to ensure complete transparency, a reference to this could be made in the cost section of the KID, such as: "The contributions for additional benefits that are not related to the savings process are presented separately".
Similarly, a reference to this separate section could be made in the performance scenario section of the KID, such as: "The additional benefits that are not related to the savings process are presented separately."

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(COB) EXAMPLE: Sector-specific regulation: ESA-Regulations are set on the premise that each financial sector is regulated specifically to its own needs

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

- Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)
- Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)
- Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)

2. Please provide us with an executive/succinct summary of your example

In cross-sectoral discussions, EIOPA has the important task to provide insurance-specific expertise and to make sure that the characteristics of the insurance industry are taken into account. The European System of Financial Supervision (ESFS) is based on a three-pillar structure, which provides for a sector-specific approach with regard to regulation. This also applies to financial conglomerates which are being supervised by the European Central Bank. In addition, the Joint Committee (JC) of the ESAs serves as a regulatory forum for cross-sectoral topics such as accounting, auditing and, to an increasing extent, consumer protection. Some topics are commonly regulated for the insurance, securities as well as the banking sector. There is a tendency that an increasing number of topics are being discussed in the Joint Committee. The main reason is to ensure a level playing field across different financial markets.

As a conclusion, we have the impression that, unfortunately, the insurance perspective is not always sufficiently considered in cross-sectoral regulation.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.
(please give references to concrete examples, reports, literature references, data, etc.)

The JC called in a **Joint report (Joint Committee Report on risks and vulnerabilities in the EU financial system, JC 2015 007, March 2015)** for the implementation of additional measures to prevent risks in the entire financial industry. It proposed to **require that loss databases be built up for the purpose of analysing and managing operational risks**. Based on examples of the banking industry only, it was pointed out that the financial industry has incurred major reputational and financial damages caused by detrimental business practices in recent years. Loss databases are, however, not an appropriate means to manage operational risks in insurance undertakings. While banks focus on short-term speculative profits in the context of proprietary trading in particular, the business model of insurance undertakings is based on a long-term perspective and sustainability. Accordingly, major operational risks which are based on inadequate incentive systems related to short-term speculation profits are not an issue for insurance undertakings. Consequently, EIOPA – during the preparatory phase – explicitly ruled out in its Final Report "System of Governance" that operational databases would be required. It is therefore incomprehensible that these insurance-specific assessments have not been addressed in the discussion of the Joint Committee.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Firstly, it is necessary to strengthen the autonomous representation of insurance issues by EIOPA in the Joint Committee and ensure a qualified approach towards the specificities of the insurance business model. It also underlines the importance of maintaining a separate insurance supervisor.

While information exchange between the ESAs seems advantageous it is of utmost importance for the insurance sector that there is no application of banking standards to the insurance sector without closer scrutiny, in particular no one-size-fits-all approach. A general reference to the requirement of a level playing field does not justify that requirements in the different sectors are equated. It is important therefore to allow for more flexibility to adjust, as appropriate, to the needs of the different sectors.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

AREA B: Unnecessary regulatory burdens

Issue 5 – Excessive compliance costs and complexity

(ECOFIN) EXAMPLE: Compliance cost and complexity under Solvency II, including excessive guidelines

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Solvency II Directive 2009/138/EC, eg Articles 35 (5), 41 (3), 44 (2), 55 (1), 87, 88, 89 and 227
- Solvency II Delegated Act – Regulation (EU) 2015/35
- Regulation (EU) No 1094/2010 (EIOPA Regulation)
- EIOPA Guidelines and explanatory text
- EIOPA opinions

2. Please provide us with an executive/succinct summary of your example

Generally, the objectives of Solvency II are sound and supported by the industry. However, its implementation has been overly long, complex and expensive for the industry. This is despite the principle of proportionality being a key element of the Solvency II regime.

The Solvency II framework is described collectively in a range of texts including the Directive, the Delegated Acts, EIOPA guidelines (including explanatory texts), EIOPA opinions, and additional texts provided by national supervisors. While the industry recognises the need for a certain level of clarity in these texts the combined total has resulted in excessive detail, constraints and requirements. Every line of text creates a cost for supervisors, the industry and for policyholders because they must be first developed and agreed by policymakers, then implemented by companies and adhered to on an ongoing basis. Compliance with the texts must also be monitored by various internal and external parties involved in the company, its audit, governance and supervision. The texts can create constraints and unintended consequences and will need to be updated and refined over time. Solvency II was intended as a principles-based system but has become a very detailed rules-based regime and overall very inflexible.

In particular, Solvency II has been implemented in such a way that there is a very short timeframe between regulations being finalised and coming into force. As such, companies have in a number of areas had to develop their approach based on draft or expected requirements. This approach will undoubtedly have led to additional costs where changes in approach are required to reflect changes in final requirements. For example, the UK's HM Treasury has estimated that the one-off costs to UK insurers of the implementation of the Solvency II Directive and Omnibus II will be €3.3bn, with ongoing costs at approximately £196m each year.[1] A more proportionate way of adopting and monitoring the regime should be considered for the future. Lessons should also be learnt and reflected in the development of future financial services legislation and regulation. Another example follows from a survey conducted by the Danish Insurance Association among its members revealing that the expected implementation costs of compliance with Solvency II Quantitative Reporting requirements total around €45m with an ongoing annual cost of roughly €15m Euro.

A significant portion of the excess detail is created by EIOPA's guidelines. Guidelines can play an important role in helping to ensure Solvency II meets the harmonisation objectives set by the Directive. However, the over 700 guidelines produced by EIOPA are excessive because only 34 relate to guidelines mandated by the Solvency II Directive (EIOPA empowerment to "should" or "may" develop). All the rest were developed at EIOPA's own initiative. Although in theory guidelines are only quasi-binding and national supervisors can choose between "complying or explaining", in practice there are very few cases where supervisors choose to explain. Costs are

[1]HM Treasury, Impact assessment opinion: Transposition of Solvency II Directive (2009/138/EC) and Omnibus II

generated by the need for translation, for supervisors to carry out the comply–or-explain mechanism, for every company to integrate the guidelines into their policies and practices and subsequently for the ongoing monitoring carried out both by companies and supervisors to assess and ensure compliance. In addition, overly extensive and prescriptive guidelines will tend to go further than intended by the Directive and the Delegated Regulation, creating additional and unintended constraints which ultimately impact policyholders adversely.

As the European Commission highlighted in its report on the 2014 review of the European supervisory authorities (ESAs), ESAs "*need to take into consideration the two objectives for issuing guidelines and recommendations set out in Article 16 of the ESAs Regulations, which should be read* ***cumulatively*** *to establish 'consistent, efficient and effective supervisory practices'* **and** to ensure the '*common, uniform and consistent application of Union law*'.[2] Insurance Europe wonders if this was done in practice by EIOPA in deciding to develop guidelines, as the majority of guidelines issued only seem to adhere to one of the criteria.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Solvency I and the 14 Directives related to it were defined in a combined total of 199 pages, while the Solvency II framework covers over 3 200 pages of text. 600 pages relate to the over 700 guidelines that EIOPA has published, with another 500 pages of explanatory text for these guidelines.

Some specific concerns are identified along with remedies in the next section but some of the general concerns over guidelines include (see Annex for Issue 5 for further information):

- Some guidelines duplicate existing legal text or are inconsistent with it.
- Some guidelines go beyond and restrict the requirements in the Directive and the Delegated Regulation.
- Some guidelines are unnecessarily burdensome to implement and adhere to.
- Timescales are not realistic or do not provide enough certainty to undertakings regarding supervisory approval processes.
- Additional restrictions beyond the Directive and the Delegated Regulation create unnecessary constraints on how insurers can finance themselves with admissible own fund capital.

New proposals by EIOPA to introduce appropriateness indicators for internal models are a further example of unnecessary detail and an approach that is not consistent with the Solvency II Directive. Internal models are crucial for sound risk management and steering because they create the right risk incentives and promote a better internal and external dialogue on risk exposures, thereby improving risk resilience. Appropriateness indicators are unlikely to give supervisors the information that they need to understand a company's risk and will weaken the transparency or accountability of the insurance sector.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

A more proportionate way of adopting and monitoring the regime should be considered for the future. Lessons should be learnt and reflected in the development of future financial services legislation and regulation. In particular the following should be considered:

- EIOPA should respect and ensure guidelines meet the **cumulative requirements** to establish '*consistent, efficient and effective supervisory practices*' **and** to ensure the '*common, uniform and consistent application of Union law*'[3].
- EIOPA should not issue opinions or guidelines in areas in which the Commission has been empowered to develop technical standards. In particular, not before the technical standard is endorsed to ensure

[2] Commission report on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS). Please note that the bold highlighting is ours.

[3] Commission report on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS). Please note that the bold highlighting is ours.

that non-binding guidelines do not pre-empt existing legislation. Additionally, fewer regulatory levels would reduce compliance costs and the risk of inconsistencies and contradiction.

- The number of mandatory policies should be limited to those defined in the Directive and the Delegated Regulation. There is no need for detailed guidelines regarding mandatory policy content as each insurer has specific characteristics in terms of organisation and risk profile and, thus, requires different content in its policies.
- Explanatory text for guidelines should only be illustrative and explain the purpose and the meaning of the provisions during the consultation phases.
- Explanatory text should either be abandoned in the final reports and final guidelines published by EIOPA or should explicitly be labelled as non-regulatory.
- Where legislation allows for flexibility, guidelines should not be drawn up arbitrarily in order to fill the gaps.
- Specify the legal framework with regard to the adoption of guidelines:
    - Guidelines must not anticipate basic political decisions and current EU legislative procedures and must not be used in lieu of missing political compromises.
    - Guidelines must not go beyond binding regulations or extend these arbitrarily by means of general provisions.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

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(ECOFIN) EXAMPLE: Qualitative requirements for insurers' investments in securitisations

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II)
- Delegated Regulation (EU) 2015/35 (Solvency II Delegated Act)
- Commission proposal for a Regulation on securitisations (2015/0226 (COD))

2. Please provide us with an executive/succinct summary of your example

Insurance Europe welcomes the European Commission's proposal on creating a European framework for simple, transparent and standardised (STS) securitisation. Insurance Europe believes that a robust EU framework is an important step toward building a sustainable securitisation market and contributing to economic growth in the EU.

However, a number of requirements in the EC proposal are burdensome for insurers as investors, namely: the due diligence and the risk retention requirements. In addition, the lack of compulsory third-party certification may result in great uncertainty in interpretations and lead to unintended consequences.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

The following requirements in the STS proposal raise concerns for insurers:

Due diligence requirements
Insurance Europe notes that Article 3 of the Regulation does not provide sufficient certainty on how it would apply where asset managers act for investors. The phrase "an institutional investor shall verify before becoming exposed to a securitisation" or "institutional investors that are exposed to a securitisation shall" does not make it clear who does what when. For example, a MiFID portfolio manager (definition 8 in Article 4 of MiFID II) may buy a securitisation for an insurance company by exercising discretion. Clarification is needed in order to prevent duplicating all the due diligence and record keeping requirements for each institutional investor client, their advisers, custodians and auditors.

Uncertainty around the certification of STS securitisations
In this EC proposal, the burden of identifying STS securitisations falls to originators and investors to avoid overreliance on third parties such as credit ratings agencies given that this was one of the main problems with the securitisation markets in the years leading to the financial crisis. National supervisors would under the EC proposal have "oversight responsibility" for STS securitisations.

Insurance Europe is concerned that the development of a STS framework that does not require third-party certification and introducing severe sanctions may result in great uncertainty in interpretations and lead to unintended consequences, such as: (i) disincentivise originators to issue securitisation due to the potential penalties/sanctions they face if there is disagreement or uncertainty in the identification of STS securitisations and (ii) disincentivise investors to buy securitisations due to the uncertainty around STS certification and the risk for cliff effects.

Risk retention requirements
Under Solvency II, insurance companies investing in securitised assets are required to ensure that the originator has complied with the risk retention requirements (an originator of a securitised asset is required to retain 5% of the risk of the asset). While securitisations issued in the US are subject to risk retention requirements, such requirements differ from the ones applying to the European Union. In this case, US securitisations would not qualify under the European framework and would be subject to much higher capital charges. In its efforts to create a level playing field between these two important markets and remove barriers to investments, Insurance

Europe believes that this is an issue, which needs to be addressed in order to make securitisations an attractive asset class.

The requirement to monitor the sell side's ongoing compliance with the retention requirements is very burdensome and it makes securitised assets a considerably less attractive investment opportunity for insurance companies.

Insurance Europe acknowledges that the risk retention rule has been introduced as a response to previous adverse behaviour on the side of originators. However, Insurance Europe believes that securitisation is a way to organise an investment in a portfolio of underlying loans, while it is the nature of the underlying loans that determine the actual risk of the investment.

Furthermore, the regulation has had an indirect adverse effect on market liquidity. Previously, banks could hold a buffer stock of relevant securitized assets in order to ensure market liquidity. Due to capital requirements this is no longer a possibility for banks.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The STS proposal could be improved in a number of areas in order to make a true difference to the attractiveness of securitisations as an asset class to investors such as insurers. This includes:

- Developing proposals for lowering the capital charge for securitisations under Solvency II.
- Addressing the uncertainty posed by the STS certification if it is questioned by the competent authority.
- Clarifying the due diligence requirements to ensure that each third party involved in the process is not required to duplicate all due diligence and record keeping requirements.
- In terms of monitoring risk retention Insurance Europe believes that this is best performed by the national supervisory authorities.

(COB) EXAMPLE: Extremely tight PRIIPs implementation timeline and high implementation costs (PRIIPs)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

This example refers to the PRIIPs Regulation 1286/2014 and particularly Articles 8, 10, 13, 31 and 34 **(PRIIPs Regulation)**.

2. Please provide us with an executive/succinct summary of your example

Insurance Europe welcomes enhanced transparency and comparability of different PRIIPs and welcomes that in future consumers will receive a short concise information document about the key features of the product.

However, as far as excessive compliance costs and complexity are concerned, Insurance Europe is very concerned about the extremely tight implementation period provided for the industry to implement the KID for PRIIPs products.

The European Supervisory Authorities are requested, by the PRIIPs Regulation level 1, to submit to the Commission draft regulatory technical standards (RTS) on the review and delivery of the KID by December 2015 and on the presentation and content of the KID by March 2016. Insurance Europe now understands that all RTS will be provided to the Commission by March 2016.

The PRIIPs Regulation also holds that, where the Commission adopts RTS, the period, during which the European Parliament and the Council may object to the RTS, should be two months from the date of notification. In addition, at the initiative of the European Parliament or the Council, that period can be extended by one month.

Accordingly, the insurance sector understands that it is not likely to have more than 3 to 4 months between the publication of the final regulatory standards, defining key elements of the KID, and its legal implementation for all insurance-based investment products. Considering the technically complex methodologies behind the KID's key features, which have been the object of no less than three consultations from the ESAs from November 2014 to February 2016, the time needed by the industry to implement such a document, has been very much underestimated. Such an extremely tight implementation timeline is not only bringing extra costs to industry but is simply unnecessary.

In addition, due to the legislators' ambition to compare as many products as possible, the implementation of the level 1 text will result in sophisticated implementation methods for manufacturers. In particular, insurers are affected more than other providers due to additional provisions on biometric risk cover. Additionally, the timeline set by level 1 is very hard to meet since the European Commission is expected to publish regulatory technical standards only in late Q2 2016, while manufacturers will have to provide key information documents (KIDs) from 31 December 2016, leaving manufacturers only a few months to implement several sophisticated risk indicators for different classes of products, cost indicators and performance scenarios. This will lead to additional unnecessary costs.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

The insurance sector is of the opinion that the timeline of the work that has been carried out so far on the PRIIPs RTS and of the remaining next steps that need to be undertaken before the application of the PRIIPs Regulation is supporting evidence demonstrating the unnecessary regulatory burden provided by the PRIIPs Regulation in respect to the implementation timeline.

- November 2014 – February 2015: consultation on the ESAs discussion paper on PRIIPs
- June 2015 – August 2015: consultation on the ESAs technical paper on PRIIPs
- November 2015 – February 2016: consultation on the ESAs draft RTS

- March 2016: Deadline submission draft RTS to the commission by the ESAs
- April 2016 (to be confirmed): EC adoption of the RTS
- May – June/ July 2016 (to be confirmed): EP and Council possible objection period
- August 2016 (to be confirmed): Final RTS provided to the industry
- December 2016: Application of the PRIIPs Regulation

Thus, providers will only have a few months (no more than 4 months) to implement several sophisticated risk indicators, cost indicators and performance scenarios for various products.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe strongly believes that the industry should be provided with a much more adequate implementation period for such an important and complex document that will require comprehensive IT system developments with the providers. A one-year extension of the PRIIPs implementation deadline is required to ensure that customers receive the best outcome.

Secondly, Insurance Europe is calling on the European Commission, co-legislators, regulators and supervisory authorities to ensure that they provide for sufficient implementation timelines in future legislation. As this is a recurring problem that extends beyond the PRIIPs, Insurance Europe strongly recommends that policy makers consider an additional separate timeframe for the technical standards to be developed and for the implementation by the industry. This will ensure sufficient time for implementation and will prevent future extensions and delays. Level 2 and 3 measures need to be taken into account when defining implementation deadlines.

Finally, with regard to the ESA consultation on the PRIIPs KID, especially the latest consultation on the draft RTS, it needs to be also mentioned that the consultation periods are very tight. More time is needed, for example, to actually test the calculation methods and methodologies proposed by the ESAs on insurance products.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(COB) EXAMPLE: Art. 20 (4) IDD creates disproportionate financial and organizational burden for insurance undertakings by demanding a PID for each customer instead of each consumer

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

- Article 20(4) of the Insurance Distribution Directive **(IDD)**

2. Please provide us with an executive/succinct summary of your example

Article 20(4) of IDD creates disproportionate financial and organizational burden for insurance undertakings by demanding a PID for each customer instead of each consumer. Merely large risks within the scope of the Solvency II Directive are excluded from the scope of Article 20 (4) of IDD. Insurance products for professional customers are often tailor made-products, sometimes even customized according to the individual needs of professionals with their unique interest in insurance coverage. Offering a PID for each and every one of these products requires a disproportionate effort and compliance costs. The need to provide the PID to professional customers has to our knowledge not been raised by the various organisations representing these undertakings.

Although a recital provides that **consumers** should benefit from the same level of protection in the area of disclosure information, the standardised PID needs to be provided prior to the conclusion of an insurance contract **by the distributor** (even exempted ancillary intermediary) **to customers (and not to consumers)**.

This is not adapted for professional risks and tailor made contracts: tailor-made contracts are not standardised one nor containing twice the same risks, guaranties or exclusions. Unfortunately only large risks ('large risks' ***means large risks*** as defined ***in Article 13(27) of Directive 2009/138/EC***) and not professional risks, are excluded from application of the PID requirements (Art 22 IDD).
In addition, it will prove difficult for ancillary (exempted) intermediaries to comply with this requirement.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.
(please give references to concrete examples, reports, literature references, data, etc.)

The variety of relevant covers in commercial insurance requires the development of a huge amount of product information documents. The relevance differs from undertaking to undertaking. However, an idea as to the amount of documents that needs to be generated can be derived from the variety of liability insurances. Such insurances address the liability risk of the various customers. The risks are fundamentally different and thus are covered by different products. Such products take into account the respective risk situation (eg pharmacies, architects, medical profession, lawyers, car workshops, agriculture, and forestry industry with production plants with individuals' insurance risks) and often offer customised insurance protection. The costs to draft and update the respective product information documents for commercial customers would be significant.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The obligation to provide a product information document under Art. 20 (4) IDD should be limited to consumers and should not be extended to professional customers.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(COB) EXAMPLE: Where ESA guidelines pre-empt EU legislative and regulatory acts, they are very likely to create inconsistencies with Level 1 texts and compliance costs for corporates

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

This example refers to:

- Insurance Distribution Directive (IDD)
- EIOPA founding regulation 1094/2010
- ESAs Joint Position on cross-selling

2. Please provide us with an executive/succinct summary of your example

- Product oversight and governance (POG) guidelines

After the conclusion of political agreement on the IDD in June 2015, the focus now turns to the various Level 2 and Level 3 measures of the Directive. The EC is currently preparing the mandate for EIOPA to work on its technical advice for Level 2 measures, which will be officially published once the IDD is published in the Official Journal (expected in February 2016).

However, recent developments confirm that EIOPA intends to proceed with Level 3 guidelines on POG without waiting for the IDD Level 2 Delegated Acts in this field. EIOPA intends to have these guidelines ready by April 2016 and to use them as a bridge to fill the gap until the implementation of the IDD in February 2018.

- ESA Joint Committee Cross-Selling Guidelines

The Joint Committee consultation on Cross-Selling Guidelines was published on 22 December 2014, which pre-empted the IDD text and contained requirements on cross-selling practices

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

These developments raise significant concerns for the following reasons:

- Firstly, from a legal point of view, Article 16 of the ESAs' founding Regulations permits the ESAs to issue guidelines in order to, cumulatively**,** (i) establish consistent, efficient and effective supervisory practices with the European System of Financial Supervision and (ii) ensure the common, uniform and consistent application of union law. The implications are twofold: (i) that Union law must already exist before EIOPA develops guidelines, and (ii) EIOPA may only issue guidelines to apply Union law, not to develop or formulate Union law.

Therefore, where primary legislation provides for Delegated Acts, EIOPA should not issue guidelines before the Delegated Acts have been adopted and furthermore should not regulate topics that are already covered by means of other EU instruments at Level 1 or Level 2.

- Secondly, from a practical point of view, **there is a significant risk of inconsistencies** between the EIOPA guidelines and the future IDD Delegated Acts on POG if the guidelines come before the Delegated Acts.

In practice, it means that insurance distributors risk having to **adapt** their internal systems and processes to comply **with the two successive sets** of potentially different rules **within just a few months,** giving rise to an unnecessary operational burden and increasing costs to the detriment of both the industry and consumers.

In order to overcome the inconsistencies, EIOPA adds in its report (EIOPA-CP-15-008) that the guidelines **will be amended** after the publication of the Delegated Acts; **Thus the industry will be obliged to face massive cost and administrative burden for something that will be amended later on.**

- Lastly, Insurance Europe would support EIOPA prioritising resources on the mandates it has received from the trialogue negotiations and agreed legislative texts rather than its own initiatives**.**

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

As guidelines are issued to ensure common, uniform and consistent application of existing Union law and consistent, efficient and effective supervisory practices, they should neither be a substitute for legislation nor go further. Where guidelines are not founded on a legal basis or where they pre-empt EU legislative and regulatory acts, they are not valid.

The existing legal framework for the issuance of guidelines must therefore be respected and, for the sake of legal certainty, further specified. In particular, it should be further clarified that:

- Basic political decisions are the exclusive competence of the EU legislator; therefore, guidelines must not (i) anticipate the outcome of ongoing EU legislative procedures, or (ii) be a substitute for legislation, for instance by addressing areas that the EU legislator has intentionally decided not to regulate, or by replacing political compromises that have failed.

- Guidelines must not be issued in areas where the European Commission has the power to issue technical standards (cf. recital 25 of the EIOPA Regulation).

- Guidelines must not go beyond the binding provisions laid down in the legislation, and they must not arbitrarily supplement them by means of general provisions.

- Guidelines are only allowed to be issued if it can be demonstrated, based on sufficient facts, that they are required to ensure cumulatively (i) a "*common, uniform and consistent application of Union law*" **and** (ii) "*consistent, efficient and effective supervisory practices"*. These criteria of Article 16(1) should be read cumulatively, as confirmed by the EC report of 2014. EIOPA appears to have a different view of this text, as evidenced by it incorrectly using "and/or" when citing the above Article 16(1) criteria in a recent guideline consultation, rather than referring to them cumulatively.

- The mandate of agencies and the principles laid down by the European courts should be borne in mind. The General Court and the Court of Justice of the EU (CJEU) set limits and control the legal basis and the extent of EU agencies' acts.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

Issue 6 – Reporting and disclosure obligations

(ECOFIN) EXAMPLE: Implementation of IFRS 9 and IFRS 4 Phase II (currently under development)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Regulation No. 1606/2002 of 19 July 2002 (IAS Regulation) and future decisions regarding the endorsement of International Financial Reporting Standards (IFRS).

2. *Please provide us with an executive/succinct summary of your example*

It is essential that International Financial Reporting Standards appropriately reflect the activities of insurers in their financial statements, including the particular needs in relation to the provision of long-term guarantees and long-term investments. To achieve this and to avoid unnecessary costs:

a) insurers need an option to defer the implementation of IFRS 9 (Financial instruments), so it can be implemented at the same time as the future insurance contracts standard (IFRS 4 Phase II) dealing with accounting for insurance liabilities; and
b) IFRS 4 Phase II needs to be finalised in a way that works appropriately with IFRS 9.

Failure to achieve this will create pressure on insurers to avoid long-term investments which meets policyholders' needs and also help insurers to play a significant role in supporting European growth and financial market stability.

3. *Please provide us with supporting relevant and verifiable empirical evidence for your example.*

Currently the mandatory effective date of IFRS 9 (Financial Instruments) as decided by the International Accounting Standards Board (IASB) is 1 January 2018. The related final insurance contracts standard (IFRS 4 Phase II) will however not be in force before 2020/2021. This non-alignment needs to be addressed in order to avoid unintended consequences for the insurance business model. The empirical evidence substantiating the need to allow insurers to align implementation of IFRS 9 and IFRS 4 Phase II was provided jointly by Insurance Europe and the European Insurance CFO Forum on 17 April 2015 to the European Financial Reporting Advisory Group (EFRAG). See Annex for Issue 6 in Section 5.

Evidence for the need for IFRS 4 Phase II to be finalised in a way that interacts with IFRS 9 can be found in the Commission's request for advice from EFRAG on the endorsement of IFRS 9. See Annex for Issue 6.

4. *If you have suggestions to remedy the issue(s) raised in your example, please make them here.*

To allow insurers to implement IFRS 9 with IFRS 4 Phase II, the following needs to be provided by the IASB — and if the IASB does not provide a suitable remedy at global level, a proper solution should be provided at EU level:

- Insurers should have an option to defer implementation of IFRS 9 so it can be implemented together with IFRS 4 Phase II. Most insurers have stated that they require this option.
- A few insurers, however, may need or want to implement IFRS 9 before IFRS 4 Phase II (eg those that are part of a conglomerate with banking activities).
- To ensure this is achieved, the Commission should follow the final advice of EFRAG and develop a temporary exemption for insurers as part of the European IFRS 9 endorsement process until the above points have been satisfactory addressed by the IASB.

To ensure IFRS 4 Phase II is finalised in a way that works appropriately with IFRS 9, certain significant points need to be addressed by the IASB before issuing the final standard:

- The accounting treatment for participating contracts needs to be further adjusted and amended to allow these types of contract, which are similar from an economic perspective to be accounted for in a consistent manner. This is important because these contracts represent a significant part of the activity of insurers in Europe and are key in the financing of the economy.
- The final standard for insurance contracts accounting should be based on an appropriate unit of account which is "at or higher" than the portfolio level and it should be determined on a top-down basis. The IASB's intention to base the final IFRS 4 Phase II's unit of account on individual contracts is not in line with the nature of insurance business and would make the final standard overly burdensome, if not impossible, to implement.

- The final design of IFRS 4 Phase II should also aim to address the prohibition within IFRS 9 on recycling equities measured at fair value through other comprehensive income; otherwise there will be disadvantageous treatment of long-term equity investments.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

Empirical evidence was provided jointly by Insurance Europe and the European Insurance CFO Forum on 17 April 2015 to the European Financial Reporting Advisory Group (EFRAG):
http://www.insuranceeurope.eu/sites/default/files/attachments/Joint%20comments%20on%20views%20on%20IFRS%209%20endorsement%20in%20the%20EU_0.pdf

Joint letter from Insurance Europe and the CFO Forum to EFRAG of 6 March 2015:
http://www.insuranceeurope.eu/sites/default/files/attachments/Joint%20letter%20to%20EFRAG%20on%20IFRS%209%20endorsement.pdf

European Commission's request for advice to EFRAG on endorsement of IFRS 9 of 8 December 2014:
http://www.insuranceeurope.eu/sites/default/files/attachments/European%20Commission%20request%20for%20advice%20to%20FRAG%20board.pdf

(ECOFIN) EXAMPLE: Current requirements for double-sided reporting under EMIR create unnecessary burdens, complications and costs

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Article 9 of Regulation 648/2012 (EMIR)
- Commission Delegated Regulation 148/2013
- Commission Implementing Regulation 1248/2012.

2. Please provide us with an executive/succinct summary of your example

Derivative agreements can be settled via exchanges, CCPs or OTC. Under the current provisions of EMIR, both parties have the obligation to report the agreement to trade repositories.

The obligation for dual-sided reporting (DSR) under EMIR requires the matching of reports from each counterparty to avoid double-counting. As Insurance Europe already pointed out in its response to the European Commission consultation on the review of EMIR, this is cumbersome, risks duplication, results in significant avoidable expense. The requirement for DSR is especially not justified in the case of exchange-traded derivatives (ETD) because they are standardised contracts.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

There are various reasons why matching is problematic in practice including different approaches to reporting by counterparties, timing differences across time-zones, due to differences of interpretation and also the lack of a global approach to unique trade identifiers (UTIs).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe believes that the obligation for dual-sided reporting (DSR) should be removed and replaced by one-sided reporting. One-sided reporting, like in the US, would offer the same, if not better, quality of data, while removing some of the practical and administrative challenges of DSR. One-side reporting would still meet the core need which is to ensure derivative positions and transactions are reported. If one-sided reporting cannot be introduced for all derivatives then it should be introduced at least for ETDs.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(ECOFIN) EXAMPLE: Problems relating to Solvency II reporting timetables

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- DIRECTIVE 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
- EIOPA Guidelines on reporting for financial stability purposes (EIOPA-BoS-15/107 EN)
- Solvency II reporting ITSs and guidelines.

2. Please provide us with an executive/succinct summary of your example

(i) Challenges created by quarterly and annual reporting processes

Solvency II reporting is an enormous task and is made more complicated and costly because of the current misalignment in scheduling and content of various reports. It is a big challenge for insurers to set up processes to be able to fulfil all reporting requirements, eg annual financial statements, Solvency II, ECB statistics, financial stability reporting and tax statements, in a consistent and efficient way.

In addition, the overlap among different Quantitative Reporting Templates (QRTs) alongside the ambitious timeline for reporting in a steady state will prove to be problematic for insurance companies as the multiplication of reporting requirements within such a short time frame represents a real operating expense and risk.

Another issue is the lack of harmonisation of QRTs across Europe. On the one hand, by some supervisors introducing national specific templates to supplement the standardised Europe-wide reporting requirements, there is a risk of duplicated reporting requirements and inconsistency across different Members States. On the other hand, in the case of groups the European Commission (and EIOPA) should ensure that supervisors are all asking for the same information (for requirements with options) from groups to avoid having different levels of requirements for a group headquartered in one member state and for its subsidiaries situated in different member states.

(ii) Financial stability reporting

Financial stability reporting duplicates data requirements under Solvency II but within a shorter timeframe. In their steady state, financial stability reporting templates will have to be reported seven weeks, four weeks, and 13 weeks faster than the respective Solvency II solo annual reporting, group quarterly reporting and group annual reporting respectively.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

(i) Deadlines for submission of QRT involve producing annual and quarterly reports in parallel:

According to the Solvency II Directive, the deadlines for submission of quantitative reporting templates (QRT) become shorter over four years as solo entities in the first year will have 20 weeks to submit their annual QRT and eight weeks for their quarterly QRT. These deadlines will be extended by six weeks for groups. Gradually these timeline will be reduced to reach after four years, 14 weeks for annual QRT and five for quarterly QRT for solo entities, with an additional period of six weeks for groups from 2020. Solo entities have 20 weeks and groups 26 weeks in 2016 to give their "day 1" reporting.

For example:

In 2016:

- Entities will have to submit the last report on a Solvency I basis before the 30th of April
- Entities will have to submit their day 1 reporting around the 19th of May
- Entities will have to submit their first quarterly reporting around the 26th of May
- The implication of these deadlines is that companies will have to produce 3 different reporting on different basis in less than one month

In 2017:

- Entities will have to submit their fourth quarterly reporting of 2016 before the end of February 2017
- Entities will have to submit their annual reporting around the 20th of May
- Entities will have to submit their first quarterly reporting around the 17th of May

It is also worth pointing out that entities will also have to submit their qualitative reports (RSR and SFCR) around the 20th of May.

In addition, insurance companies will have to provide at least three sets of reporting templates: Solvency II, Financial Stability, ECB and national reporting. The number of templates and the information required are extensive and very constraining.

(ii) Financial stability reporting

Groups under the scope of financial stability reporting have to provide balance sheet information within seven weeks after the year-end reference date. The same information has to be reported again four weeks later for the Q4 Solvency II reporting and 13 weeks later for annual Solvency II reporting. Thus, insurers have to either run a threefold calculation to cover for three different reporting requirements or shorten all processes up to seven weeks. The latter is almost impossible if you consider 1) that groups have to consolidate data from their solo entities at first, and 2) that insurance undertakings are likely to run into resource bottlenecks at year-end when not only financial stability reporting and Solvency II reporting is due, but also the annual financial statements. Additionally, in their attempt to meet the short deadlines, a group will need to receive the information even quicker for compilation purposes, resulting in even shorter deadlines than what is prescript for the solos affiliated to that group.

The following identical quarterly information have to be submitted again for regular Solvency II reporting four weeks later (ie 11 weeks after end of quarter):Solvency II balance sheet, information on Own funds, premiums, claims and expenses by country, asset-by-asset list. Additionally, one annual piece of information is also part of annual Solvency II reporting which is regularly due 13 weeks later (ie 20 weeks after end of year), namely information on life obligations analysis.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

(i) A new architecture of reporting requirements in the European financial supervisory legislation would require careful consideration.

As for the overlap in Solvency II reporting, the timeline for reporting/disclosing should be amended and adjusted to ensure feasibility and efficiency of reporting. The gap between the previous prudential reporting and the new one is so wide that progressive and smooth evolution should be taken into account to ensure right implementation of the new regime. As 2016 will be the first year, feedback from supervisors on the necessity of all the information should be evaluated, assessed and amended if necessary.

Impact assessments should be performed earlier in the solvency II process for all the reporting requirements from different statements to show evidence of the need and the harmonisation of all these requirements. In the future, reporting requirements should be reviewed, streamlined and harmonised.

(ii) Align financial stability reporting deadlines with the Solvency II reporting deadlines.

The financial stability requirements effectively mean reporting the same information twice and this duplication coupled with such an ambitious timetable is extremely burdensome. This applies not only to large insurers, but also to small and medium size entities for which the burden is even more acute given limited resources. Therefore, we recommend the Commission to align the financial reporting deadlines with the Solvency II reporting deadlines.

5. ***Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.***

-/-

(ECOFIN) EXAMPLE: Report on solvency and financial condition: contents, matching adjustment and volatility adjustment

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II), Article 51: Report on solvency and financial conditions.

2. Please provide us with an executive/succinct summary of your example

Article 51(1a) of the Solvency II Directive provides that where the matching adjustment is applied a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position should also be described. Additionally, it sets out that in case the volatility adjustment referred to in Article 77d of the Directive is used by the undertaking, a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

This requirement in Article 51(1a) is unnecessary and risks leading to misinterpretations, confusing investors and undermining the legitimacy of these two LTG key components of the Omnibus II agreement, as well as affecting financial stability.

The requirement for public disclosure of the impact of the LTG measures also implies an extra compliance burden due to dual-reporting.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Evidence of the potential misunderstanding of the actual solvency position of insurance undertakings for retail investors, financial analysts and policyholders cannot be provided at the moment since no such reporting has come into effect as yet. However, as these measures were carefully calibrated to reflect economic reality, we can anticipate that a disclosure to the public of the impact without the measures can be misinterpreted in particular by the lay people, to the detriment of companies. Indeed, insurers invest in assets for the long term in order to match their liabilities and are therefore able to disregard short-term market artificial volatility. As such, this artificial volatility does not need to be reported in public filings (only to the supervisors).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The proposal is to amend Article 51(1a) of the Solvency II Directive in the following way:

"*1a. Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1(d) shall include a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied~~, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position~~.*

The description referred to in paragraph 1(d) shall also include a statement on whether the volatility adjustment referred to in Article 77d is used by the undertaking ~~and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position~~."

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(ECOFIN) EXAMPLE: Excessive costs generated by reporting of ECAI ratings

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Solvency II Delegated Act 2015/35*, Article 304.*

2. Please provide us with an executive/succinct summary of your example

Solvency II reporting requirements demands the reporting of ratings of assets from External Credit Assessment Institutions (ECAI rating). This poses a considerable financial burden on undertakings as ECAIs have decided to not only raise license fees for undertakings' use of ratings but also to impose an extra fee related to undertakings passing information on asset ratings to a third party – eg a financial supervisor.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

For example, rough estimates suggest that in Denmark the extra cost of using and reporting ECAI ratings is in the area of €5-€10m for the whole market. In a European context, it can easily be inferred that the extra costs in the Danish market are a drop in the bucket.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe believes that it is not essential for financial supervisors that ECAI ratings are part of undertakings' ongoing reporting. Since assets identified would be reported, national supervisors can implement systems to look-up ECAI ratings where they are needed. This would limit the need for every undertaking to pay for licenses.

Insurance Europe suggests to remove the ECAI rating reporting requirement from the general reporting requirements. In addition, Insurance Europe suggests that the option to exempt undertakings from particularly burdensome reporting requirements on grounds of proportionality in Article 35(6) and (7) of the Solvency II Directive be made mandatory instead of optional so that member states are forced to include it in their national legislation.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

Issue 7 – Contractual documentation

(COB) EXAMPLE: Paper requirements for information provision (IDD)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

- Article 23 of the Insurance Distribution Directive **(IDD)**
- Article 14 of the PRIIPs Regulation 1286/2014 **(PRIIPs Regulation)**

2. Please provide us with an executive/succinct summary of your example

Clear obstacles to the use of digitalisation to help simplify and make contractual information more understandable can be found in the rules regarding the provision of information to consumers under the recently adopted Insurance Distribution Directive (IDD).

The use of digitalisation greatly improve providers' ability to target and layer the relevant information, to improve presentation and enhance overview of otherwise comprehensive information. However, it does mean that the information can be presented and framed in such a way that makes it more likely to be effective. Consumers should therefore be able to easily choose the manner in which they wish to receive information.

The recently adopted IDD contains the relevant conditions that must be followed for the provision of information regarding the distribution of all insurance products (Article 23). The primary condition that must be met under this article is that all information must be provided to customers in paper form. While it is crucial that customers receive all the necessary information in order to compare products and make informed decisions, imposing such a requirement not only presents an obstacle to the simplification and cost-effective provision of information, but it also runs counter to the Commission's objectives to promote and bolster a robust digital economy.

The PRIIPs Regulation also sets out requirements for the provision of the key information document (Article 14) that do not fully embrace the use of digitalisation to aid in the simplification and cost-effective provision of information.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.
(please give references to concrete examples, reports, literature references, data, etc.)

Article 23 of the IDD contains the relevant conditions that must be followed for the provision of information regarding the distribution of all insurance products. The issue, however, is that the information conditions as set out in this article fail to adequately capture the growing digital trend and the provision of information in a paperless electronic form. All information is required to be given to the consumer "on paper" (Article 23(1)(a)), and is only allowed to be provided in another medium, such as on a website or other digital format, "by way of derogation" or exception from this paper requirement (Article 23(2)), subject to certain conditions being satisfied (Article 23(4) and 23(5)).

The introduction of such a mandatory default paper requirement is not reflective of a consumer-friendly approach and is something that will actually inhibit digitalisation and prevent the further development of the internet as a distribution channel, at a time when the benefits of a digital society are repeatedly being focused on. The logical approach would surely be to allow consumers the choice to decide for themselves in which format they wish to receive the information, particularly when considering the volume of paper that would need to be provided.

Article 14 of the PRIIPs Regulation also provides that paper should be the default option for the provision of the key information document where the PRIIP is offered on a face-to-face basis. It also imposes specific additional

conditions for the provision of information in a durable medium other than paper (Article 14(4)) and by means of a website (Article 14(5)).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

A mandatory default paper requirement should be removed from IDD and the PRIIPs Regulation, and replaced with a clear possibility for consumers to choose in which format they wish to receive the information. This would better facilitate the move towards digitalisation and allow consumers control over the manner in which they access information.

Finally, we would strongly suggest that this be considered in future legislation, for example with the Pensions Benefit Statement as required in the current review of the IORP Directive.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

AREA B: Unnecessary regulatory burdens

Issue 8 – Rules outdated due to technological change

(COB) EXAMPLE: Paper requirements for information provision (IDD)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

- Article 23 of the Insurance Distribution Directive **(IDD)**
- Article 14 of the PRIIPs Regulation 1286/2014 **(PRIIPs Regulation)**
- Directive 2002/65/EC on the distance marketing of consumer financial services

2. Please provide us with an executive/succinct summary of your example

An important area where the effectiveness of rules could be enhanced to respond to increasingly online-based services relates to the **provision of information** to consumers.

The recently adopted Insurance Distribution Directive (IDD) contains the relevant conditions that must be followed for the provision of information regarding the distribution of all insurance products (Article 23). The primary condition that must be met under this article is that all information must be provided to customers in paper form. While it is crucial that customers receive all the necessary information in order to compare products and make informed decisions, imposing such a requirement not only impacts on the ability of the rules to respond to increasingly digital-based services, but it also runs counter to the Commission's objectives to promote and bolster a robust digital economy.

The PRIIPs Regulation also sets out requirements for the provision of the key information document (Article 14) that could be further enhanced in order to better respond to increasingly digital-based services.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Article 23 of the IDD contains the relevant conditions that must be followed for the provision of information regarding the distribution of all insurance products. The issue, however, is that the information conditions as set out in this article fail to adequately capture the growing digital trend and the provision of information in a paperless electronic form. All information is required to be given to the consumer "on paper" (Article 23(1)(a)), and is only allowed to be provided in another medium, such as on a website or other digital format, "by way of derogation" or exception from this paper requirement (Article 23(2)), subject to certain conditions being satisfied (Article 23(4) and 23(5)).

The introduction of such a mandatory default paper requirement is not reflective of a consumer-friendly approach and is something that will actually inhibit digitalisation and prevent the further development of the internet as a distribution channel, at a time when the benefits of a digital society are repeatedly being focused on. The logical approach would surely be to allow consumers the choice to decide for themselves in which format they wish to receive the information, particularly when considering the volume of paper that would need to be provided.

Article 14 of the PRIIPs Regulation also provides that paper should be the default option for the provision of the key information document where the PRIIP is offered on a face-to-face basis. It also imposes specific additional conditions for the provision of information in a durable medium other than paper (Article 14(4)) and by means of a website (Article 14(5)).

- Directive on Distance Marketing of Consumer Financial Services

Findings from the DG JUST questionnaire on the Distance Marketing Directive underline and stress that provisions contained in the directive are outdated since information requirements and advice, in some jurisdictions, are not suitable for distance marketing and national specificities and minimum harmonization led to different levels of implementation:

- Option left to MS give rise to inconsistent implementation and lack of harmonization between jurisdictions (eg in member states not making use of the derogation, the **right of withdrawal** of 30 days applies to all life insurance contracts **including unit linked contracts**. Other member states have chosen to apply the derogation of article 6 paragraph 2 to unit-linked insurance contracts)
- Option whether or not to apply existing national legislation as regards information: for example, some member states **decided to apply existing national provisions on pre-contractual information**
- The number of pieces of pre-contractual information to provide to the client is effectively **not suitable for a smart phone**
- Obstacles as regards **electronic signature** (almost all contracts concluded at the end of a distance marketing process are provided on paper. The reason is that electronic signature is not effective and not fully recognized by the judge)
- Differences existing as to mandatory advice or advice as a service are barriers to distance marketing.
- Moreover, for life insurance contracts anti money laundering legislation requires that the identity of the client is formally proven which is difficult to fulfil in distance marketing.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

A mandatory default paper requirement should be removed from IDD and the PRIIPs Regulation, and replaced with a clear possibility for consumers to choose in which format they wish to receive the information. This would better facilitate the move towards digitalisation and allow consumers control over the manner in which they access information. This should also be considered in future legislation, such as in the review of the IORP Directive in relation to the Pensions Benefit Statement.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

Issue 9 – Barriers to entry

(ECOFIN) EXAMPLE: Barriers to place business in third countries

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Solvency II (European insurance regulation): Directive 2009/138/EC and Regulation (EU) 2015/35
- EC equivalence decisions (delegated acts)

Barriers are created by regulatory developments in third countries and could be addressed via bilateral, plurilateral and multilateral trade negotiations that the Commission is engaging in.

2. Please provide us with an executive/succinct summary of your example

The European insurance industry has a significant presence in third countries. The industry has over the past years been facing an increasing protectionist trend in a number of third countries, who have created either market access barriers or discriminatory regulatory requirements that limit the extent to which European (re)insurers can place business in these jurisdictions.

In addition, EU companies will potentially be disadvantaged compared to domestic companies in third counties due to the cost of regulatory compliance, and the need to hold capital according to Solvency II standards in cases where an equivalence decision does not exist.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Please refer to the Insurance Europe market access issues paper as published in early 2015. An updated version of this paper will follow in early 2016.

Due to disadvantages for EU-based companies, business is already being off-shored to non-EU companies. Longevity reinsurance is increasingly moving outside of the EU. In addition, companies that are considering re-location cite Solvency II as a factor in their decision-making.

For example, in 2013 Europe's 20 largest insurance companies earned approximately 30% of their premiums outside Europe (see Annex). At present, where equivalence with other countries is lacking this could have a damaging impact on the position of EU firms in third countries, particularly where they are competing with non-EU firms.

Moreover, it is important that Europe is regarded by third countries as an open market. For example, with regards to reinsurance, companies know that they can enter into reinsurance arrangements in the EU on equal regulatory terms. The European insurance industry welcomes the current dialogue between the US and EU on the covered agreement, which would ensure market access between two of the world's biggest insurance markets.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The Commission should continue its efforts to engage in bilateral, plurilateral and multilateral trade discussions and include the industry's concerns on the negotiating agendas in order to help support the business of the European (re)insurance industry on foreign markets.

Furthermore, necessary decisions on Solvency II equivalence should be made quickly and efficiently to avoid uncertainty.

Insurance Europe welcomes the decisions on provisional equivalence under Article 227 of the Solvency II Directive for certain countries (Australia, Bermuda, Brazil, Mexico, Canada, US) and would encourage provisional

equivalence to be extended to other countries, such as Chile, China, Hong Kong, Israel, Singapore, South Africa, Turkey.

Insurance Europe would also support the granting of temporary equivalence to the United States under Article 172, provided that it has taken steps to initiate negotiations of a covered agreement with the United States on the removal of discriminatory state-level reinsurance statutory collateral requirements.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

Please refer to the Insurance Europe market access issues paper (2015).

Please also refer to the Insurance Europe letter to the EC on equivalence from September 2015. (https://extranet.insuranceeurope.eu/International%20Affairs%20And%20Reinsurance%20Working%20Group/PublishedDocuments/ECO-IAR-15-189.pdf)

(COB) EXAMPLE: Impact of IBER non-renewal (IBER)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?
(if applicable, mention also the article referred to in your example.)

This example refers to the Insurance Block Exemption Regulation (267/2010) **(IBER)**

2. Please provide us with an executive/succinct summary of your example

Insurance Europe welcomes the Commission's willingness to address barriers to entry for new market players to challenge incumbents within the context of this call for evidence. The Insurance Block Exemption Regulation (IBER) is a key legal instrument used at EU level to stimulate competition and innovation in the (re)insurance sector, which in turn ensures that consumers are being offered effective products and services at reasonable prices. The current IBER, last renewed in March 2010 and due to expire in March 2017, sets out the conditions under which (re)insurance companies can cooperate in the fields of joint calculations and studies as well as (re)insurance pools, without infringing EU competition law. The European Commission (EC) is currently examining whether or not the IBER should be renewed.

Insurance Europe wishes to take this opportunity to underline why a full renewal of the current IBER is essential for both (re)insurers and consumers in Europe.

The current IBER leads to the opening of markets, in particular to foreign as well as to small and medium-sized insurers by enabling them to access sufficient information and gain the necessary experience to cover risks. This enhances the variety of products and coverage available to consumers. In fact, the cooperation facilitated by the IBER enables insurers to offer innovative products and services meeting consumers' constantly evolving needs and expectations also due to the fast emergence of new risks.

A non-renewal of IBER would create legal uncertainty for (re)insurers, which in turn would make their internal legal self-assessments to ensure that their activities are in line with EU competition law more burdensome and costly. This would be particularly detrimental for small and medium-sized companies. Some insurers might even be forced to abandon positive business cooperation for fear that it is afterwards challenged by the competition authorities.

The Solvency 2 reform introduces new reporting requirements to the national supervisory authorities including new indicators. Among these indicators, the requirement of equities necessary for each big class of risk (credits, subscription, and defect of the counterparts…) will have to be communicated by insurers to supervisors. Such an increased reporting of quantitative data, combined with the increased legal uncertainty with regard to statistical co-operations between insurers should the IBER not be renewed, could create a high risk of arbitration to the detriment of the statistical co-operations between insurers. This would in turn result in a harmful decline of the production of statistical data.

Without the IBER, the current competitive environment in which (re)insurers are currently operating would be hindered, to the detriment of the single market and consumers. The non-renewal of the IBER would ultimately lead to less innovation and less variety in products on the market, leading to less consumer choice. Any additional costs incurred by (re)insurers are also likely to be transferred to consumers.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.
(please give references to concrete examples, reports, literature references, data, etc.)

Insurance Europe's members have reported a number of positive developments enabled by the IBER over the past years concerning the competitive situation in their market and the market structure, including new entries.

For example:

- In Italy, the (re)insurance market has become more and more competitive over the last ten years, particularly for motor third-party liability (MTPL), which is the largest class of non-life business. The Italian insurance association (ANIA) reported on having provided two new entrants with motor third-party liability (MTPL) and accident data in 2013 and 2014, in line with the IBER conditions for exemption on joint compilations. As a result, these insurance companies have successfully penetrated the local MTPL market, one of them bringing innovation by selling its MTPL products via a new distribution channel (banks).

- In Malta, a number of new entrants have benefited from the national insurance association's (MIA) joint compilations - without contributing to them. Over the past five years, this has provided them with access to the local general insurance market. These new entries have fostered competition, in particular in the motor insurance market, despite the fact that the loss ratio has deteriorated.

- In the Netherlands, the Dutch insurance association (VVN) has been compiling data from public services and several insurance undertakings in relation to workmen's compensation insurance for about 10 years. This has permitted several insurance undertakings to become and remain active on this market. Without these joint compilations, these undertakings would not have been able to obtain sufficiently representative and reliable data on their own.

- In France, the Economy and Finance Ministry commissioned a report on retail insurance (home and motor insurance) that was published in 2011. The report highlights (i) new entries, (ii) a highly competitive concentration index, and (iii) strong competition based on tariffs (pp 37 and 38). The report can be found here. The share of banks as a distribution channel for these retail non-life insurance lines has increased over the last 10 years, from 5.6% for motor insurance and 9.7 % for home insurance in 2002 vs. 10% for motor insurance and 16.9 % for home insurance in 2012. Moreover, the net combined ratios of reinsurance remain at high levels, thus confirming the strong competitive nature of these markets (motor insurance: 103% in 2013; 101 % in 2012; 103% in 2011. Home insurance: 103% in 2013; 105% in 2012; 99% in 2011).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

In this context, Insurance Europe called for the European Commission to propose a full renewal of the IBER in its 2016 report to the European Parliament and the EU Council as well as in its public consultation in 2016.

This would ensure that (re)insurers and consumers can continue to take advantage of the full benefits of a competitive European (re)insurance single market.

It is also essential that the renewal of the current rules in 2017 is done through the IBER instrument. Other alternative instruments such as guidelines would, by their very nature, not be legally binding and would not be tailored to the specificities of the (re)insurance sector.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

AREA C: Interactions, inconsistencies and gaps

Issue 10 – Links between individual rules and overall cumulative impact

(ECOFIN) EXAMPLE: Cumulative impact of Solvency II, CRD IV and EMIR on insurers' ability to invest in long-term assets

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Solvency II (European insurance regulation): Directive 2009/138/EC and Regulation (EU) 2015/35
- European banking regulation/Basel III: Directive 2013/36/EU and Regulation (EU) 575/2013
- European Market Infrastructure Regulation (EMIR): (EU) 648/2012

2. Please provide us with an executive/succinct summary of your example

The EMIR requirements to centrally clear and collateralise, combined with the Capital Requirements Directive (CRD) IV and Solvency II requirements, risk forcing insurers to hold significant amounts of cash that is economically unnecessary, despite the fact that insurers hold high-quality, non-cash assets. Implementing the requirements of EMIR creates significant fixed and variable costs for insurers. Holding unnecessary amounts of cash is inefficient, costly, reduces the capacity to invest long-term and dilutes investment returns for policyholders.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

In order to optimise asset/liability risk management it is often necessary for insurers to buy derivatives as hedges. Solvency II rightfully encourages this and creates significant capital penalties for unhedged risk exposures. Insurers typically hold government and corporate bonds in significant volume. These assets have therefore been used as collateral to be posted within derivatives agreements.

EMIR introduces requirements intended to ensure that derivatives are reported and collateralised in accordance with minimum standards. EMIR allows derivative counterparties to use a wide range of assets as collateral and it sets conservative and standardised haircuts to ensure that the collateral will safely support exposure even under stressed market conditions. Problems arise, however, because of the requirement of EMIR to clear the most common derivatives via central counterparties (CCPs).CCPs, however, often accept only cash. This practice means that insurers, despite having perfectly suitable bonds, cannot use them as collateral and instead have to hold significant amounts of cash. Without the emerging practice under EMIR, cash would often only form a very small part of insurers' portfolios. This is because insurers with long-term business have very little need for cash, given the matching of assets/liabilities, stable inflow of premiums and cash coming from investments (eg dividends, coupons).

One potential solution to this problem could be for the insurance company to raise the cash when needed through repos provided by banks. However, CRD IV rules (leverage ratio) disincentivise banks from providing repo services at reasonable cost. In addition, the FSB has indicated concerns over the use of repos for collateralisation and has been over recent years considering a number of new requirements aimed at disincentivising the use of the repo market for derivative collateral purposes because of concerns over how these can lead to complex linkages across financial markets.

It should also be noted that for non-vanilla derivatives there are no central clearing solutions, so these will remain in the OTC environment and offered directly by banks to insurers. However the CRD IV rules and the leverage ratio requirements disincentivise banks from offering OTC derivatives.

4. ***If you have suggestions to remedy the issue(s) raised in your example, please make them here.***

Insurance Europe believes that there are two possible solutions to address the concern about cash as collateral:

1) Encourage CCPs to develop tailored solutions for both pension funds and insurance companies. This could be done by either allowing for non-cash collateral as variation margin or providing viable repo solutions over the lifetime of the derivative.
2) Consider a permanent exemption from the central clearing obligation for both pension funds and insurance companies that use derivatives for hedging.

In addition, banking rules should be reviewed to see if there are any adjustments that can be made to allow banks to continue to provide insurers with OTC and repo solutions at reasonable prices.

5. ***Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.***

-/-

(ECOFIN) EXAMPLE: treatment of small companies under EMIR

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Article 2, definitions 8 and 9 of the Regulation (EU) 648/2012 (EMIR) in connection with Directive 73/239, Directive 2002/83 and Directive 2005/68.

2. Please provide us with an executive/succinct summary of your example

Insurance companies predominately use financial derivatives to hedge balance sheet risks. These hedging strategies - and the corresponding acquisition of financial derivatives - are important tools for insurers' asset liability management.

EMIR has introduced a number of requirements which in practice translate into obligations that are burdensome both in terms of initial implementation and ongoing operation, especially for small and very small companies.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Small companies also have hedging needs and, where the size of the risk exposure is limited, the company may decide to engage in hedging via derivatives but only perform one transaction per quarter or per year. A single transaction would in fact trigger significant EMIR obligations, including collateral management on a daily basis. Such an entity would be faced with a decision of whether it is efficient from a risk and cost perspective to be hedged and could in the end be incentivised to not hedge because of overly-burdensome EMIR requirements. A reduction of hedging purely driven by the cost of regulatory compliance will lead to an increase of companies' idiosyncratic risk.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The Commission should in its report on the review of EMIR assess the burden for small institutional investors and reflect on unintended consequences where small institutional investors reduce their risk-mitigation via derivatives. The report should reflect on how the requirements of EMIR can better take into account the situation of small companies.

(ECOFIN) EXAMPLE: Separate supervision of financial conglomerates is an unnecessary burden

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and Commission Delegated Regulation (EU) 2015/35
- Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) and Delegated Regulation (EU) 2013/575 (CRR)
- Financial Conglomerate Directive 2011/89/EU - Directive 2002/87/EG on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (FICOD)
- European Central Bank (ECB) Regulation and Guide on options and discretions available in Union law, currently part of the ECB consultation on a draft ECB Regulation on the exercise of options and discretions available in Union Law

2. Please provide us with an executive/succinct summary of your example

The overall concerns relate to duplication of requirements and difference in legal treatment of financial conglomerates, as important and imposing decision are left for national discretion.

There are three types of Financial Conglomerates: dominantly insurance led, dominantly banking led and conglomerates with no dominant sector. Both Solvency II and CRD IV have requirements relating to group supervision. Both legislations also include articles that refer to specific areas of equivalence between regimes. However, it is left to national discretion whether these equivalent regimes articles are applicable at national level. Consequently, the industry is very concerned that some NSAs might deem certain provisions in Solvency II not to be equivalent and require insurance dominated financial conglomerates to apply the CRD IV / CRR rules for the entire group.

In addition to the Solvency II and CRD IV Directives, a group comprising banking and insurance business units and meeting the thresholds defined in FICOD will also have to comply with FICOD. This means that the conglomerate has to comply with three different European regulations and potential diverging local interpretations. This approach does not help harmonisation at European level, creates regulatory overlap and unnecessary compliance costs without ensuring better policyholder protection.

Insurance Europe believes it is necessary to clarify interactions between the banking, the insurance and the financial conglomerates related regulations in order to avoid the duplication of requirements that adds complexity to group operations and creates unduly increased costs to comply with excessive regulations.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

In some member states supervisors have determined, based on the discretion imparted by FICOD, that Solvency II is not equivalent in risk-based supervision, compared to CRD IV. Consequently, financial conglomerates for which this is the case, have to report simultaneously, at a group level, on the basis of FICOD, Solvency II and CRD IV provisions. The emerging capital requirements and solvency ratios exhibit significant differences, as a natural consequence of the very different natures and designs of supervisory regimes. These requirements are not only operationally burdensome, but also give rise to measurement indicators that are not tailored for the insurance business model and are therefore almost impossible to manage and supervise. Furthermore, the requirements provide no additional benefit in terms of policyholder protection.

Besides, the need to and the benefits of maintaining an additional layer of supervision for financial conglomerates in Europe considering the implementation of Solvency II and CRD IV/CRR requirements is not evident. From the perspective of insurance-led financial conglomerates, Solvency II ensures that:

- governance requirements apply group-wide, also to significant (from a risk perspective) unregulated entities;
- cross-sectoral capital requirements are reflected in the insurance group solvency calculation;

- supervision of intra-group transactions as well as risk concentrations occur group-wide, ie also with regard to cross-sectoral entities and significant non-regulated entities;
- supervision of holdings is already covered and even extended to include sub-holdings without a separate management function on national level.

In addition, remaining gaps in terms of scope of FICOD have been closed, as mixed financial holding companies are included in the Solvency II group supervision. At the same time, waivers were included in Article 213 of the Solvency II Directive following an assessment that certain provisions of FICOD and Solvency II are equivalent. The issue is further explained in the next example below.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Against this background, Insurance Europe believes that supplementary supervision of financial conglomerates should be assessed and revisited since the evolving sectoral regulation for insurers and banks extensively address cross-sectoral risks.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

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ECOFIN) EXAMPLE: Unintended consequences of overlapping sectorial regulation

1. *To which Directive(s) and/or Regulation(s) do you refer in your example?*

- Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and Commission Delegated Regulation (EU) 2015/35
- Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) and Delegated Regulation (EU) 2013/575 (CRR)
- Financial Conglomerate Directive 2011/89/EU - Directive 2002/87/EG on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (FICOD)
- European Central Bank (ECB) Regulation and Guide on options and discretions available in Union law, currently part of the ECB consultation on a draft ECB Regulation on the exercise of options and discretions available in Union Law
- Directive 2014/59/EU, establishing a framework for the recovery and resolution of credit institutions and investment firms.

2. *Please provide us with an executive/succinct summary of your example*

Certain financial groups are deemed to be financial conglomerates and are automatically identified as a Mixed Financial Holding Company.

Several National Insurance Associations (NIAs) have reported an issue related to the implementation of the Solvency II Directive when an insurance group includes small banks. Some National Supervisory Authorities (NSAs) consider the banking entities in the group as being "too large", which leads to insurance-led conglomerates being subject to a supervisory treatment that is not appropriate. In particular:

- some NSAs request the application of CRD IV (instead of Solvency II) to the whole insurance group.
- others request quantitative reporting in line with CRD IV rules at the level of the holding, removing all the insurance subsidiaries from the own funds.

Financial conglomerates, in the meaning of the FICOD, headed by a mixed financial holding company (MFHC), are formally subject to consolidated CRR supervision (Article 11(3) CRR). The CRR uses the concept of MFHC from the FICOD in the context of CRR consolidated supervision.

However, unlike the FICOD itself, the CRR does not distinguish between conglomerates with a primary banking (including asset management) character, conglomerates with a primary insurance character and conglomerates with a (more or less) even division of banking and insurance activities.

The application of CRR consolidated supervision to MFHCs with a primary insurance character (i.e. large insurance groups with a relatively small bank in the group) has unintended consequences. Such groups, which are treated primarily as insurance groups and, as such, are subject to Solvency II group supervision, would become, according to Article 11(2) and Article 11(3) of the CRR, subject to the obligations of Part II, III, IV, VI and VII of the CRR on the basis of the consolidated situation of the parent MFHC. This means these groups would need to comply, on a consolidated basis, with capital requirements, own fund requirements, large exposure requirements, liquidity requirements and leverage requirements on a consolidated basis, in addition to the comprehensive Solvency II group requirements.

These groups are managed primarily as insurance groups, not as banking groups. The requirements imposed by Solvency II are developed for such groups and these groups should, on a group basis, be regulated in accordance with these requirements (in addition to the solo-requirements to which the banking part of the group is subject). The differences that exist between Solvency II and CRR lead to unsatisfactory results. For instance, the calculation of the CRR consolidated own funds for such groups may lead (depending on the capital structure of the group and the calculation method applied) to a significantly overstated or understated consolidated capital

position. In neither case (either a full deduction of the insurance entities or a 100% risk-weighting of these entities), the result of the calculation reflects the actual capital position of the insurance conglomerate properly, on a consolidated basis.

With respect to the other CRR requirements referred to, other complications arise, due to the fact that the CRR requirements are tailored to banking groups and banking activities, not to insurance groups with a relatively small bank in the group.

Similar to the CRR, in the Bank Recovery and Resolution Directive, the MFHC concept is also used, with respect to application of the BRRD requirements at consolidated level (see article 1(1) c of the BBRD). This means that the BRRD requirements, which have been designed for the recovery and resolution of banks and banking groups, would formally also apply to insurance led conglomerates. BRRD requirements, generally speaking, are not designed for such groups. Insurance groups, not being a financial conglomerate (or insurance led conglomerates not headed by an MFHC) are not subject to the BRRD requirements.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Article 11(2) of the CRR requires the application of the obligations of parts Two to Four and Seven of the CRR to institutions, headed by eg an MFHC. Through this provisions, conglomerates with a primary insurance character also become subject to these CRR provisions. This means these groups would need to comply, on a consolidated basis, with capital requirements, own fund requirements, large exposure requirements, liquidity requirements and leverage requirements on a consolidated basis, in addition to the comprehensive Solvency II group requirements. Article 120 CRD IV (as well as Article 212 of the Solvency II Directive, which contains a more or less similar provision) contains an option to apply, where groups are subject to equivalent supervision under the Solvency II, CRD IV/CRR and or FiCoD, only one of the regimes (the most dominant, i.e. Solvency II, in case of conglomerates with a primary insurance character) applies to that group. Although it may be concluded from the inclusion of these provisions in the different directives that these should be considered to be equivalent, this is not made explicit in the text. Some NSAs seem inclined to use discretion and not consider Solvency II equivalent to CRD IV (at least not in all respects).

Alternatively, it may also be argued that CRR consolidated requirements do not apply at all to insurance led conglomerates. Article 8 of the EC Delegated Regulation 342/2014 indicates that method 1 (accounting consolidation) of the FCD is equivalent to method 1 of Solvency II, which would result in applying the Solvency II requirements (pursuant to article 9 of the Delegated Regulation 342/2014).

The ECB, in its recently published consultation document on a draft ECB Guide on options and discretions available in Union law, seems conscious of the effects of full deduction or alternatively 100% risk weighting of insurance holdings in the CRR consolidated own fund calculations.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Do not use the concept of Mixed Financial Holding Company in (essentially) sectoral (banking) directives and regulations, such as the CRR/CRD IV and BRRD as it creates unnecessary burdens on those insurance conglomerates that includes banking activity due to lack of harmonisation. The CRD IV/CRR should rather make reference to Article 2(15 of FICOD) like the Solvency II Directive does in Article 213(1)(h)

An alternative to the application of CRD IV as referred to above may be for the banking parts to keep the insurance own funds and add the related capital requirements, as indicated in the Article 49(1) of the CRD IV and the recently issued ECB consultation, meaning that:

- The Solvency II Directive requires a group to include the information of the banking sector based on the sectoral requirements in the Solvency position. This enables the group supervisor to assess the solvency position of the whole group based on the fundamental drivers of the risks faced by each sector.

- The same requirement could be included in the CRD IV Directive. Thus not subtracting the whole investments in the other financial sector or (as proposed by the ECB) the determined capital requirement of the other financial sector, but to use the sectorial requirements in the consolidated data.

5. ***Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.***

-/-

(COB) EXAMPLE: Too many layers of regulation

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority): Article 16
- DIRECTIVE 2009/138/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II): Art. 42
- EIOPA Consultation on the "Proposal for guidelines on product oversight & governance arrangements by insurance undertakings" (EIOPA-BoS-14/150).
- EIOPA Consultation Paper on the proposal for preparatory guidelines on product oversight & governance arrangements by insurance undertakings and insurance distributors (EIOPA-CP-15/008)
- Joint Committee Consultation Paper on guidelines for cross-selling practices of 22 December 2014 (JC/CP/2014/05).
- Consultation paper on draft guidelines on the application of C6 and C7 of Annex I of MiFID (ESMA/2014/SMSC/1189)

2. Please provide us with an executive/succinct summary of your example

High-quality and consistent regulation reduces the cost and resources of supervisors and undertakings in the development, consultation, and implementation of legislation, given the limited resources available, especially at EIOPA.

The quality of regulation in the insurance sector is currently impaired by the excessive number of provisions and the level of detail (eg of up to seven regulatory levels in Germany).

For instance, it can be observed that EIOPA extends the Solvency II rules by tightening provisions of the Solvency II Directive through DAs and ITS and guidelines. The final set of rules now comprises more than 6,700 pages. Contrary to the principle-based approach, many of the provisions are characterised by a high level of detail. Moreover, the individual regulatory levels are not sufficiently aligned to each other. The large number of regulations results in a reduction of legal clarity and transparency as well as a significant increase in bureaucratisation.

The more explicit setting of when delegated acts and guidelines can be used will not only result in less consultation and implementation efforts but also in fewer issues causing conflicting provisions and uncertainties. It is therefore reasonable to clarify the limits of the application of guidelines. According to Article 16 of the EIOPA Regulation, guidelines serve the purpose of harmonising supervision and application of Union law. Guidelines, however, are not a general instrument to enforce independent regulatory aspects defined by the ESAs.

In addition, the credibility of guidelines to harmonise provisions is severely restricted compared to binding Level 2 measures: NCAs decide on "whether" and "how" they are being implemented in Member States. Divergences in the transposition pose the risk that the legal requirements will be fragmented further.

According to recital 25 of the EIOPA Regulation, the authority does not have the power to issue guidelines in areas covered by technical standards. The Parliament's ECON Committee also stressed in this context that "EIOPA should check the necessity of drafting guidelines and recommendations"[4]. There are several examples in the current regulatory practice where these requirements have not been fulfilled.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.
(please give references to concrete examples, reports, literature references, data, etc.)

[4] Comments of the Committee on Economic and Monetary Affairs for the financial year 2013 (2014/2121(DEC)).

(1) EIOPA has consulted on **guidelines on product governance and oversight**, without waiting for the parallel discussion of the European legislator within the scope of the trilogue on the Insurance Distribution Directive (IDD). So no regulatory law existed at that time. EIOPA has also recently signaled its intention to proceed with 'preparatory' guidelines despite the empowerment with regard to Level 2 measures in the Insurance Distribution Directive. In practice, this would result in double implementation efforts for insurance undertakings.

(2) Guidelines going beyond binding EU law are equally critical. For instance, **the scope of application of Article 42 of the Solvency II Directive with regard to personnel**, which has been restricted deliberately, is explicitly extended by the proposals of EIOPA on the interpretation of the fit and proper requirements.

(3) The Joint Committee of the European Supervisory Authorities also drafted **guidelines on cross-selling** that would apply to all sectors, even though a respective basic decision by the legislator had been missing. The guidelines were based only on an empowerment for ESMA to develop guidelines under MiFID 2, in cooperation with EBA and EIOPA.

(4) A parallel discussion also takes place at ESMA. Despite the existing empowerment of the Commission to develop delegated acts and already started work on this issue, **ESMA** has published **guidelines on MiFiD I Annex C6 and C7 (definition of derivatives).** With the publication of these guidelines, ESMA anticipates the politically legitimate procedure on the delegated acts.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Specify the legal framework (Article 16 of EIOPA founding Regulations 1094/2010) **with regard to the adoption of guidelines**:

- Guidelines must not anticipate basic political decisions and current EU legislative procedures and must not be used in lieu of missing political compromises.
- Guidelines must not go beyond binding regulations or extend these arbitrarily by means of general provisions.

EIOPA should not issue guidelines in areas in which the European Commission has been empowered to develop technical standards

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

Issue 11 – Definitions

(COB) EXAMPLE: Use of term consumer/customer

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2014/65/EU on Markets in Financial Instruments (recast) (MiFID 2)
- Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (so called Mortgage Credit Directive - MCD)
- Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Payment Accounts Directive - PAD)
- Insurance Distribution Directive (IDD)
- DIRECTIVE 2008/48/EC on credit agreements for consumers (Art.12)
- DIRECTIVE 2011/83/EU of 25 October 2011 on consumer rights

2. Please provide us with an executive/succinct summary of your example

To date, the EU consumer *acquis* has employed an approach to incorporate the definition of a consumer in each separate legislative instrument and these definitions do not always correspond with one another.

The definition of a consumer is one of the issues which should be uniformly addressed in all of the directives.

Whilst a definition of consumer is included in the Directives, other related concepts that are not completely the same tend to appear in texts covering financial services, and are sometimes used as synonyms: customer, client, retail client, etc.

Furthermore, when transposing into national legislation, different approaches are taken by different member states resulting in a distortion in the EU market.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

DIRECTIVE 2011/83/EU of 25 October 2011 on consumer rights

> (17) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.
>
> Article 2 – Definitions - For the purpose of this Directive, the following definitions shall apply:
>
> 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

DIRECTIVE 2002/65/EC DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES

> (d) "consumer" means any natural person who, in distance contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;
>
> Article 3
> Information to the consumer prior to the conclusion of the distance contract

1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:
(1) the supplier
(a) the identity and the main business of the supplier, the geographical address at which the supplier is established and any other geographical address relevant for the customer's relations with the supplier;
(b) the identity of the representative of the supplier established in the consumer's Member State of residence and the geographical address relevant for the customer's relations with the representative, if such a representative exists;
(c) when the consumer's dealings are with any professional other than the supplier, the identity of this professional, the capacity in which he is acting vis-à-vis the consumer, and the geographical address relevant for the customer's relations with this professional;

Insurance Distribution Directive (IDD)
It does not includes a definition of consumer or customer.
However, both terms are often used equally.

DIRECTIVE 2008/48/EC on credit agreements for consumers (Art.12)
Article 3 Definitions For the purposes of this Directive, the following definitions shall apply: (a) 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;

Directive 2014/65/EU on Markets in Financial Instruments (recast) (MiFID II),

(9) 'client' means any natural or legal person to whom an investment firm provides investment or ancillary services; (10) 'professional client' means a client meeting the criteria laid down in Annex II; (11) 'retail client' means a client who is not a professional client;

In its Consultation Paper on preparatory Guidelines on product oversight and governance, EIOPA affirms that:

"In view of relevant on-going regulatory developments (in particular, negotiations on the IDD) EIOPA decided to further revise the scope and content of the draft guidelines (following the results of such negotiations). With regard to Chapter 1 and the guidelines for insurance undertakings manufacturing insurance products the wording has been slightly redrafted by replacing "consumers" with "customers" to be better aligned with the wording of the IDD.

Surprisingly, the final wording of the linguistic revision contains references both to consumer and to costumers.

Furthermore, EIOPA avoids including a definition of consumer as in the first Guidelines on POG. On the contrary, EBA Guidelines on POG for retail banking products includes a definition of Consumer, whilst ESMA Good practices for product governance arrangements for structured retail products, includes a definition of investors or retail investors referring to retail clients within the meaning of MIFID.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

An extensive revision of all Directives where reference is made to consumer/customer/client should be carried out in order to ensure a coherent approach in the terminology used.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

Issue 12 – Overlaps, duplications and inconsistencies

(ECOFIN) EXAMPLE: Reduced risk for derivatives implemented through EMIR is ignored by Solvency II

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Regulation (EU) 648/2012 (EMIR)
- Directive (EU) 2009/138/EC (Solvency II)
- Delegated Regulation (EU) 2015/35, Articles 189 to 201 (Counterparty default risk module)

2. Please provide us with an executive/succinct summary of your example

The reduction of the counterparty risk in derivatives agreements caused by the requirements of EMIR is not reflected in the Solvency II capital requirements for derivatives, leading to double counting of collateral haircuts and unnecessary capital charges.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Insurers are only allowed to invest in derivatives where they use them for hedging or for efficient portfolio management (see Art. 132(4) of the Solvency II Directive). The risk that a counterparty in a derivative contract defaults is captured in the capital requirement under the counterparty default risk module (see Solvency II Delegated Act, Articles 189 to 201).

Where European insurers enter into derivatives agreements, they have to comply with EMIR. EMIR led to a significant reduction, if not removal, of the counterparty risk for derivatives agreements. The Solvency II charges for derivatives were calibrated in the pre-EMIR regime. The charges therefore overstate to a large degree the risk of derivatives that comply with EMIR. There are more precisely two key parameters that need to be reviewed in a post-EMIR environment, namely: 1) the recovery rate in case of counterparty default (recovery rates are significantly high in a fully collateralised environment) and 2) the haircuts applied to collateral, given that the EMIR collateral already includes a haircut and Solvency II applied an additional haircut to it when calculating the counterparty risk exposure.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The Commission should review the charges for derivatives under the Solvency II counterparty default risk module, to reflect the post-EMIR regulatory environment for derivatives. Where derivatives comply with EMIR the risk charge should be minimal, and even zero for at least centrally cleared derivatives.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

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(ECOFIN) EXAMPLE: The Solvency II Delegated Act restricts Undertaking Specific Parameters (USPs) far beyond what is allowed in the Directive

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II): Articles 41, 104 (7), 111 (1)(j), 218 to 221, 246 and Annex XVII
- Delegated Regulation (EU) 2015/35 (Solvency II Delegated Act): Articles 218 (1), 218 to 221, 338 and Annex XVII

2. Please provide us with an executive/succinct summary of your example

It's not possible to design a standard formula that works for a wide and varied market like the European market. The Solvency II Directive created two ways to cope with this: 1) internal models and 2) USPs. The USPs are relevant when the standard formula design is suitable for assessing the risk but the calibration is not appropriate because the underlying portfolios are not consistent with those used to calibrate the standard formula. In such situations, given the very significant costs and resources required to develop an internal model, the USPs are a valuable tool to ensure that the standard model provides a good estimate for the risk exposure of a company. This is particularly valid for undertakings that specialise in providing specific types of insurance to specific segment, the so-called mono-liners.

The Directive allows USPs to be applied to any underwriting risk. Furthermore, recital 20 of the Directive explicitly lays down that the requirements should not be burdensome to "mono-liners". However, the Solvency II Delegated Regulation, restricts the methodologies to calibrate the USPs and the scope of risk sub-modules for which the use of USPs is allowed. Also it sets out extremely onerous data requirements to be able to use USPs. As a result of these provisions, the Solvency II Delegated Regulation acts as a strong deterrent for companies to take the USPs route, in clear contradiction with the original intention of the Directive which should be restored.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

According to Article 104(7) of the Solvency II Directive USPs may be applied to all underwriting risk modules. However, this is unjustifiably restricted by Article 218(1) of the Solvency II Delegated Regulation. Insurance Europe sees no good reason to limit the range of underwriting risk modules in respect of which approval may be sought for USP's. Moreover, the possibility to develop and use group specific parameters (GSP) is further reduced, if not even entirely excluded by Article 338 of the Solvency II Delegated Regulation.

The additional restrictions on methodology, which include references to granularity and highly technical content can be found in the Solvency II Delegated Regulation Annex XVII. These restrictions express a literal interpretation of the Directive which requires that a closed list of method be defined to calculate USPs, insofar as Solvency II Delegated Regulation Annex XVII provides in most instances only one single method. To keep attuned to the advancements made in the actuarial field, Insurance Europe believes that it should be permissible for USP's to be approved based on any calculation methodology conforming to professional actuarial standards.

One of the constraints that has been identified as a problem is that national supervisors (following the EIOPA Guidelines) only allow companies to use USPs when their historical data fits the probability distribution of the standardised methods set out in Annex XVII of the Solvency II Delegated Regulation(Log-normal distribution). Hence, the application of UPS's will be virtually impossible as this condition will not be met in most cases.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Undertakings should be able to replace parameters in all sub-modules of the underwriting risk (life, non-life, and health business) by USPs as determined by the Solvency II Directive.

We suggest to limit the outline of the Solvency II Delegated Regulation on USPs in a way which sets requirements for the methods used when calculating USP without prescribing defined methods in an exhaustive list. A criteria

setting out that a USP will be approved if it is based on any calculation methodology conforming to professional actuarial standards would address that.

It should be permissible for USP's to be approved solely on the basis of a credible body of data specific to any firm, or a homogeneous risk group. In that respect, the scope of USPs should be expanded with additional probability distributions other than the Log-normal.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

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(ECOFIN) EXAMPLE: inconsistency of implementation of Solvency II

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II)
- Delegated Regulation (EU) 2015/35 (Solvency II Delegated Act)
- Solvency II ITS and EIOPA guidelines

2. Please provide us with an executive/succinct summary of your example

The development and implementation of Solvency II is an important step towards the harmonisation of insurance regulatory regimes and improved risk management across Europe. However, an inconsistent approach to its interpretation and implementation in Member States and additional requirements risk undermining the maximum harmonisation objective.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Several examples of different implementations of Solvency II are starting to emerge resulting in "gold-plating" and an unlevel playing field. There are a number of examples of such inconsistency, including:

- Treatment of the Volatility Adjustor under stress: Differing interpretations by national supervisors of whether the Solvency II volatility adjustment mechanism can be modelled dynamically. While some national supervisors (eg the UK) have concluded the modelling cannot be dynamic, others have reached the opposite conclusion (eg the Netherlands). The material implications this has on insurers' balance sheets and solvency positions creates level playing field concerns.
- National Specific Templates: Regarding Solvency II reporting there is a risk of duplication, specifically the use of national specific templates to supplement the standardised Europe-wide reporting requirements. This results in inconsistent requirements across different Members States.
- External audit requirements: There is no requirement in the Solvency II Directive for external audit of Solvency II public disclosures. EIOPA has, however, published a note on the need for high-quality public disclosure, encouraging external audit of them. Member States are therefore developing differing external audit requirements, whilst some member states will have no such requirement.
- Internal model stress calibrations: Subject to meeting strict development criteria, Solvency II internal models are intended to represent an undertaking's view on the risks it is exposed to, and the value of the 1-in-200 year shocks that it could experience. However in some Member States national supervisors have developed quantitative indicates to reflect their own view of these shocks, in particular longevity and credit spread shocks. These indicators are being used as benchmarks by national supervisors, despite them lacking transparency and not being a requirement of the Directive.
- When compared to the requirement of Article 230 of the Solvency II Directive, EIOPA Guidelines on Group Solvency (EIOPA BoS – 14/181), leads to real problems of un-level playing field. Of particular concern is guideline 21 about minimum consolidated group solvency capital requirement (floor to the group solvency capital requirement) impairing the ability to compete in third countries. Indeed, EIOPA requests to include in the calculation of the floor the "local capital requirements, at which the authorisation would be withdrawn, for third country insurance and reinsurance undertakings included in the scope of method 1, independently from any equivalence finding." Article 230 of the Directive (combined with article 13 and article 212) only refers to MCRs of related entities, without mentioning either third country insurance and reinsurance undertaking or the local capital requirements applying to these entities, as defined by third country jurisdictions. This guideline would reduce the competitiveness of European (re)insurers with operations in third countries.

Other examples include additional criteria relating to counterparty credit risk and concentration risk in relation to the recognition of reinsurance structures (the UK and the Netherlands are examples of diverging approaches).

Inconsistent approaches are also being taken in relation to the treatment of deferred taxes, the conditions under which capital add-ons will be imposed/removed and the application of fit and proper requirements for Pillar 2 purposes.

In several instances the supervisory approach has not been subject to public consultation (eg EIOPA opinions, despite having a material market impact. For example, in some member states, Directors letters have been helpful as they ensure understanding of local regulatory expectations (eg UK). Nonetheless, there should be consultation where substantive changes are proposed. In other cases the approach is simply not transparent with different companies experiencing different approaches – this is particularly problematic for entities part of a group.

These inconsistencies have resulted in investor uncertainty and calls for public disclosure beyond the legal requirements, given the uncertainties around a supervisor's likely approach. In some cases businesses are also considering whether to relocate within the Union in light of the stance being taken by some supervisors.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Rather than focus on more guidelines/ opinions to address these inconsistencies, more efforts and resources should be placed on a timely peer review system by EIOPA. The outcomes of these peer reviews should be transparent as is the case with the IMF's FSAP process.

Solvency II rules on supervisory transparency should be reviewed to ensure that supervisor approaches are transparent and include approaches expressed through public letters, speeches etc.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

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(ECOFIN) EXAMPLE: Overlap of reporting requirements from different regulations

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Solvency II Directive 2009/138/EC
- European Market Infrastructure Regulation (EMIR) (EU) 648/2012
- Markets in Financial Instruments Directive (MiFID II) 2014/65/EU

2. Please provide us with an executive/succinct summary of your example

Regulations such as EMIR, MiFID II, and Solvency II provide different reporting formats and differing taxonomies. This leads to a duplication of costs for implementing requirements that in fact target identical objectives.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

As an example, insurers have to report on their derivatives exposure to supervisors under Solvency II and to trade repositories under EMIR. The reporting requirements under the two frameworks are not aligned, which increases the burden for insurers and the likelihood of inconsistencies in the data.

Legal references for the example of derivatives reporting:

1. EMIR reporting requirements:
   - Commission Delegated Regulation (EU) No 148/2013, especially the Annex (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0001:0010:EN:PDF)
   - Commission Implementing Regulation (EU) No 1247/2012, especially the Annex (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0020:0029:EN:PDF)
2. Solvency II reporting requirements:
   - Implementing Regulation (EU) 2015/2450, especially the templates S.08.01.xx and S.08.02.xx in the Annex (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2450&from=EN)

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The reporting formats should be standardised and reported to one competent authority or trade repository (single entry point). Key data should be clearly defined.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

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(ECOFIN) EXAMPLE: Risk of overlapping prudential requirements triggered by ongoing developments by the IAIS

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II)
- Developments by the IAIS (BCR, HLA, ICS)

2. Please provide us with an executive/succinct summary of your example

Three workstreams that apply to insurance are currently in different stages of development by the International Association of Insurance Associations (IAIS), namely the Basic Capital Requirement (BCR), the Higher Loss Absorbency (HLA) and the international Insurance Capital Standard (ICS). The European industry has concerns about these developments, in particular because key elements of their design and calibration diverge from Solvency II. While the implementation of these international standards into European law is not yet a defined objective or ambition of EU policymakers, the industry believes that any consideration of these developments in a European context should be carried out with great care and should not endanger 15 years of efforts by both regulators and industry developing the Solvency II framework.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

The BCR was developed over nine months. It includes key elements for determining available and required capital, therefore a valuation basis for assets and liabilities, as well as criteria for the eligibility of own funds. The valuation basis for liabilities lacks some of the most important technical components of the Solvency II long-term package, namely the matching adjustment and the volatility adjustment, and ignores the most basic elements of risk sensitivity, including the matching of assets and liabilities, the impact of profit sharing, hedging and reinsurance.

The HLA is aimed at defining a formula through which capital add-ons would be defined on top of the BCR. It would apply only to global systemically important institutions (G-SIIs). The industry has strong concerns about the BCR+HLA framework as it is a simplistic, non-risk-based measure, was very little tested and not at all tested for periods of market stress (as was the case for Solvency II). The industry also fears that supervisors could use the BCR as a trigger for sudden requests for more capital —despite a good Solvency II capital position — which could, as a consequence, expose companies to forced sales of assets and pro-cyclical behaviour.

The ICS would be applied to internationally active insurance groups (IAIGs), with the aim of achieving a greater degree of comparability across jurisdictions. It contains rules for the identification of available and required capital, namely rules for the valuation of assets and liabilities, capital tiering as well as a standard formula for deriving a capital requirement. The implementation of an ICS that runs in parallel with Solvency II would create not only significant burden on European companies, but would also in practice make management of business very difficult as two different steering measures would have to be taken into account at the same time. In addition, there will be a period of confidential reporting on an initial version of the ICS (ICS 1.0) during which the IAIS does not plan to allow internal models. An ICS standard method will not be appropriate for all business models, which will cause problems from a risk management perspective.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The European Commission and European supervisors, as members of the IAIS, should engage in IAIS discussions and support design and calibration solutions that do not create unnecessary barriers to the provision of long-term products and long-term investment by the European insurance industry and that would not trigger (new) implementation costs for the industry.

Furthermore, EU involvement in international economic fora should be enhanced. The following principles should be adhered to by EU representatives in international standard-setting bodies:

- The EU representatives should explain the objectives and potential outcomes of negotiations or international initiatives to relevant stakeholders.
- Any potential impact of (emerging) outcomes of international discussions on national/EU regimes should be assessed.
- EU institutions should develop a mandate that determines ideal outcomes as well as fallback positions, while leaving the necessary space for negotiation. The mandate should also pre-agree the frequency of feedback.
- There should be a thorough consultation process, including the affected industry or sector, in the development of EU positions. This would be consistent with EU governance for legislation that is not based on international standards.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(COB) EXAMPLE: Information overload including information duplication (PRIIPs, SII, IDD)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

This example refers to:

- Solvency II Directive 2009/138 and particularly Article 185 (information for policy holders) under subsection 2 (life insurance) **(Solvency II)**
- Insurance Distribution Directive (IDD), including Article 18 (general information provided by the insurance intermediary or insurance undertaking), Article 19 (conflict of interest and transparency), Article 20 (advice, standards for sales where no advice is given), Article 23 (information conditions), Article 24 (cross-selling), Article 28 (conflicts of interest), Article 29 (information to customers) and Article 30 (assessment of suitability and appropriateness and reporting to customers) **(IDD)**
- PRIIPs Regulation 1286/2014 and particularly Articles 3, 8 and 14 **(PRIIPs Regulation)**
- e-Commerce Directive 2000/31 and particularly Article 5 (general information to be provided) and Article 10 (Information to be provided)
- Distance Marketing Directive 2002/65 and particularly Article 3 (information to the consumer prior to the conclusion of the distance contract)

2. Please provide us with an executive/succinct summary of your example

Well-informed consumers are better equipped to compare products and make informed decisions. In order to empower and protect consumers effectively, the information provided must respond to consumers' needs. For information to effectively meet the needs of consumers several elements must be considered eg the content, clarity and amount of information along with the presentation and timing of delivery of the information.

The provision of high-quality rather than high-quantity information is a basic principle of consumer protection. Indeed, consumer behavioural theories widely recognise that it is essential that information sent to consumers is meaningful and clear, rather than for the sake of simply providing documents to fulfil regulatory requirements. The disclosure of too much information is counterproductive and has the effect of limiting consumers' ability to make appropriate decisions when comparing and purchasing products.

Insurance Europe welcomes the Commission's statement in the call for evidence that '*given the large amount of legislation in place and the interactions between them, there is a need to understand their combined impact and whether they give rise to any unintended consequences*'.

Regrettably, several pieces of EU legislation, applicable to insurance, have been developed and adopted recently by the European regulators in silos. This will dramatically increase the amount of pre-contractual information that insurers will be required to provide to consumers. As a result, consumers risk being overloaded with information that potentially provides very little benefit to them when choosing insurance products. This information overload risks confusing consumers and distracting them from paying attention to important information, such as the insurance coverage and exclusions. Moreover, behavioural insight studies show that information overload has a demotivating effect on consumer engagement.

In addition, not enough attention has been paid to the combined effects and potential unintended consequences of these regulations. This results in numerous duplicative requirements in EU legislation regarding the information that needs to be disclosed to insurance consumers. In practice, it means that consumers risk receiving the same type of information twice, but with different wording and a different format. This would have a negative impact on consumers' understanding of a product's features. Such an approach would, in turn, hamper consumers' ability to compare products effectively and to shop around to find the best product that meets their needs. It risks ultimately undermining their confidence in the products and industry concerned.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Insurance Europe is and has always been supportive of a high level of transparency and has always emphasised that pre-contractual information should be useful, relevant and timely.

When looking, for example, at the rules that will be applicable to the sale of insurance-based investment products, it becomes clear that (1) the cumulative effect of the legislation on the disclosure of pre-contractual information and (2) the interaction between all disclosures (including potential duplications) have never been properly assessed by policymakers.

As far as the cumulative effect is concerned, currently 75 different pieces of pre-contractual information are applicable under existing EU legislation to the case of a consumer purchasing an insurance-based investment product online from an intermediary (this also includes provisions under the e-Commerce and Distance Marketing Directives). With the new PRIIPs Regulation, the Solvency II Directive and the IDD, this number will increase to 148 different pieces of pre-contractual information. When broken down into its component parts, the number of pre-contractual product disclosures will increase from 20 under the Life Directive, to 66 under the Solvency II Directive and the PRIIPs Regulation, or 330% of what it used to be, while the disclosure requirements for sales rules would rise from 9 under IMD 1 to 36 under IDD, or 400% of what it used to be.

As far as duplication is concerned, Solvency II and the PRIIPs Regulation require the cumulative disclosure of fully or partially equivalent information to consumers, as per Article 3 of the PRIIPs Regulation. Fully equivalent information that needs to be provided under Solvency II and the PRIIPs Regulation includes the insurer's identity, the duration of the contract, the description of the underlying instruments, the description of the surrender/cooling-off periods, the risks and the existence and details of procedures for complaints. In addition, partially equivalent information also needs to be provided including the product benefits, the costs/payment and the tax arrangements.

Another example illustrating such duplication of equivalent requirements under different pieces of legislation is related to the disclosure of a product's costs under Article 29 of the Insurance Distribution Directive (IDD), as well as under Article 8 of the PRIIPs Regulation.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Excessively burdensome and prescriptive rules on product disclosure must be avoided. Insurance Europe calls on the EC to consider the cumulative impact of the potential information overload for consumers and duplicative disclosures and take steps to remove them where they exist.

For instance, as regards the overlap between Solvency II and the PRIIPs Regulation, we suggest that the Key Information Document (KID) should also satisfy the duplicative disclosure requirements under Solvency II. Consumers would benefit from receiving relevant information only once through the KID, instead of disclosing it a second time to consumers, in a different format, under Solvency II, which would do nothing more than confuse consumers.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

See COB-15-110: "CMU call for evidence _ Information overload and duplicative requirements"

(COB) EXAMPLE: Duplicative rules including disclosure of similar information (PRIIPs, SII), costs and charges (PRIIPs, IDD) and advice (IDD (general chapter), IDD (insurance-based investment products chapter))

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

This example refers to:

- Solvency II Directive 2009/138 and particularly Article 185 (information for policy holders) under subsection 2 (life insurance) **(Solvency II)**
- Insurance Distribution Directive (IDD), including Article 20 (advice, standards for dales where no advice is given), Article 23 (information conditions), Article 24 (cross-selling), Article 26 (scope of additional requirements), Article 29 (information to customers) and Article 30 (assessment of suitability and appropriateness and reporting to customers) **(IDD)**
- PRIIPs Regulation 1286/2014 and particularly Articles 3 and 8 **(PRIIPs Regulation)**

2. Please provide us with an executive/succinct summary of your example

Several EU regulations that have been developed and adopted by the European regulators, have been done so in silos. This has led to unnecessary duplicative requirements. Not enough attention has been paid to the combined effects and potential unintended consequences of EU initiatives.

(1) Solvency II and PRIIPs provide for duplicative requirements for the disclosure of a wide range of similar pre-contractual information.

(2) IDD and PRIIPs provide for duplicative requirements for the disclosure of similar pre-contractual information on costs and charges.

(3) The general conduct of business rules under IDD and the specific chapter on insurance-based investment products provide for duplicative requirements on advice.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Solvency II and the PRIIPs Regulation require the cumulative disclosure of totally or partially equivalent information to consumers on insurance-based investment products, as per Article 3 of the PRIIPs Regulation. Fully equivalent information that needs to be provided under Solvency II and the PRIIPs Regulation includes the duration of the contract, the description of the underlying instruments, the description of the surrender/cooling-off periods, the risks and the existence/ procedures for complaints. In addition, partially equivalent information also needs to be provided including the products benefits, the costs/payment and the tax arrangements. Insurance Europe has always emphasised that pre-contractual information should be useful, relevant and timely. However, when looking at the rules that will be applicable to the sale of insurance-based investment products, it becomes clear that the interaction between all disclosures, including potential duplications, have never been properly assessed by policymakers. In practice, it means that consumers risk receiving the same type of information twice, but in a different wording and a different format.

Another example illustrating such duplication of equivalent requirements under different pieces of legislation is related to the disclosure of costs of the product under the Insurance Distribution Directive (IDD), as well as the PRIIPs Regulation. The PRIIPs Regulation contains information requirements in relation to the disclosure of costs and charges for insurance-based investment products. IDD also contains similar provisions regarding the disclosure of costs and charges for insurance-based investment products, with no acknowledgement in either piece of legislation for the requirement to be met by the other.

Lastly, Article 20 of the IDD contains the requirement to assess the consumer's demands and needs for the sale of all insurance products, including insurance-based investment products. It also contains a chapter containing additional enhanced rules applicable to the sale of insurance-based investment products, which require further

assessment of the product's appropriateness and suitability, on the top of the assessment of demands and needs.

Such duplicative requirements related to the distribution of insurance products should be removed as these requirements do not provide consumers with any added-value when buying insurance products, but, to the contrary, are rather likely to confuse consumers and decrease their understanding of the financial products on the market.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe calls on the EC to consider the cumulative impact of the duplication of requirements and take steps to remove them where they exist.

Regulations should not be developed in silos but a holistic approach should be taken to ensure whatever information is being sent to consumers is meaningful and truly aids them in making their decision.

For instance, as regards the overlap between Solvency II and the PRIIPs Regulation, we suggest that the KID should also satisfy the duplicative disclosure requirements under Solvency II. Consumers would benefit from receiving equivalent information only once through the KID, instead of disclosing it a second time to consumers, in a different format, under Solvency II, which would confuse consumers.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

See COB-15-110: "CMU call for evidence _ Information overload and duplicative requirements"

(COB) EXAMPLE: POG guidelines

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Article 16 of EIOPA founding Regulations 1094/2010
- Article 25 of the Insurance Distribution Directive **(IDD)**

2. Please provide us with an executive/succinct summary of your example

Insurance Europe supports a strong, effective and efficient EIOPA which strives to protect the public interest while contributing to the stability and effectiveness of the financial system. This is indispensable for a functioning European insurance market.

Supervisory convergence is key for a level-playing field between EU member states and for avoiding regulatory arbitrage. Therefore, Insurance Europe strongly supports EIOPA in its objective to coordinate supervision across member states. We do not, however, believe that guidelines are always the best instrument to achieve such convergence. The transposition of guidelines depends on the existing national legal provisions and guidelines, and may therefore not always lead to actual convergence.

If guidelines are deemed to be the right choice, these must be adopted within the existing legal framework. Where the legal requirements are not complied with, legal uncertainty and/or excessive use of own-initiative powers can arise. Where guidelines are not founded on an appropriate legal basis, they should not be deemed valid.

One recent and one ongoing example illustrate the risk of inconsistencies between guidelines and EU law. The adoption of Product Oversight and Governance (POG) guidelines that were developed ahead of the legal text on IDD were narrowly avoided in June 2015. On 30 October 2015, EIOPA launched a consultation on draft POG guidelines that are being developed ahead of the adoption of the Commission's Delegated Acts on POG. The risk of inconsistencies between EU law and Level 3 measures developed by EIOPA is clear.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Insurance Europe sets out briefly two examples where there are risks of inconsistencies, legal uncertainty and where guidelines could have been, and may still be, adopted inappropriately:

- **POG guidelines, rejected by EIOPA's Board of Supervisors on 29-30 June 2015**
  Insurance Europe raised its objections to EIOPA's decision to propose own-initiative guidelines on POG in late 2014, which would anticipate, pre-empt or otherwise influence/shape the outcome of political discussions ahead of the final legislative text of the IDD. The consequence of EIOPA's premature action to develop POG guidelines in the first half of 2015 resulted in an unnecessary and avoidable risk of inconsistency of rules applying to the insurance industry.

  The industry would have been faced with potentially inconsistent rules to implement at short intervals, had those guidelines been adopted by EIOPA in June 2015, given that the final text of the IDD was not even known at that point. This would have added an unnecessary operational burden to the industry and introduced avoidable costs to the consumers.

  This avoidable risk arises from EIOPA's wrong interpretation of its founding Regulation. EIOPA is empowered to develop Level 3 measures, on its own initiative, only where this is: "*…with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, **and** to ensuring the common, uniform and consistent application of Union law…*" (emphasis added). This means that EIOPA's ability to issue own-initiative guidelines is limited by the need for EU basic acts to already have been adopted.

However, in the consultation on POG guidelines, EIOPA incorrectly summarised its empowerment as being with an alternative ("and/or") (EIOPA-BoS-14/150, page 25) whereas Article 16 explicitly states the criteria to be met are cumulative ("and"). The Commission confirms this conclusion in its 8 August 2014 report (p.5) on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS).

- **POG Guidelines, expected for adoption by EIOPA in April 2016**

Although the first instance of EIOPA proposing guidelines before the co-legislators had completed their trialogues was averted, EIOPA is currently consulting on preparatory POG guidelines (EIOPA-CP-15/008). This would be ahead of the Commission's adoption of Delegated Acts on POG as provided for by Article 25 of the IDD. EIOPA is thereby pre-empting the outcome of EU law and is not respecting the application date decided by the co-legislators.

From a practical perspective, there is a significant risk of inconsistencies between the EIOPA guidelines and the future IDD Delegated Acts on POG if the guidelines come before the Delegated Acts. In practice, it means that insurance companies and distributors risk having to adapt their internal systems and processes to comply with the two successive sets of different rules within just a few months. This will give rise to an unnecessary operational burden and will increase costs to the detriment of both the industry and consumers and will impact all insurance undertakings, intermediaries and insurance products (except the insurance of large risks).

Article 16 permits the ESAs to issue guidelines in order to, cumulatively: (i) establish consistent, efficient and effective supervisory practices with the European System of Financial Supervision and (ii) ensure the common, uniform and consistent application of union law.

The implications of these legal criteria are twofold: first, that Union law must already exist before EIOPA develops guidelines and, second, that EIOPA may merely issue guidelines to apply Union law, not to develop or formulate Union law. Therefore, where primary legislation provides for Delegated Acts, EIOPA cannot issue guidelines before the Delegated Acts have been adopted. However, EIOPA refers only to the first of these two criteria in its consultation, unilaterally omitting the criteria necessitating the existence of EU law.

EIOPA justifies the POG consultation on the basis that the guidelines will be "draft preparatory guidelines" (section 1). However, despite the fact that the guidelines are only "preparatory" in nature, EIOPA still requires competent authorities to confirm whether they comply or intend to comply with the guidelines. It seems difficult to understand how preparatory guidelines aimed at supporting competent authorities when implementing IDD can be subject to a 'comply or explain' procedure, particularly as EIOPA also states that no enforcement actions should follow from practices that are not fully in line with the guidelines. In addition, the term "preparatory guidelines" is nowhere to be found in the EIOPA Regulations. It is therefore questionable whether it is within EIOPA's mandate to issue such types of guidelines.

On several occasions, Insurance Europe has been reminded that because the ESAs are independent agencies, there is limited scope to object to EIOPA's approach. This is a misleading argument, because the ESAs remain accountable to both the Parliament and Council (Article 3 of the EIOPA founding Regulations).

Insurance Europe would urge EIOPA to await the IDD Delegated Acts on POG to assess whether there is a need for guidelines in this area.

Insurance Europe would support EIOPA prioritising resources on the mandates it has received from the trialogue negotiations and agreed legislative texts rather than its own initiatives.

In the context of the Better Regulation Package, Insurance Europe underlines that EU legislation should be easy to implement, provide certainty and predictability, and should avoid any unnecessary burden and costs. The package emphasises that actively managing existing EU legislation is as important as preparing new initiatives. Both these points are important, even if the Package is not directly applicable to Level 3 measures, because they clarify the standard that the EU legal order can be expected to be held to.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe supports the existing legal framework for the issuance of guidelines under Article 16 of the EIOPA founding Regulations, however, the Regulations must be respected and, for the sake of legal certainty, should be further clarified as follows:

- Basic political decisions are the exclusive competence of the EU legislator; therefore, guidelines must not (i) anticipate the outcome of ongoing EU legislative procedures, or (ii) be a substitute for legislation, for instance by addressing areas that the EU legislator has intentionally decided not to regulate, or by replacing political compromises that have failed.

- Guidelines must not be issued in areas where the European Commission has the power to issue technical standards (cf. recital 25 of the EIOPA Regulation).

- Guidelines must not go beyond the binding provisions laid down in the legislation, and they must not arbitrarily supplement them by means of general provisions.

- Guidelines are only allowed to be issued if it can be demonstrated, based on sufficient facts, that they are required to ensure cumulatively (i) a "*common, uniform and consistent application of Union law*" **and** (ii) "*consistent, efficient and effective supervisory practices"*. These criteria of Article 16(1) should be read cumulatively, as confirmed by the EC report of 2014. EIOPA appears to have a different view of this text, as evidenced by it incorrectly using "and/or" when citing the above Article 16(1) criteria in a recent guideline consultation, rather than referring to them cumulatively.

  In the present case, even where POG provisions have been included in the IDD, EIOPA should not proceed with the adoption of its guidelines prior to the Commission's Delegated Acts. EIOPA should await them before assessing the need, if any, for own-initiative guidelines.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(COB) EXAMPLE: Risk of overlaps and inconsistencies raised by ESAs cross-selling guidelines (MiFID 2, IDD)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Article 24(11) of Directive 2014/65/EU **(MiFID 2)**
- Article 24 of the Insurance Distribution Directive **(IDD)**

2. Please provide us with an executive/succinct summary of your example

In 2015 the ESAs came forward with proposed guidelines on cross-selling that would apply across financial sectors. This would have resulted in overlap, duplication and potential inconsistencies between the content of the guidelines and the respective conduct of business rules in the relevant sector-specific legislation, due to the fact that they address numerous issues that are broader in nature than foreseen under the relevant legislative empowerment.

However, as things stand, it appears that there will no longer be joint ESAs guidelines, due to lack of final agreement between the three ESAs. ESMA has decided to proceed with the publication of its own guidelines on cross-selling in order to meet its obligations under MiFID 2. These guidelines will, however, cover insurance products that are sold together with products that fall under MiFID 2. If the other ESAs develop their own specific guidelines on cross-selling, there will be further risks of inconsistencies between the different guidelines and questions as to which set of guidelines should apply to a particular sale, given that cross-selling can often involve the combined sale of products from different financial sectors.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Article 24(11) of MiFID 2 provides for ESMA, in cooperation with EBA and EIOPA, to develop by 3 January 2016 guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations laid down in the first paragraph of that article (ie to inform the client whether it is possible to buy the different components of the package separately and to provide for a separate evidence of the costs and charges of each component).

However, the ESAs worked on the development of proposed guidelines, on which a Joint Committee consultation was published on 22 December 2014, which sought to go further by seeking to include additional requirements covering issues such as advice, disclosures, staff training and remuneration. Such issues are relevant for the sale of all financial products, and are not confined to situations of cross-selling. As a result, they are dealt with under each of the respective sector-specific pieces of financial services legislation, including IDD and MiFID 2.

It is inappropriate therefore for any guidelines of the three ESAs (whether in joint or sector-specific form) to tackle broad issues and requirements that are not specific to cross-selling practices. Moreover, such provisions will result in overlap, duplication and potential inconsistencies between the content of the guidelines and the respective conduct of business rules in the relevant sector-specific legislation. Equally, the timeframe set out in Art. 24 (11) of MiFID 2 can only be relevant for combinations which are covered by this empowerment and not for product combinations covered under IDD. Cross-selling practices within the meaning of MiFID 2 are only product combinations comprising an investment service (cf. legal definition stipulated in Article 4(42)).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

It is crucial to ensure that a coherent approach is taken with respect to the development of any potential guidelines that would apply to all financial sectors, particularly where the rules are not harmonised across sectors

at Level 1. As such, the guidelines should avoid going beyond the scope and requirements of the relevant primary legislation, and refrain from addressing broader conduct of business rules that are already sufficiently tackled in the respective primary legislation. Such guidelines should necessarily be kept high level in nature.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

(COB) EXAMPLE: Risk of inconsistencies raised by IMD 1.5 (MiFID 2, IDD)

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Article 91 of Directive 2014/65/EU **(MiFID 2)**
- Insurance Distribution Directive **(IDD)**
- Directive 2002/92/EC on insurance mediation **(IMD)**

2. Please provide us with an executive/succinct summary of your example

Conduct of business rules for the sale of investment products are addressed under MiFID 2, while the Insurance Distribution Directive (IDD) contains conduct of business rules for the distribution of all insurance products, including a specific chapter with enhanced rules applicable to insurance-based investment products. Insurance undertakings are specifically excluded from the scope of MiFID 2.

However, during the final stages of negotiations on MiFID 2, the trilogue parties agreed to introduce specific rules on conflicts of interest for insurance-based investment products via amendments to IMD (the so-called IMD 1.5 approach), despite the fact that discussions were still taking place on the review of IMD, which also included rules on conflicts of interest for insurance-based investment products. Amendments were therefore made to a Directive that was already in the process of being reviewed before awaiting the outcome of that review.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Article 91 of MiFID 2 introduced amendments to the existing Insurance Mediation Directive (IMD) that sought to already introduce rules on conflicts of interest for insurance-based investment products, prior to the completion of negotiations on the text of IDD, which raised concerns over potential inconsistencies between the IMD amendments and the final text of IDD.

The amendments to IMD also included a delegated act on conflicts of interest, which resulted in EIOPA working on Level 2 measures in this area and submitting its technical advice to the European Commission, prior to the conclusion of the Level 1 discussions on conflicts of interest under IDD, thereby creating a risk of further inconsistencies.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Article 43 of the IDD will delete the relevant amendments to IMD with effect from the date of its entry into force. However, this has created uncertainty for member states and some may decide to proceed with the introduction of rules based on the amendments to IMD without waiting for the relevant delegated acts under IDD, which may lead to further inconsistencies. This may result in an unnecessary expense and burden to comply with the changes that will be replaced within months with the real rules.

Clear direction should therefore be given to member states that measures should not be introduced on the basis of IMD 1.5, as they are now repealed, and that member states should await the forthcoming delegated acts under IDD.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

N/A

AREA D: Rules giving rise to unintended consequences

ISSUE 14: Risks

(ECOFIN) EXAMPLE: Contractual and practical issues relating to EMIR

1. ***To which Directive(s) and/or Regulation(s) do you refer in your example?***

- Regulation (EU) 648/2012 (EMIR)
  - Article 2, definition (5) of Regulation (EU) 648/2012 (EMIR) in connection with point (4) to (10) of Section C of Annex I to Directive 2004/39/EC (MiFID) as implemented by Article 38 and 39 of Regulation No 1287/2006

2. Please provide us with an executive/succinct summary of your example

Insurance Europe highlights three areas of concern:

(i) EMIR has led to a considerably more complex, costly and demanding setup for derivatives management, which creates difficulties and significant burden for insurers using derivatives. Despite prior expectations, there is limited competition between clearing brokers and this puts upward pressure on costs for transactions via clearing brokers.

(ii) A challenge emerging from the EMIR implementation is represented by the outstanding equivalence decisions. Many European companies operate in multiple jurisdictions globally. The delays in the equivalence decisions in relation to the US have led to operational duplication within the EU as well as to market fragmentation with other countries.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

(i) EMIR entails a move from OTC to central clearing. This implies that insurers have to post initial and variation margins which have to be collateralised with highly liquid assets. The need to post collateral therefore translates into increased regulatory complexity and consequently greater costs. The resulting derivative activities via clearing brokers have increased the complexity of derivative agreements. Compared to bilateral clearing arrangements prior to the introduction of EMIR there are difficulties in assessing legal requirements, obligations and rights in terms of eg segregation of accounts, forced and/or accelerated termination of derivative trades and positions, portability.

It is becoming clear that the number of clearing brokers and CCPs is significantly lower than expected when EMIR was introduced. The reduced number of clearing brokers and limited number of CCPs has led to (at least) two serious problems. Firstly, there is only limited competition between clearing brokers which drives up prices. Positions in derivatives can often have a volume of several billion Euros per company, so any increase in transaction costs can have significant impact. Secondly, derivative trades are now concentrated between significantly fewer market participants than before the introduction of EMIR. This raises the question whether EMIR has actually led to a decrease of systemic risk (as initially intended).

(ii) The negative impact of cross-border fragmentation caused by outstanding equivalence decisions is evidenced by the negative impact on EU-US interest rate swap trading. ISDA research shows that prior to the implementation of US SEF rules, approximately 25% of Euro interest rate swaps activity comprised trades between European and US dealers. The current figure is 10% while having been as low as 3% in 2014.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

(i) Article 36 of the EMIR requires CCPs to offer their services to clearing brokers/clearing members and to clearing clients in ways that are in the interests of clearing brokers/clearing members and clearing clients. Insurance Europe believes that supervisory authorities should strengthen their effort in ensuring that CCPs comply with this requirement. The obligation under article 36 should also be extended to cover clearing brokers'/clearing members' services to clearing clients.

(ii) The Commission should increase its efforts in order to achieve timely equivalence decisions under EMIR, especially for markets that are as important as the US.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(ECOFIN) EXAMPLE: Currency risk

1. *To which Directive(s) and/or Regulation(s) do you refer in your example?*

- Directive 2009/138/EC (Solvency II)
- Delegated Regulation (EU) 2015/35 (Solvency II Delegated Act)

2. *Please provide us with an executive/succinct summary of your example*

Currency risk arises when obligations an entity has promised to fulfil (liabilities) are in a different currency from the assets it holds to cover those liabilities. This exposes the entity to fluctuations in exchange rates between the currencies in which the assets and the liabilities are denominated. In particular, it poses a threat if the value of the currency in which liabilities are priced appreciates relative to the currency of the assets.
The current Solvency II approach to currency risk incentivises firms to hold all excess assets in one currency — the local currency — as this does not result in any capital charge (The local currency is the currency in which the undertaking prepares its financial statements. All other currencies are referred to as foreign currencies). This method, which assumes that it is not prudent for an undertaking to hold any of its excess assets in foreign currencies is flawed, as sound risk management would recommend holding a relative proportion of the assets in foreign currencies to protect against the risk of having to purchase foreign currency assets at short notice to match increases in foreign currency liabilities. As a result, this approach penalises insurers for reducing their exposure to currency risk while it rewards them when they increase it. As such, the current approach does not reflect real currency risks faced by insurers.

Ever since 2011, Insurance Europe has been urging the Commission to change the draft implementing measures in order to provide for the right risk management incentives. Unfortunately, no changes were finally introduced and the issue remains in Article 188 of the Delegated Regulation. As a result, the current regulation contravenes Solvency II's fundamental principles insofar as it is not risk-based, does not provide adequate protection for the policyholders, does not promote good risk management, and reduces the international competitiveness of EU insurers.

3. *Please provide us with supporting relevant and verifiable empirical evidence for your example.*

Insurance Europe's January 2012 paper ECO-SLV-12-048 "Solvency II: resolving the currency risk problem" Briefing note currency risk (See annex to Issue 14) provides a worked example which depicts a euro-based firm with a branch in the United Kingdom and illustrates the effects of matching and non-matching of the excess assets on currency risk.
The current Solvency II approach wrongly incentivises the firm to hold all excess assets in the Euro currency (the local currency in the example) as this does not result in any capital charge. However, since the firm has some liabilities denominated in Pounds, it is exposed to currency risk because it has no buffer in that currency, which the Delegated Acts approach rewards.

4. *If you have suggestions to remedy the issue(s) raised in your example, please make them here.*

Insurance Europe made a proposal to the European Commission in 2012, the details of which are in the uploaded document Insurance Europe's January 2012 paper ECO-SLV-12-048 "Solvency II: resolving the currency risk problem"
This Insurance Europe's proposal introduces the concept of Currency Risk Exposure (CRE) which measures currency mismatching by comparing the proportions of assets and liabilities held in foreign currencies. The CRE for foreign currency C is: Insurer's Total Assets x (Percentage of assets in currency C – Percentage of liabilities in currency C)

The CRE is then subject to a 25% shock. The results for all an insurer's foreign currencies are added up to make its total currency risk capital requirement.

5. ***Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.***

Insurance Europe's January 2012 paper ECO-SLV-12-048 "Solvency II: resolving the currency risk problem"
Briefing note currency risk

ISSUE 15: Procyclicality

(ECOFIN) EXAMPLE: Solvency II can, in stressed market conditions, incentivise pro-cyclical investment behaviour

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II)
- Delegated Regulation (EU) 2015/35 (delegated act on Solvency II)

2. Please provide us with an executive/succinct summary of your example

The Solvency II design and calibration can incentivise pro-cyclical behaviour. The current valuation measurement still leaves significant volatility on insurers' balance sheets, which increases during periods of market stress. Insurers will have to hold capital buffers to cope with both balance sheet volatility and solvency capital requirements and these buffers are higher for long-term investments. From this perspective, in periods of market stress long-term assets are the most volatile due to their long duration and also exposed to additional volatility in case things deteriorate. Volatility of the assets measurement not reflected in the liabilities measurement creates increased needs for buffers. This can incentivise insurers to dispose of these long-term assets and therefore exhibit a pro-cyclical behaviour by selling assets in a bearish market environment.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

Insurers need to hold capital buffers on top of the solvency capital requirements, in order to cope with balance sheet volatility. The balance sheet volatility emerges in cases where the valuation of liabilities only partially reflects the link between assets and liabilities. Where insurers hold long-term investments to back their liabilities the volatility of the balance sheet will be significant in periods of market stress as the market value of long-term assets has a high sensitivity to changes in market spreads. Where insurers can no longer cope with required capital buffers, they may decide to reduce the need for capital buffers by reducing the balance sheet volatility and/or the solvency capital requirements. Choosing to dispose long-term assets could look like a solution to address both sources of capital buffers needs.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

The efficiency of the Solvency II balance sheet measurement (including the effects of the volatility and matching adjustment) and the extent to which it can give rise to artificial balance sheet volatility should be carefully investigated and simulations should be done for periods of extreme market stress.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(ECOFIN) EXAMPLE: CCPs' requirements to post cash as collateral

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Regulation (EU) 648/2012 (EMIR)

2. Please provide us with an executive/succinct summary of your example

As pointed out by the European Commission in a report published on 3 February 2015[5] there are not sufficient possibilities to transfer non-cash collateral with CCPs. Insurance Europe agrees with this assessment and is concerned about this. EMIR clearing requirements in practice often imply a requirement by CCPs to have cash available to be posted as margin. For insurers, this will cause a higher demand for liquidity transformation which may not be available in times of market stress. The combination of clearing and margin requirements may therefore incentivise pro-cyclical behaviour through forced sales.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

In the current regime the demand for cash collateral will increase in times of market stress. Insurers have limited cash on their balance sheets and would need to perform liquidity transformation via repo markets and this need would amplify in periods of market stress. This is a particularly concerning issue if it coincides with repo markets drying up. In such a scenario, insurers would be left with the alternative of forced sales of assets, precisely at a time when prices are low because of the stressed conditions.

Therefore European insurers managing long-term products risk being forced to either:

i. hold unnecessary amounts of cash (to the detriment of long-term investments)
ii. perform forced sales of assets when cash is needed
iii. monetise assets via the repo market (if not restricted by national regulations)
iv. or simply make less use of derivatives, which threatens the provision of long-term insurance products, for some of which derivatives are vital

Unfortunately, alternatives ii. and iii. encourage pro-cyclicality and threaten the significant counter-cyclical role that the insurance industry has traditionally played in periods of market stress.

Policymakers had, in fact, anticipated the problem of cash requirements and exempted pension scheme arrangements (PSAs) from the clearing obligation. This exemption was designed to avoid forcing PSAs to "hold cash reserves instead of higher yielding assets" thereby reducing "the total amount paid out by the PSAs as retirement income".

Because of the way that the exemption was defined in EMIR, its application to insurance companies managing long-term products has a very narrow scope and is therefore extremely limited. This ignores the fact that insurance companies are affected in the same way as PSAs. They also act as long-term investors and minimise the allocation to cash in the interest of their policyholders.

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Insurance Europe believes that there are two possible solutions to address the concern of cash:

1) Encourage CCPs to develop tailored solutions for both pension funds and insurance companies. This would require either that CCPs accept non-cash collateral as variation margin or viable repo solutions over the lifetime of the derivative are provided. This approach would also require an extension of the

[5] *REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL under Article 85(2) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, assessing the progress and effort made by CCPs in developing technical solutions for the transfer by pension scheme arrangements of non cash collateral as variation margins, as well as the need for any measures to facilitate such solution (link), published on 3 February 2015*

existing exemption from the clearing requirement (i) in scope to insurers and (ii) in time until CCPs have developed respective solutions.

2) Consider a permanent exemption from the central clearing obligation for both pension funds and insurance companies that use derivatives for hedging.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

(ECOFIN) EXAMPLE: Volatility adjustment- National component.

1. To which Directive(s) and/or Regulation(s) do you refer in your example?

- Directive 2009/138/EC (Solvency II), Article 77d: Volatility adjustment to the relevant risk-free interest rate term structure.
- Commission Delegated Regulation (EU) 2015/35 (Delegated Act on Solvency II), Articles 49 Reference portfolios), 50 (Formula to calculate the spread underlying the VA) and 51 (Risk-corrected spread).

2. Please provide us with an executive/succinct summary of your example

The volatility adjustment (VA) was a key component of the Omnibus II agreement. Where insurers have a long term business model, they will be able to avoid forced sales by matching assets with liabilities. Insurers are therefore not exposed to short term market volatility. The prudential framework should reflect this ability and provide for a mechanism that dampens the impact of short-term volatility. Without any dampening mechanism, an increase of market spreads would reduce the value of insurers' investments in fixed income securities leading to a reduction of the company's available capital. If the instruments are also downgraded then the capital requirement of the insurer will also increase. In order to avoid a breach of prudential requirements the company might be forced to sell the asset and contribute to a further reduction of the market prices of assets (pro-cyclical behaviour). The VA aims to avoid this incentive by allowing the insurer to use part of the spread in the discounting of liabilities.

However, the VA does not achieve the intended goal. This is even more the case for the country-specific VA. Article 77d(4) of the Solvency II Directive provides that for countries in the Euro Area a country-specific VA may apply under certain conditions. The conditions are expressed in the form of the following dual threshold (i) the country-specific spread is at least 100 bps, and (ii) the country-specific spread should be at least twice as large as the spread for the whole Euro Area. When the dual condition is fulfilled, the spread for the Euro Area is increased by the country-specific spread less twice the spread for the Euro Area. At the end, the volatility adjustment is derived as 65% of the relevant spread. This design leads to an inefficient country VA since the country specific spread can rarely be more than 100 bps and is also less likely to be higher than twice the spread for the Euro area.

Many of the problems described under the example "Exaggerated Volatility of the prudential framework for insurers" could also incentivise pro-cyclical behaviour.

3. Please provide us with supporting relevant and verifiable empirical evidence for your example.

EIOPA publishes on a regular basis the risk-free rate and the VA. In October 2015, the VA was 23 basis points (bps) for most countries of the Euro Area, namely Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia and Spain.

A national VA was only applied to the following countries of the Euro Zone: Bulgaria (23+14=37 bps, not Euro Area but pegged), Denmark (23+24=47 bps, not Euro Zone but pegged), Greece (23+24=47 bps) and Hungary (23+25=48 bps).

At the same time the spread vs 10 year German government bonds was the following: Austria (27 bps), Belgium (31 bps), Denmark (28 bps), Finland (25 bps), France (33 bps), Greece (647 bps), Ireland (53 bps), Italy (102 bps), Netherlands (17 bps), Portugal (197 bps), Spain (121 bps).

The high dual threshold for the country-specific spread (the country-specific spread to be at least 100 bps and at least twice as large as the spread for the whole Euro Area) makes it unlikely that the country VA is triggered. More specifically the large weight of the affected markets in the representative portfolio for the Euro Area causes

that the country-specific spreads are less likely to go beyond twice the spread for the Euro Area. Therefore, most countries have to use the same volatility adjustment although the differences in spreads are quite large.

The evidence above shows that the country VA does not work as intended. It fails to dampen the impact of the spread movements in countries of the Euro area where spreads are significantly above the average (eg Spain, Portugal, Greece and Ireland).

4. If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Article 77d of the Directive should be revised to achieve a better and ideally simpler approach to addressing the volatility issue. Other changes may also be necessary however Insurance Europe does not believe these would be very extensive.

The Commission's 2018 review set out in Recital 150 of the Solvency II Delegated Act currently includes only a review of the Standard Formula but should be expanded to cover also a review of the Article 77d so that improvements can be made no later than 2018.

5. Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

-/-

AREA C: Interactions of individual rules, inconsistencies and gaps

ISSUE 11: DEFINITIONS

(PERS) EXAMPLE: TERMINOLOGY USED IN THE PENSIONS AREA

1. To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example)

n/a

2. Executive/succinct summary of the example

We find that the terminology used by different EU institutions and bodies in the area of occupational and personal pensions is not always fully consistent. This gives room to misunderstandings based on unclear definitions and concepts, which could affect policy work and the implementation of EU legislation in this area.

The use of the word "scheme" is a striking example, since this term is often used interchangeably with the institution providing the funding of the scheme (such as Institutions for Occupational Retirement Provision – IORPs -, insurers, other). But as stated in article 6.b of the IORP Directive (2003/41/EC), "*'pension scheme' means a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions*".

The relationship between the parties to the scheme (ie employers and employees) and the design of the scheme itself is grounded in Social and Labour Law, whereas the provider of the funding of a scheme (eg insurers, IORPs, etc.) is the correct addressee for prudential law, conduct of business rules etc.

This distinction has an impact on the scope of the EU jurisdiction vis-à-vis Member State competence.

The term "investment alternatives" is also subject to interpretation. In this case problems might arise both in relation to occupational pensions and third pillar products. For instance, "investment alternatives" could be either interpreted as different types of products (eg. insurance providing a guarantee or unit-linked insurance) or as different investment options that a member/consumer can choose within a given product (eg. a conservative strategy or a risky strategy). The lack of clear terminology in this field makes it difficult to make correct assessments of possible legislative interventions and, where this is done, causes difficulties in interpretation and implementation, including who should be seen as the right addressee of the legislation.

3. Supporting relevant and verifiable empirical evidence for your example (references to concrete examples, reports, literature references, data, etc.)

1) The lack of consistent terminology and unclear concepts influences underlying questionnaires and the result of different surveys conducted by EIOPA. This is in turn likely to have an adverse effect on policy, as there is a concrete risk that the choice of policy options and legislative/other actions taken will be based on incorrect assumptions. Below is a non-exhaustive list of incorrect descriptions of some occupational pension systems found in various reports from EIOPA:

- EIOPA Survey of EU practice on default investment options, issued on 8 April 2013:
  - Some occupational pension schemes are incorrectly described as "voluntary". Rather, they should be labelled as "mandatory", because they are based on mandatory collective agreements. Equally, some default alternatives have been wrongly described as having a "conservative" profile (ie aiming "to preserve the value of contributions and provide

minimum return"), when in fact they seek to maximise return, taking into account the relevant risks.

- EIOPA Fact Finding Report on Decumulation Phase Practices, issued on 27 October 2014:
  - The report contains mistakes with regard to the dominant type of financial institutions managing the pension decumulation phase in some member states. The report also seems to assume that there is always a split between the accumulation and the decumulation phases. However, in some member states such a split would not apply, as occupational pension schemes' members may stay with the same provider throughout these two phases.

- EIOPA Report on Investment options for occupational DC scheme members, issued on 28 January 2015:
  - The report mistakenly claims that no investment options exist under DC schemes in Member States where investment options are in fact a fundamental feature of such schemes.

2) The same ambiguity can be found in some consultation papers, naturally affecting the outcome of the consultation and any conclusions drawn from the consultations. One recent example is the EIOPA Consultation Paper on a Report on Good Practices on individual transfers of supplementary occupational pension rights. Due to inconsistent terminology, it was unclear whether the consultation paper focussed on transfers between schemes (ie pension agreements offered by employers/social partners) or between actors funding these schemes (ie IORPs/insurers/other).

3) The EIOPA database of pension plans and products in the EEA mixes "plans", providers and products. The term "plan" is inconsistent with the terminology used in the IORP directive (please see above). In addition, the database does not clearly distinguish between second (ie occupational) and third pillar (personal) pensions. The comparability between member states and the value of the database can therefore be put into question. Although the database has expressively been prepared on a "best effort" basis, it is nevertheless referred to in official documents as a key information source.

4. Suggestions to remedy the issue(s) raised in your example

A clear EU pension taxonomy needs to be developed and used consistently by EU policymakers.

Such a taxonomy should fit all EU pension systems. It should be based on clear definitions and concepts, clearly separating the pillars and distinguishing between the pension scheme, the institution managing the scheme (IORP/insurer/other) and possible products/investment alternatives offered, taking account of national specificities.

We would advise against moving forward with new initiatives in the pensions area without such a taxonomy.

Issue 12 – Overlaps, duplications and inconsistencies

(PERS) EXAMPLE: INSUFFICIENT TRANSITIONAL PERIOD FOR OCCUPATIONAL PENSIONS BUSINESS MANAGED BY INSURERS IN LINE WITH THE IORP DIRECTIVE UNDER SOLVENCY II

1. To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example)

- Directive 2003/41/EC, IORP Directive: article 4
- Directive 2009/138/EC, Solvency II: recital 138
- Directive 2014/51/EU, Omnibus II: recital 62, article 308b (15)

2. Executive/succinct summary of the example

Insurers are major providers of occupational pensions in several EU markets.

Under article 4 of Directive 2003/41/EC, member states can choose to let insurers be subject to the same rules as Institution for Occupational Retirement Provisions (IORPs) for their occupational pension business. This ensures a level-playing field between different types of institutions managing occupational pension schemes in markets making use of this option.

The level playing field for member states making use of the article 4 option is currently subject to a transitional period, running until the end of 2019.

However, in light of the EC decision not to revise IORPs' quantitative rules yet, this transition will come too soon. This will have serious consequences on occupational pension provision in member states making use of the article 4 option.

3. Supporting relevant and verifiable empirical evidence for your example (references to concrete examples, reports, literature references, data, etc.)

Directive 2003/41/EC ("IORP Directive") sets out minimum prudential requirements for IORPs. When IORP I was adopted, specific prudential rules applicable to insurers had already been developed under Directive 2002/83/EC.

In some member states, the occupational pension market is almost exclusively managed by insurers. Therefore, lawmakers agreed to extend the scope of IORP I to insurers' occupational pension business – including the same prudential treatment - with two objectives: effectively applying IORP I to the different occupational pension markets regardless of their organisation, and ensuring fair competition between pension funds and insurers.

This extension was granted under an option allowing member states to choose if they wanted to apply insurance-specific prudential rules or the IORP Directive rules to insurers' occupational pension business, provided that these activities are ring-fenced (ie strictly financially separated) from their insurance business:

Article 4 of IORP I:

"Optional application to institutions covered by Directive 2002/83/EC

Home Member States may choose to apply the provisions of Articles 9 to 16 and Articles 18 to 20 of this Directive to the occupational-retirement-provision business of insurance undertakings which are covered by Directive 2002/83/EC. In that case, all assets and liabilities corresponding to the said business shall be ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer."

Three countries have decided to use this option: France, Sweden and Lithuania.

Later, the EC proposed a new set of prudential rules for insurers through Directive 2009/138/EC ("Solvency II"). Co-legislators agreed to call on the EC to review IORP I and develop a risk-based prudential regime for IORPs:

Recital 138 of Solvency II:

"Article 17(2) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision refers to the existing legislative provisions on solvency margins. Those references should be retained in order to maintain the status quo. The Commission should conduct its review of Directive 2003/41/EC under Article 21(4) thereof as quickly as possible. The Commission, assisted by CEIOPS, should develop a proper system of solvency rules concerning institutions for occupational retirement provision, whilst fully reflecting the essential distinctiveness of insurance and, therefore, should not prejudge the application of this Directive to be imposed upon those institutions."

When Solvency II was reviewed and adjusted by Directive 2014/51/EC ("Omnibus II"), co-legislators agreed to introduce a transitional period for article 4 insurers. This transition should cease to exist only when IORP I would be reviewed with a substantial risk-based regime for IORPs with a target date in 2019:

Recital 62 of Omnibus II:

"It is necessary to provide for a transitional regime for occupational retirement business carried out by insurance undertakings pursuant to Article 4 of Directive 2003/41/EC of the European Parliament and of the Council while the Commission conducts its review of that Directive. The transitional regime should lapse as soon as amendments to Directive 2003/41/EC enter into force."

Article 308b of Omnibus II:

"Where, on 23 May 2014, home Member States applied provisions referred to in Article 4 of Directive 2003/41/EC, that home Member States may continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to complying with Articles 1 to 19, 27 to 30, 32 to 35 and 37 to 67 of Directive 2002/83/EC as in force on the last date of application of Directive 2002/83/EC until 31 December 2019."

In 2011, the EC asked for EIOPA's advice to review IORP I, especially in terms of prudential rules. Due to the complexity of the topic and diverging national approaches, EIOPA suggested pursuing a specific project called "holistic balance sheet", which is still ongoing. Considering the time the EC may take to develop a new prudential framework for IORPs, it is fair to assume that the initial transitional period under Omnibus II (ie 2019) will be void. In its proposal for a review of the IORP Directive (COM (2014)167 final), the EC suggests extending the transition until 2022, which is far too short. This will have serious consequences on insurers' ability to provide occupational pensions in markets making use of the article 4 option.

Therefore, Insurance Europe recommends extending the article 4 transitional measures until an appropriate date, ie 2032. This would also ensure legal certainty and a smooth transition for insurers making use of article 4 option.

4. Suggestions to remedy the issue(s) raised in your example

Insurance Europe suggests amending article 308b (15) of Omnibus II to extend until 31 December 2032 the transitional period for those insurers which are subject to article 4 of the IORP Directive.

(PERS) EXAMPLE: REMOVAL OF REINSURANCE FOR IORPs UNDER SOLVENCY II

1. To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example)

- Directive 2005/68/EC, Reinsurance Directive: article 2(2)
- Directive 2009/138/EC, Solvency II: Article 13(7)(a)

2. Executive/succinct summary of the example

Under 'Reinsurance' Directive 2005/68/EC, which is still in force today, Member States can allow reinsurers to provide cover to IORPs directly (Article 2(2)). Directive 2009/138/EC ('Solvency II'), which is due to come into force on 1 January 2016, changes the definition of reinsurance in such a way that it will suppress the ability for reinsurers to provide cover to IORPs directly (Article 13(7)(a)).

3. Supporting relevant and verifiable empirical evidence for your example (references to concrete examples, reports, literature references, data, etc.)

IORPs play a major economic and social role in the European Union, and carry a significant amount of market and biometric risks. For instance, IORPs offering annuities may be exposed to sizeable longevity risks, for which it is essential that they get adequate coverage. Reinsurance, as a security mechanism for carriers of occupational pension schemes, has the capacity to add stability to the pension system by offering such coverage.

The core competency of reinsurers is protection against some specific risks such as peak risks and protection of very large portfolios. Therefore, reinsurers can offer particularly efficient protection against these risks to IORPs.

Under the Reinsurance Directive (Directive 2005/68/EC), which is still in force today, member states can allow reinsurers to provide cover to IORPs directly (Article 2(2)). This is unquestionable since from a risk perspective the reinsurance of occupational pension schemes is very similar to the reinsurance of group life portfolios. While pension funds and insurance companies can have different characteristics, both can provide a cover against similar risks (eg mortality, morbidity, invalidity). This is why a number of member states have made use of this option.

Solvency II (Directive 2009/138/EC), which is due to become applicable as of 1 January 2016, changes the definition of reinsurance in such a way that it will suppress the ability of reinsurers to provide cover to IORPs directly (Article 13(7)(a)).

For the reasons mentioned above, we believe that this new development is unfortunate for reinsurers, IORPs and pensioners and employers. It is also our understanding that this modification was not the result of a clear intent, but largely accidental. We strongly support that all IORPs should be able to use reinsurance directly, unless home Member States decides otherwise.

4. Suggestions to remedy the issue(s) raised in your example

The issue can be remedied through an amendment to Solvency II. This would reintroduce a definition of reinsurance that would allow all IORPs to use reinsurance directly, unless home member states have special national provisions that justify the limitation or prohibition of direct reinsurance.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. 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 generate premium income of almost €1 170bn, employ over one million people and invest nearly €9 900bn in the economy.