

**Summary of Comments on Consultation Paper 68 - CEIOPS-CP-68/09 CEIOPS-SEC-170-09
CP No. 68 - L2 Advice on Treatment of ring fenced funds**

CEIOPS would like to thank ABI, ACA, AMICE, Assuralia , CEA, CFO Forum, CRO Forum, Deloitte , DIA Danish Insurance Association, DIMA, FFSA, GDV, GROUPAMA, Groupe Consultatif, Institut des Actuaires , IUA, Just Retirement Limited, KPMG ELLP, Legal & General Group, Lucida plc, Munich Re, PWC, and UNESPA

The numbering of the paragraphs refers to Consultation Paper No. 68 (CEIOPS-CP-68-09)

No.	Name	Reference	Comment	Resolution
1.	ABI	General Comment	<p>For the UK market RFF should only apply to With Profit Funds. None of the CEIOPS definitions by themselves is appropriate as they have the potential to include other business which should be excluded. Alternative B may also fail to recognise the 90/10 with profit funds.</p> <p>RFF cover a very different reality across Europe, and are proving very difficult to identify using only principles. Although we recognise that level I and II should aim at consistency of principles the ultimate goal should be the consistency in the outcome. We would therefore support approach A limited to Life insurance with the possibility for local regulators to specify which arrangement should be treated as RFF.</p> <p>General insurance profit sharing arrangements and unit linked should specifically be excluded, at least in the UK.</p> <p>The fund owner value within RFF should be recognised. As it stands the proposal is unclear and we strongly believe that shareholder's value embedded within the RFF must be recognised.</p> <p>Internal and partial models should have the freedom to adopt a more sophisticated approach such as future projection of SCR.</p> <p>There is not specific mention of how RFF should be treated at group level. We would like a confirmation from CEIOPS that there will be consistency of treatment at entity and group level and when there</p>	<p>Agreed. A principles-based approach has been adopted.</p> <p>Agreed. See comments to N° 3.</p> <p>Agreed.</p> <p>Noted. CEIOPS is satisfied that there is</p>

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			<p>are several RFF.</p> <p>The proposed adjustment to the SCR makes perfect sense but may add undue complexity to the calculation of the SCR where the impact may be immaterial for non-life companies with very small levels of Ring Fenced Funds. We suggest a simplification in cases where the impact is not material e.g. assess the surplus/deficit in Ring Fenced Funds separately and adjust the SCR directly, rather than the more complex method proposed, subject to materiality considerations.</p>	<p>consistency in the proposed treatment of own funds and SCR as between solo and group approaches. This is to ensure a consistent treatment and avoid regulatory arbitrage.</p> <p>Partially agreed. Further examples will be developed and included in the paper. (3.31 modified, addressing materiality).</p>
2.	ACA	General Comment	<ol style="list-style-type: none"> 1. The suggested approach is generally pragmatic as part of the standard formula, but should not be imposed when an internal or partial model is used 2. Internal and partial models should have the freedom to adopt more sophisticated approaches for allowing for fungibles and transferability constraints, e.g. using Monte Carlo simulations to reflect the different directional effects. Using such approaches is likely to result in fungibles and transferability constraints being much more accurately captured. 3. Further consideration is required regarding the principle of proportionality where there are multiple ring fenced funds. raises the treatment of multiple ring-fenced funds as an issue but does not offer any solutions as to how to deal with the problem. We request examples showing how multiple ring-fenced funds should be treated. 4. Qualitative measures under Pillar II should be considered to reduce the need of complex calculations based on national accounting figures (e. g. the percentage of non-transferability used 	<p>Agreed.</p> <p>Agreed.</p> <p>See last comments in N° 1.</p> <p>Noted.</p>

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			<p>in the examples would require to take into account the legal environment).</p> <p>Shareholder value within ring-fenced funds should be recognised. The value of shareholders' rights to participate in future profit sharing should be recognised and not treated as policyholder funds and potentially excluded.</p> <p>The frontier between the two definitions is not clear to us. What type of arrangements would/could be considered RFF under definition 1 and not under definition 2? Under definition 2 and not under definition 1?</p>	<p>Agreed. The advice will cover the treatment of future transfers attributable to shareholders in respect of profit sharing arrangements where benefits to policyholders are reflected in technical provisions – for example 10%/90%. These future transfers should not form part of the own funds of the ring fenced fund when calculating the ring fencing restriction. This is only relevant where own funds of the ring fenced fund exceed the notional SCR.</p> <p>Noted. See comments in N° 1.</p>
3.	AMICE	General Comment	<p>These are AMICE 's views at the current stage of the project. As our work develops, these views may evolve depending in particular on other elements of the framework which are not yet fixed.</p> <p><input type="checkbox"/> CEIOPS defines two Alternatives (Alternative A and Alternative B) which correspond to CEIOPS different views on how Ring-Fenced Funds should be identified. The paper also includes some tests; Clarification is needed on whether these tests are intended to act as an overarching assessment of whether an arrangement is a RFF, or are going to be applied strictly on the basis of either definition Alternative A or B.</p> <p><input type="checkbox"/> AMICE Members believe that a clear distinction needs to be made between Funds where own funds are not available both on a winding up situation and on a going concern situation and those</p>	<p>Agreed. A principles-based approach was adopted. Call for stakeholders' feedback regarding the development of further guidance in time for QIS5 and Level 3.</p> <p>Noted. See comments to N° 5.</p>

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			<p>Funds where own funds are only not available on a going concern situation. A more favorable treatment should be given to the second type of Arrangements.</p> <p><input type="checkbox"/> Diversification benefits should not deducted from the total amount of own funds:</p> <p>Own funds can only be decreased due to potential lack of transferability. Therefore we suggest that no artificial decrease is made to the Own Funds to counter-act diversification effects captured in the SCR. Any reduction to diversification effects should be recognised within the SCR, not the own funds.</p> <p><input type="checkbox"/> We consider it is essential maintaining due regard to the principle of proportionality which is at the core of the solvency II process. This is particularly important for undertakings with a large number of ring-fenced funds.</p> <p><input type="checkbox"/> We would be more in favour of the Alternative B for the definition and treatment of ring-fenced funds. This definition appears consistent with the way the business is managed, and consistent with the definition of ring-fenced funds used in Article 304 of the Level 1 text. Irrespective of our preference for Alternative B, it is essential supervisors develop, as part of the Level 3 guidance, a list of arrangements that may fall under the "ring-fenced fund" definition.</p> <p><input type="checkbox"/> AMICE also proposes to include an impact assessment on this topic to be tested in the QIS 5 exercise.</p>	<p>Agreed. Advice has been clarified to remove references to diversification in respect of the own funds adjustments.</p> <p>See last comments in N° 1.</p> <p>See first comments to N° 1 and N° 3.</p> <p>Not accepted. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new</p>
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				types of RFF that may be created in the future.
4.			Confidential comments deleted.	
5.	CEA	General Comment	<p>The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 68 on Treatment of ring fenced funds.</p> <p>It should be noted that the comments in this document should be considered in the context of other publications by the CEA.</p> <p>Also, the comments in this document should be considered as a whole, i.e. they constitute a coherent package and as such, the rejection of elements of our positions may affect the remainder of our comments.</p> <p>These are CEA's views at the current stage of the project. As our work develops, these views may evolve depending in particular, on other elements of the framework which are not yet fixed.</p> <p>Moreover, it should be noted that this consultation has been carried on an extremely short time frame which has not allowed a complete analysis of all the advice. Therefore, the following comments focus only on the main aspects of Ceiops' advice and are likely to be subject to further elaboration in the future.</p> <p>This paper leaves it very unclear as to how to identify a ring-fenced</p>	

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		<p>fund, neither proposed definition appears appropriate</p> <p>There are two definitions of ring-fenced funds proposed in this paper (upon which Ceiops is not yet decided) which could result in very different interpretations of what actually constitutes a ring-fenced fund. Ceiops' proposal A seems far too wide and would encompass a range of funds which are not considered as ring-fenced funds.</p> <p>In our view the following should NOT be considered as ring-fenced funds:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinsurance <input type="checkbox"/> General insurance profit sharing arrangements such as pooling, finites, equalisation reserves <input type="checkbox"/> Guarantee scheme provisions <input type="checkbox"/> Unit linked products <p>The above products should be excluded from the scope of this paper. In particular, ring-fenced funds should be limited to LIFE insurance products only. Furthermore, funds should not be considered ring-fenced if there are no direct policyholder rights to these funds.</p> <p>Ceiops attempts to find one definition which could cover all EU markets. However, ring-fenced funds can exist in very different legal structures across the EU. We would suggest that a more granular analysis is carried out in order to determine the types of funds that exist i.e. Ceiops should draw up a list of the types of funds that are currently in existence in each market that are considered to be ring-fenced. We would be happy to work with Ceiops to produce this list. Obviously we would not expect that</p>	<p>Accepted. See comments to N° 1.</p> <p>See first comments to N° 1.</p> <p>Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p> <p>See previous comment.</p> <p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture</p>
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		<p>level 2 contains a specific list, as this could exclude the setting-up of new ring-fenced fund structures. However, we believe it is essential to first consider what we are trying to capture under this definition before attempting to define a set of principles that can define these, and only these, as ring-fenced funds. Furthermore, this list would be essential to consider in determining if different treatments are appropriate for each fund.</p> <p><input type="checkbox"/> We would be happy to work with Ceiops to word an appropriate definition which takes into account the national specificities in each market whilst also ensuring an appropriate level of harmonisation.</p> <p>Ceiops' suggested approach to the treatment of fungibility and diversification should not be imposed when an internal or partial model is used</p> <p>Ceiops' view of the treatment of ring-fenced funds is asymmetric, i.e. while the lack of transferability is taken into account, the potential one-way diversification effects with ring-fenced funds is not. It is important that this one-way diversification is taken into account, however, we understand that this may be difficult to capture in a simple manner and we support the fact that Ceiops has attempted to capture part of these effects for those RFF in deficit. However, Ceiops should also allow for diversification with the part of the ring-fenced fund that belongs to the shareholder, and as discussed below, this shareholder value, as well as its effect on diversification, is ignored. We would expect that those companies using Internal and Partial models should have the freedom to adopt more sophisticated approaches allowing accurately for fungibility and transferrability constraints, e.g. using Monte Carlo simulations to reflect the different directional effects.</p>	<p>the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p> <p>Agreed.</p> <p>See last comments to n° 8.</p> <p>Agreed.</p>
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			<p>We also note the following concerns with Ceiops' treatment:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All shareholder value within ring-fenced funds should be recognised at entity level. - The own funds held within each ring-fenced funds can be split into two components, the part that belongs to policyholders and the part that belongs to shareholders. The shareholder part, i.e. the value of shareholders' rights to participate in future profit sharing, should be recognised in the own funds shown in the entity's balance sheet and should not be treated as policyholder funds. <input type="checkbox"/> All other value within ring-fenced funds should be shown as "non-transferable own funds" at entity level. <p>These should not be set to zero at entity level. Clearly an entity with a significant amount of excess own funds held within a RFF is in a much stronger position than an identical entity but with no excess own funds within the RFF. However, under Ceiops' proposal the entities would appear equally well capitalised looking at their balance sheets.</p> <ul style="list-style-type: none"> <input type="checkbox"/> In the case a ring fenced fund is in excess, potential reduction of own funds due to lack of diversification benefits should be analysed only for the part of own funds that are not transferable. <input type="checkbox"/> Diversification benefits should not reduce Own Funds, but 	<p>Agreed. See comments to N° 3.</p> <p>Agreed.</p> <p>Partially agreed. Within the ring fenced fund, own funds meeting the notional SCR may be taken into account for the purposes of the SCR of the undertaking. Any excess over the notional SCR may not be recognised in any tier. This is because they cannot be used outside of the ring fenced fund. In terms of reporting the balance sheet, all own funds should be included making clear those which are available to meet the SCR and those which are not because they are restricted.</p>
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		<p>should be taken into account in the SCR.</p> <p>- Ceiops seems to be mixing-up the restrictions to transferability in the SCR and Own Funds. We suggest that no artificial decrease is made to the Own Funds to counter-act diversification effects captured in the SCR. Any reduction to diversification effects should be recognised within the SCR, not the own funds.</p> <p>We should state that the impact of the proposed quantitative restrictions has not yet been tested as the QIS4 approach was different. Ceiops' proposed treatment would need to be tested under QIS5.</p> <p>Further consideration is required regarding the principle of proportionality where there are multiple ring fenced funds.</p> <p>Ceiops raises the fact that the treatment of multiple ring-fenced funds is an issue to be resolved and does not actually offer any solutions as to how to deal with the issue. In some markets this could be a very important issue as we understand there could be as many as 100 ring-fenced funds existing within an insurer, related for example to distribution channels or to the ALM policy, and so the computational burden could be immense.</p> <p>We request examples showing how multiple ring-fenced funds should be treated. Ceiops has given useful examples of the treatment of ring-fenced funds in their Annex to CP68, but has only done so for entities with one ring-fenced fund.</p> <p>Quantitative thresholds (e. g. based on a percentage of the SCR) might be appropriate to restrict the special treatment of such funds to those with material effect on the solvency position of the undertaking. Qualitative measures under Pillar II should also be</p>	<p>Agreed. Advice has been clarified to remove references to diversification in respect of the own funds adjustments.</p> <p>Noted.</p> <p>See last comments in N° 1.</p> <p>Noted. Examples will be added to the CP.</p>
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			<p>considered to reduce the need of complex calculations (e. g. the percentage of non-transferability used in the examples would require to take into account the legal environment).</p> <p>Identification of ring-fenced funds may be time-dependent</p> <p>The classification as a ring-fenced fund might not be stable over time. For example:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The level of ring-fencing might be influenced by the regulator. In special circumstances he might allow the cross-use of profits to cover losses. This might require a dynamic modelling of the transferability/non-transferability of profits and losses. <input type="checkbox"/> Another example is the merger of two separate undertakings. It can happen that the two businesses initially are run separately but later on are merged in a way that no ring-fencing happens. 	<p>No simplification will be developed at this stage.</p> <p>Noted.</p>
6.	CFO Forum	General Comment	<p>We highlight that this consultation paper considers the extent to which financial resources are fungible and transferable.</p> <p>In order to for an undertaking to correctly assess its internal solvency, it is first required to calculate its available financial resources ('AFR'). An undertaking must then consider the extent to which its financial resources are fungible and transferable. We highlight that the purpose of this consultation paper is to consider the second of these steps.</p> <p>The CFO Forum believes that the definitions of a ring fenced fund,</p>	<p>Noted.</p> <p>See first comments to N° 1.</p>

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			<p>as they are currently set out in CP68, are too broad. We believe the CP is aiming to mainly capture UK-style with profit funds within the definition and would instead support a more principles-based solution, restricted to life business, in which local regulators would work with undertakings to agree the funds that would be defined as ring fenced.</p> <p>The CFO Forum believes that the current definition of ring fenced fund is too broad and excludes diversification benefits that exist in stress scenarios from the calculation of the SCR and recognition of own funds.</p> <p>Our interpretation of the CP is that the definition is trying to capture UK-style with profits funds as ring fenced funds. We believe that the definition should be more principles based and allow flexibility for local regulators to work with undertakings to agree the definition of a ring fenced fund for their territory. In addition, we propose that the scope is reduced to only cover life business and should allow an undertaking to depart from the local regulator’s definition if this is considered more appropriate and the rationale is suitably explained and disclosed.</p> <p>The current definition would encapsulate unit linked funds. We do not agree that funds of this type should fall within the definition of ring fenced.</p> <p>CFO Forum proposes an alternative definition which would include only those rare cases where there are legal barriers against extraction of capital. That is, only funds that are “legally isolated” and require separate accounts should be classed as “ring fenced”.</p> <p>Shareholders’ embedded value within a ring fenced fund should be fungible.</p> <p>Own funds of a ring fenced fund can be split into two components,</p>	<p>See first comments to N° 1.</p> <p>See first comments to N° 1.</p> <p>Unit linked funds have been explicitly excluded from the scope of the paper.</p> <p>See first comments to N° 1.</p> <p>Agreed. See comments to N° 3.</p>
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			<p>the share that belongs to policyholders and the share that belongs to the shareholders. CP68 does not currently consider whether the shareholders' share of the own funds is fungible.</p> <p>We interpret paragraph A1.1 as recognising the existence and fungibility of shareholders' embedded value, consistent with the economic based approach underpinning Solvency II. We consider that the shareholders' embedded value can be reliably calculated and as such, strongly believe that it is considered fungible. We believe the level 2 text should be clarified so that it is clear that it only places a limitation on fungibility for the policyholders' embedded value in the ring fenced fund.</p> <p>Advice in CP68 focuses mainly on solo entities but some of the issues discussed in this paper should also be considered at the group level.</p> <p>1. The advice mainly concentrates on the treatment of ring fenced funds at entity level. The CFO Forum would welcome a similar approach at group level, in particular the considerations given to assessing shareholders' embedded value of future emerging profits.</p>	<p>Noted. CEIOPS is satisfied that there is consistency in the proposed treatment of own funds and SCR as between solo and group approaches. This is to ensure a consistent treatment and avoid regulatory arbitrage.</p>
7.			Confidential comments deleted.	
8.	CRO Forum	General Comment	<p>1. 68.A Shareholder's embedded value within a ring-fenced fund (RFF) should be fungible (priority: High)</p> <p>2. Own funds of a RFF can be split into two components, a share that belongs to the policyholders and a share that belongs to the shareholders. The paper is vague on whether the shareholders' share of the own funds (i.e., the Shareholders' embedded value within RFF) is considered fungible.</p> <p>3. It is our interpretation that CEIOPS recognises the existence</p>	Agreed. See comments to N° 3.

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		<p>and fungibility of shareholders’ embedded value (as outlined in Para A1.1), which is consistent with the economic based approach that underpins Solvency II, and only places a limitation on fungibility for the policyholders’ embedded value in the RFF in its advice in para 3.74.</p> <p>4. We strongly recommend CEIOPS to clarify this in their final advice to indicate that recognition of shareholders’ embedded value is allowed. We consider that the shareholders’ embedded value can be reliably calculated using the valuation approaches in Solvency II and should be considered fungible.</p> <p>5. In addition, companies using Internal (and partial) models should have the freedom to adopt more sophisticated approaches for allowing for fungibility and transferability constraints, e.g. using Monte Carlo simulations to reflect the different directional effects. Using such approaches is likely to result in fungibility and transferability constraints being much more accurately captured.</p> <p>6. 68.B Identification of ring-fenced funds (priority: High)</p> <p>7. The paper proposes two approaches for identifying ring-fenced funds (RFF) (“Alternative A” and “Alternative B”). Both these proposals, as stated could result in funds inadvertently being included in scope of RFF while some RFF being excluded from the scope (as discussed in para 3.68). Care should be taken when designing a mechanism for identifying RFF because these funds have a legal structure in their own right. Any prescriptive attempt at identifying a RFF under Solvency II could have unintended consequences.</p> <p>8. We would like to highlight the potential ambiguity and challenges with setting out a principles based approach to identify RFFs across EU. As currently drafted, there seems to be room for a range of different interpretations. We suggest further work is undertaken in tailoring the definitions to accommodate only those</p>	<p>Agreed.</p> <p>See first comments to N° 1. See first comments to N° 3.</p> <p>See first comments to N° 1.</p> <p>See first comments to N° 3. Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such</p>
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			<p>products falling in scope of RFF (for instance, Unit-Linked should not be considered as RFF. In general, we would support a principle based approach for identifying RFF, such as using a modified "Alternative A" which is restricted to life insurance business on a "comply or explain" basis, supported by a list of RFF maintained by each member state regulator as part of Level 3 to ensure harmonization. (see para 3.68 for details).</p> <p>9. 68.C The advice in CP46 on consideration of own funds on a run-off basis may also be applicable to RFF (priority: high)</p> <p>10. The overall tone of CP46 seemed to imply that own funds are being considered from a run-off perspective, which could also apply to RFF. We would like to point out (as we did in our response to CP46) that such an approach is inconsistent with the transfer concept in the Directive. We consider that since the Solvency II measurement basis is to transfer liabilities to another entity, a going concern basis is most appropriate.</p> <p>11. Refer to the CRO Forum's comments on CP46 for details.</p> <p>12. 68.D Recognition of SCR diversification between RFF and other funds when RFF is in deficit (priority: medium)</p> <p>13. We agree with CEIOPS approach to allow SCR diversification benefit between RFF and other funds when RFF is in deficit, however we suggest that amounts of own funds should not be restricted based on diversification benefits as there is no direct link between the amount of diversification and amount of own funds (own funds should not be artificially decreased to counter-act diversification effects captured in the SCR).</p>	<p>perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p> <p>Noted.</p> <p>Agreed. There are diversification effects where the profits arising in the calculation of SCR for bidirectional scenarios can cover losses outside the RFF. Otherwise, that is, the case of restricted OF, such effects cannot be considered because there is no place to such compensation. Thus, SCR will be higher in the presence of restricted OF.</p> <p>Agreed (last comment).</p>
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9.	Deloitte	General Comment	<p>We welcome CEIOPS’s contribution to clarify what can be considered as Ring-Fenced Funds (RFFs). We note that under both definitions of RFFs a high number of RFFs would be considered. We therefore recommend an approach to determine the notional SCR and the adjusted own funds that is as simple as possible, particularly for non-material RFFs. In addition, our principal comment on the approach outlined in the CP is that the exclusion of own funds for surplus within a RFF should be limited to the proportion of the surplus that is attributable to policyholders See our comments at paragraph 3.40 for more detail on this point.</p>	See comments in N° 1.
10.	DIA Danish Insurance Association	General Comment	<p>The term ring fenced funds is not clearly defined. A clear delimitation of ring fenced funds is necessary.</p> <p>According to article 99 b) a condition for the identification of a ring fenced fund is a lack of transferability of own funds items.</p> <p>However, in its advice of CEIOPS in our view extends some arrangements which do not necessarily involve a lack of transferability of own funds, but which are only characterised by a barrier to the sharing of profits/losses arising from different parts of the undertaking’s business (3.71 in CP 68). The uncertainty arises in Denmark because we do see ring fenced arrangements like the ones in the CP among the provisions for future discretionary bonuses rather than among the own funds.</p> <p>Hence, in our view CEIOPS is extending the definition of own ring</p>	See first comments to N° 1.

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			<p>fenced funds beyond the arrangements which should be covered according to the directive text. We urge, therefore, that the CEIOPS advice is adjusted accordingly to avoid misunderstandings.</p> <p>In the Danish case, the advice from CEIOPS could lead to some with profits arrangements in life insurance being covered even though they should not be, according to the directive text as they are not part of own funds. The following remarks are thus only valid if the CP advise is used also on technical provisions – which we doubt should be the case</p> <p>According to the definition in CP 68, ring fencing arrangements in the Danish with-profits market typically concern the distribution of profit and losses. In most cases own funds are not included in the ring fenced funds. The assets of the ring fenced funds are usually invested on a collective basis and the investment return distributed to the individual funds according to a pre-defined allocation key. The ring fencing arrangements may involve different persons/contracts dependent on the source of the loss.</p> <p>When profits are generated they are automatically passed on to the contract holders by increasing their bonus obligation. The provision of own funds are paid for based on a pre-defined fraction of technical provisions. When losses occur the bonus obligation is reduced to the extent possible.</p> <p>If this does not suffice, own funds cover additional losses. Most ring fencing arrangements in Danish with-profit companies set out restrictions as to the usage and allocation of the bonus obligation. These restrictions imply that a loss may cause own funds to be written down even if the total value of the bonus obligation exceeds</p>	
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			<p>the loss.</p> <p>The restrictions on the distribution of profit and losses do not cease to exist in a winding up situation.</p> <p>For the products found in the Danish market and in the light of Danish legislation, proposal B raises more questions than answers. As an example, if ring fenced funds invest on a collective basis does this imply that assets must be separated from those of the other insured as required according to condition 1 of proposal B?</p> <p>However, we reiterate that the definition of ring fenced funds in CP 68 seems to go beyond the directive text, and hence, we believe that the products described above should not lead to the recognition of ring fenced funds.</p> <p>The only arrangements in the Danish market which may fall under the scope of the directive text on ring fenced funds could be certain health and accident activity /non-life) which can be carried out within life business.</p>	
11.	DIMA	General Comment	<p>DIMA welcomes the opportunity to comment on this paper.</p> <p>Comments on this paper may not necessarily have been made in conjunction with other consultation papers issued by CEIOPS.</p> <p>DIMA notes that, to date, CEIOPS' contemplation of the issue of ring fenced funds has not included features that are more particular to reinsurance.</p> <p>DIMA believes that in considering ring fenced funds, it is necessary to contemplate the various collateral arrangements that can be put in place to mitigate the exposure of (re)insurance undertakings to the credit risk of their reinsurers/retrocessionaires. These</p>	Agreed.

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			arrangements can create a barrier of sorts to the sharing of losses from the non ring fenced portfolio with the assets collateralising the ring fenced funds. These arrangements are not at a national level and can vary significantly from instance to instance with respect to, inter alia, nature, duration and strength of rights of each party so that it would be impractical to describe any particular type. Therefore, a principles-based approach is appropriate and advocated.	
12.	FFSA	General Comment	<p>FFSA disagrees with both alternatives for the identification of a ring fenced fund. The definition of ring-fenced funds under alternative A leads to major restrictions on life insurance, as well as PPI insurance in France, since this is subject to profit sharing rules. Reinsurance contracts also include quite often participation features. This paper does not address this topic, and seems to focus only on life insurance. We believe that these businesses should not be considered as ring-fenced funds, since it is not easy to separate the assets relating to these activities.</p> <p>Assessing the impact of the individual risk charges at the ring fenced funds level could be highly burdensome for undertakings as well diversified companies may have a significant number of ring fenced funds, related for example to distribution channels or to the ALM policy (§ 3.33). CEIOPS should provide some simplifications.</p> <p>Taking both diversification and own funds adjustments on restricted own funds appear to be extremely too conservative. Dealing with ring-fenced funds does not mean that a company cannot take advantage of diversification. Indeed, it can use transfers between segregated funds, in order to optimise the asset allocation. We consider that the adjustments should be limited to own funds adjustments.</p> <p>Amounts of own funds should not be restricted based on diversification benefits. Indeed, diversification of risks means that</p>	<p>See comments to N° 1.</p> <p>See first comments to N° 3. Reinsurance has been explicitly excluded from the scope of the paper.</p> <p>See last comments in N° 1.</p> <p>See last comments to n° 8.</p> <p>Agreed.</p>

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			all risks do not happen at the same time and in consequence when the business is more diversified the SCR should be decreased. There is no link between the amount of diversification and the amount of own funds. Own funds can only be decreased due to potential lack of transferability. Undertaking's future profits should be recognised as transferable (as they belong to the undertaking and not to the policyholder or ring fenced fund) (§3.73)	
13.			Confidential comments deleted.	
14.	GDV	General Comment	<p>GDV recognises CEIOPS' effort regarding the implementing measures and likes to comment on this consultation paper. In general, GDV supports the detailed comment of CEA. Nevertheless, the GDV highlights the most important issues for the German market based on CEIOPS' advice in the blue boxes. It should be noted that our comments might change as our work develops.</p> <p>Based on our experience during the previous two consultation waves we also want to express our concerns with regard to CEIOPS decisions:</p> <ol style="list-style-type: none"> 1. restricting the consultation period of the 3rd wave to less than 6 six weeks 2. splitting the advice to the EU-commission in two parts ((1) first+second wave and (2) third wave) although both parts are highly interdependent 3. not taking into account many comments from the industry due to the high time pressure (first+second wave) <p>These decisions could reduce the quality of the outcome of this</p>	

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		<p>consultation process. Therefore we might deliver further comments after we fully reviewed the documents.</p> <p>From our point of view, it could be foreseen that especially the calibration of the QIS5 will not be appropriate nor finalised when beginning in August 2010.</p> <p>Moreover, it should be noted that this consultation has been carried on an extremely short time frame which has not allowed a complete analysis of all the advice. Therefore, the following comments focus only on the main aspects of CEIOPS' advice and are likely to be subject to further elaboration in the future.</p> <p>We think that there are no arrangements in Germany which would have to be treated as ring-fenced funds (RFF). However, this paper leaves it very unclear as to how to identify a RFF</p> <p>There are two definitions of ring-fenced funds (RFF) proposed in this paper (upon which CEIOPS is not yet decided) which could result in very different interpretations of what actually constitutes a ring-fenced fund. Based on the ambiguity of and in the definitions our analysis of different arrangements in non-life insurance, life insurance, health insurance and reinsurance resulted in the following: We think that there are no arrangements which would have to be treated as ring-fenced funds for Solvency II purposes in Germany.</p> <p>CEIOPS' proposal A seems far too wide</p> <p>CEIOPS' proposal A seems far too wide and would encompass a range of funds which are not considered as ring-fenced funds depending on the interpretation. We favour the alternative</p>	<p>See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p>
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			<p>definition B which is narrower and more related to life insurance. In general, a broad scope of the definition of RFF is not desirable; i. e. criteria should be at least seen as cumulative.</p> <p>Defining arrangements NOT to be considered as ring-fenced funds In our view the following should NOT be considered as ring-fenced funds:</p> <ul style="list-style-type: none"> • Reinsurance • General insurance profit sharing arrangements such as pooling, finites, equalisation reserves • Guarantee scheme provisions • Unit linked products <p>The above products should be excluded from the scope of this paper. In particular, ring-fenced funds should be limited to LIFE insurance products only. Furthermore, funds should not be considered ring-fenced if there are no direct policyholder rights to these funds.</p> <p>Further work on types of funds to be considered to be ring-fenced for Solvency II purposes is necessary</p> <p>CEIOPS attempts to find one definition which could cover all EU markets. However, ring-fenced funds can exist in very different legal structures across the EU. We would suggest that a more granular analysis is carried out in order to determine the types of funds that exist i.e. CEIOPS should draw up a list of the types of funds that are currently in existence in each market that are considered to be ring-fenced for Solvency II purposes. GDV is willing to support these attempts on an appropriate definition which</p>	<p>See first comments to N° 3.</p> <p>See first comments to N° 1.</p> <p>Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p> <p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new</p>
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			<p>takes into account the national specificities in each market whilst also ensuring an appropriate level of harmonisation.</p> <p>More guidance is needed for QIS5</p> <p>We think that much more guidance is needed for QIS5 as provided in the draft consultation paper. Sound analysis of QIS5 identification and treatment of RFF will be only possible if undertakings get clear technical specifications. The draft consultation paper with its ambiguous alternative definitions was far away from being sufficient in that kind and has to be improved for more clarity on existing arrangements in the undertakings.</p> <p>We should state that the impact of the proposed quantitative restrictions has not yet been tested as the QIS4 approach was different and rejected as non-appropriate. Care has to be taken to ensure consistency with the treatment of ring-fenced funds and the group calculations, otherwise arbitrage would be created.</p> <p>CEIOPS' suggested approach to the treatment of fungibility and diversification should not be imposed when an internal or partial model is used</p> <p>CEIOPS' view of the treatment of ring-fenced funds is asymmetric, i.e. while the lack of transferability is taken into account, the potential one-way diversification effects with ring-fenced funds is not. It is important that this one-way diversification is taken into account, however, we understand that this may be difficult to capture in a simple manner and we support the fact that CEIOPS has attempted to capture part of these effects for those RFF in deficit. However, CEIOPS should also allow for diversification with the part of the ring-fenced fund that belongs to the shareholder,</p>	<p>types of RFF that may be created in the future.</p> <p>Noted.</p> <p>Noted. See last comment to N° 7.</p> <p>Agreed. (3.21 modified).</p> <p>See last comments to n° 8.</p>
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			<p>and as discussed below, this shareholder value, as well as its effect on diversification, is ignored. We would expect that those companies using Internal and Partial models should have the freedom to adopt more sophisticated approaches allowing accurately for fungibility and transferability constraints, e.g. using Monte Carlo simulations to reflect the different directional effects.</p> <p>All shareholder value within ring-fenced funds should be recognised at entity level.</p> <p>The own funds held within each ring-fenced funds can be split into two components, the part that belongs to policyholders and the part that belongs to shareholders. The shareholder part, i.e. the value of shareholders' rights to participate in future profit sharing, should be recognised in the own funds shown in the entity's balance sheet and should not be treated as policyholder funds.</p> <p>All other value within ring-fenced funds should be shown as "non-transferable own funds" at entity level.</p> <p>These should not be set to zero at entity level. Clearly an entity with a significant amount of excess own funds held within a RFF is in a much stronger position than an identical entity but with no excess own funds within the RFF. However, under CEIOPS' proposal the entities would appear equally well capitalised looking at their balance sheets.</p> <p>Diversification benefits should not reduce Own Funds, but should be taken into account in the SCR.</p> <p>CEIOPS seems to be mixing-up the restrictions to transferability in the SCR and Own Funds. We suggest that no artificial decrease is</p>	<p>Agreed.</p> <p>Agreed. See comments to N° 3.</p> <p>Agreed.</p> <p>Partially agreed. See comments to N° 5.</p> <p>Agreed. See last comments to N° 8.</p>
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			<p>made to the Own Funds to counter-act diversification effects captured in the SCR. Any reduction to diversification effects should be recognised within the SCR, not the own funds.</p> <p>We should state that the impact of the proposed quantitative restrictions has not yet been tested as the QIS4 approach was different. CEIOPS' proposed treatment would need to be tested under QIS5.</p> <p>Further consideration is required regarding the principle of proportionality.</p> <p>CEIOPS raises the fact that the treatment of multiple ring-fenced funds is an issue to be resolved and does not actually offer any solutions as to how to deal with the issue.</p> <p>Quantitative thresholds (e. g. based on a percentage of the SCR) might be appropriate to restrict the special treatment of such funds to those with material effect on the solvency position of the undertaking. Qualitative measures under Pillar II should also be considered to reduce the need of complex calculations (e. g. the percentage of non-transferability used in the examples would require to take into account the legal environment).</p> <p>Identification of ring-fenced funds may be time-dependent The classification as a ring-fenced fund might not be stable over time. For example:</p> <ul style="list-style-type: none"> ■ The level of ring-fencing might be influenced by the 	<p>Noted.</p> <p>See last comments in N° 1.</p> <p>Noted.</p>
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			<p>regulator. In special circumstances he might allow the cross-use of profits to cover losses. This might require a dynamic modelling of the transferability/non-transferability of profits and losses.</p> <ul style="list-style-type: none"> ■ Another example is the merger of two separate undertakings. It can happen that the two businesses initially are run separately but later on are merged in a way that no ring-fencing happens. 	
15.	GROUPAMA	General Comment	<p>We would be in favour of Alternative B for the definition and treatment of ring-fenced funds. This definition appears consistent with the way the business is managed, and consistent with the definition of ring-fenced funds used in the Directive for Article 304.</p> <p>However, we would like to emphasize the different treatment suggested by CEIOPS to deal with restricted own funds:</p> <p>* para 3.40: we understand that restricted own funds could not be used to cover the entity SCR to the limit of the ring-fenced funds SCR. No limitation of diversification benefit is suggested, as the problem of transferability is analysed at the own fund level.</p> <p>* para 3.74: CEIOPS is suggesting limiting the diversification benefits where ring-fenced funds could generate restricted own funds. This is very conservative, and contradictory with an economic approach. Restricted items should be analysed case by case and potentially reduce the total amount of eligible own funds if these are not transferable.</p> <p>Furthermore, this would be in contradiction to the treatment suggested in the CP 60 dealing with group consolidation of own funds.</p>	<p>See first comments to N° 1.</p> <p>See last comments to N° 8.</p> <p>Accepted.</p> <p>Noted. See last comment to N° 7.</p>
16.	Groupe	General	It will be clear from what follows that there are considerable	Not accepted. The aim is to

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	Consultatif	Comment		
			<p>differences between national contexts. We have contrary to our usual practice allowed national comments to stand. The Groupe would support the suggestion of industry stakeholders that work be done to inventory the variety of arrangements which exist at national level.</p> <p>Regarding the proposed interpretations to identify a RFF, Interpretation B (Para 3.43 + 3.69) may be the more appropriate. Looking at local markets: E.g. Germany: Interpretation B identifies the German RFF "Sicherungsvermögen (according to § 66 German Insurance Supervisory law)" correctly, as well as its subdivision "Anlagestock" (according to § 54 b German Insurance Supervisory Law).</p> <p>The two supplemental tests [3.58 + 3.71 a) and 3.59 + 3.71 b)] should be adapted to the employed interpretation to identify a RFF.</p> <p>Computation of SCR: The treatment of SCR very much depends on local conditions, on regulatory and contractual rules. It is imaginable that different countries arrive at different points of view. From the German point of view, we don't agree with the advice that "...loss of diversification should be reflected through an adjustment". From the German point of view, diversification should be fully applied even if there is a ring fenced fund. The existence of a ring-fenced fund does not influence the common distribution function of the overall risk that is expressed by applying diversification on modular calculated SCRs relating to single risk drivers. Why should the existence of ring-fenced funds lead to simultaneous occurrence of risk events?</p> <p>Also the transferability of own funds in excess very much depends on local conditions, on regulatory and contractual rules. It is also imaginable that different countries arrive at different points of view. From the German point of view, we determine generally no lack of</p>	<p>establish a principles-based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p> <p>See first comments to N° 3.</p> <p>Not Agreed. See last comments to N° 8.</p> <p>Noted. Where the excess of funds over SCR can absorb losses</p>

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		<p>transferability of own funds. Own funds in context of SII should reflect the economic value of the considered business which is the value payable by third parties in case of purchase or transfer of the underlying business. Therefore own funds could always be considered as transferrable even if own funds are related to ring-fenced funds. Furthermore, in Germany the transferability can always be achieved because the economic value coming from the ring-fenced fund can for example be used outside the ring-fenced fund to issue some sort of covered bond or to enter a cashflow swap with a third party. This would be also consistent to the "third party valuation principle".</p> <p>The suggested approaches for the calculation of the SCR and the adjustment of total own funds should only be valid for the standard formula and not for internal models. There should be the freedom to use more sophisticated approaches here, but the approaches must model the aspect of transferability adequately.</p> <p>The principle of proportionality and the principle of materiality should be observed adequately.</p> <p>We welcome CEIOPS' efforts to cover "Ring-fenced funds" as they give rise to a number of difficult and complex issues which need to be addressed separately. We agree with the principles-based approach taken in this paper (as opposed to a more prescriptive approach) given the lack of homogeneity in ring-fenced funds and their precise operation.</p> <p>Regarding the proposed interpretations to identify a RFF, neither A nor B seems to cover all national specifications. Perhaps the best approach would be to define a "Ring-fenced fund" using high level principles and then develop the decision tree (2 tests) further to</p>	<p>outside the ring-fenced fund, it is considered transferable. Where there are restrictions to it, it should not be considered this way.</p> <p>Agreed. (3.21 modified).</p> <p>See last comments in N° 1.</p> <p>See first comments to N° 1 and 3.</p>
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		<p>provide for a more consistent interpretation of the requirements.</p> <p><input type="checkbox"/> EG for the German market, Interpretation B (Para 3.43 + 3.69) is appropriate. Interpretation B identifies the German RFF "Sicherungsvermögen (according to § 66 German Insurance Supervisory law)" correctly, as well as its subdivision "Anlagestock" (according to § 54 b German Insurance Supervisory Law).</p> <p><input type="checkbox"/> E.g. for the UK market, Approach A seems (per 3.68) as a reasonable definition of ring-fenced funds. This would capture UK With Profits business but would correctly not include unit-linked.</p> <p>The two supplemental tests [3.58 + 3.71 a) and 3.59 + 3.71 b)] should be overworked as well.</p> <p>The institute welcomes CEIOPS' attempt at clarifying what can be considered as RFF.</p> <p>Definition: The institute believes that the first definition is too wide, in particular in reference to the French market where there would be many cases where the first condition is fulfilled. However for this type of products, although a barrier exists for profit sharing, it cannot be extended to capital needs, as companies can mutualise profits between some funds that would be classified as RFF under definition A, in particular under stressed conditions. This is mainly due to the presence of specific French reserves (e.g. profit sharing fund) which only exist at the legal entity level and cannot be legally allocated to sub-funds under the French insurance code.</p> <p>The institute therefore believes that the second and more restrictive definition is more appropriate for the French market.</p> <p>Calculation of the SCR for RFF where an internal model is used: We recommend that the calculation methods described in this paper only apply where an internal model is not used. Where an</p>	<p>Conventional unit-linked business have been explicitly excluded from the scope of the CP.</p> <p>Agreed.</p>
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			<p>The proposed adjustment makes sense, but may add undue complexity to the calculation of the SCR in cases where the impact may be immaterial; for example, for non-life companies with very small levels of Ring Fenced Funds. We would suggest that it may be helpful to offer a simplification in instances where the impact is not material to the SCR. Such a simplification could operate on the basis of assessing the surplus or deficit within the ring fenced funds, and adjust the SCR directly, rather than the more complex method proposed. What is considered material would need to be considered however.</p>	See last comments in N° 1.
19.	Just Retirement Limited	General Comment	<p>We believe that, for the UK, Ring Fenced funds should only apply to With Profits Funds.</p> <p>None of the definitions as currently drafted works completely satisfactorily, with each having the potential to include other business areas which ought to be excluded. We would favour a narrow definition of Ring Fenced funds, clearly relating to national legal contractual restrictions.</p> <p>Given the fact that legal applicability will differ in each national jurisdiction, national regulators ought to clarify their intended application in advance of implementation (for example, in level 3 guidance).</p> <p>In situations where an undertaking is using an approved Internal Model, or Partial Internal Models, where fungibility issues between different funds are incorporated into the model, the high level requirements set out in this consultation paper should not need to be applied separately.</p>	<p>See first comments to N° 1.</p> <p>Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p> <p>Noted.</p> <p>Agreed. (3.21 modified).</p>
20.	KPMG ELLP	General	There are many different types of products across Member States	

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		Comment	<p>that could be deemed to be caught by the interpretation of ring-fenced fund, and what makes sense for one country may not be applicable for another. As such, we agree with the comment in 3.13 that CEIOPS aims at a pragmatic and principles-based approach. However, in this regard, we believe that a less prescriptive approach than both Alternative A and B may need to be found. Whilst we agree with the principles proposed, it must be clear beyond doubt whether business should fall to be treated as within, or outside, a RFF and there should be no ambiguity. We recognise however that the non-homogeneous nature of the different insurance contracts may make this difficult to achieve. In this regard, we feel that an alternative approach may be to use the flowcharts in 3.58 and 3.59 as a starting point, rather than Alternatives A and B as described in paragraphs 3.18 to 55.</p> <p>We have some reservations about restricting own funds in ring-fenced funds from counting towards solo solvency and in the knock-on effect on the amount of diversification benefit that can be taken. On the one hand, this provides a strong degree of protection to the policyholders within the ring-fenced fund (RFF), but in practice the product mix of the company as a whole may have been determined taking into account risk diversification between funds.</p>	<p>See first comments in N° 3.</p> <p>See last comments to N° 8.</p>
21.	Legal & General Group	General Comment	<p>We believe that this CP has been over engineered and by trying to define ring fenced, essentially with profits, has produced guidance that is inevitably unworkable.</p> <p>We fully support the aims of the paper which are that fungibility and structural constraints must be recognised. However as framed unit linked funds could be regarded as ring fenced and the shareholders interest and value with a WP fund ignored.</p> <p>Our proposal is that the CP should be regarded as applying primarily to with profit funds and certainly not others including unit</p>	<p>See first comments in N° 1 and 3.</p> <p>Conventional unit linked business has been explicitly excluded from the scope of the paper.</p> <p>Not agreed. See first comments in N° 1 and 3.</p>

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			<p>linked. The definition should be set at a principle level and deal with the fungibility and restraints. The actual decision on which funds are ring fenced should be left to the local regulator who can also make decisions on funds other than WP that a firm wishes to regard as ring fenced or that the regulator believes are ring fenced. This will enable the complex differences between WP funds in a given country as well as local differences that have evolved over many years to be effectively managed. In many countries WP is declining as the true cost of guarantees and options are charged to policyholders.</p>	
22.	Lucida plc	General Comment	<p>Lucida is a specialist UK insurance company focused on annuity and longevity risk business. We currently insure annuitants in the UK and the Republic of Ireland (the latter through reinsurance).</p> <p>Some of the contracts that we write provide additional security to the cedant by ring-fencing assets in a collateralised custody account. Profits can be removed from the collateral account and Lucida has an obligation to top the account up if it falls below a pre-agreed level.</p> <p>We are concerned that a loose definition of ring-fenced funds could capture (re)insurance contracts in which assets are collateralised. For example parts of the definitions in A and B could be argued to apply in certain circumstances (e.g. 3.18(a) and 3.42). If this is the intention then the implementing measures need to take into account some of the flexibility in the collateralised arrangement so that the rules are not applied to situations where there is a degree of fungibility of funds.</p> <p>We would therefore recommend keeping a broad definition at this stage and giving power to local regulators to establish a list of arrangements that should be considered as RFF.</p>	<p>See first comments to N^o 1.</p> <p>Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p> <p>See first comments to N^o 1 and 3.</p> <p>Not accepted. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective</p>

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				and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.
23.	Munich Re	General Comment	<p>We fully support all of the GDV statements and would like to add the following points:</p> <p>This paper leaves it unclear how to identify a ring-fenced fund (RFF)</p> <ol style="list-style-type: none"> 1. The paper proposes two approaches to identifying RFF ("Alternative A" and "Alternative B"). The definitions of RFF proposed could result in very different interpretations of what actually constitutes a RFF. For example, CEIOPS' proposal A seems far too broad. 2. We favour the alternative definition B which is narrower and more related to life insurance. In general a broad scope of the definition is not desirable, i.e. criteria should be at least seen as cumulative. 3. Shareholder value within ring-fenced funds should be recognised 4. The value of shareholders' rights to participate in future profit sharing should be recognised and not treated as policyholder funds and potentially excluded. 	<p>See first comments to N° 3.</p> <p>Agreed. See comments to N° 3.</p>

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			Internal and partial models should have the freedom to adopt more sophisticated approaches for allowing for fungibility and transferability constraints	Agreed.
24.	PWC	General Comment	<p>Our view is that the proposed treatment of ring-fenced funds is an improvement over QIS 4. However, we note that some firms have a fund structure where one ring-fenced fund may provide support to another. Rigid application of the proposed treatment may prevent such support arrangements from working.</p> <p>The existence of ring-fenced structures will impact on the calculation of a firm's overall SCR and may also impact on the availability of capital where there are transferability restrictions. As such, it is sensible to consider these two aspects in conjunction.</p> <p>The approach outlined for calculating the overall SCR is based on risk charges applied at the level of each ring-fenced fund and, separately, for the rest of the company's business taking account of any barriers to the sharing of profits/losses. This could pose significant practical challenges where a firm has ring-fenced funds with complex profit-sharing mechanisms.</p> <p>In addition, assessing the adjustment to be made to the amount of total own funds in the presence of ring-fenced funds could prove complicated where there is a large number of such funds with differing positions of surplus/deficit over notional capital requirements.</p>	<p>See first comments to N° 1.</p> <p>See last comments in N° 1.</p>
25.	UNESPA	General Comment	<p>- UNESPA (Association of Spanish Insurers and Reinsurers) appreciates the opportunity to analyze and comment on Consultation Paper 68 on Treatment of ring fenced funds.</p> <p>UNESPA is the representative body of more than 250 private</p>	

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		<p>insurers and reinsurers that stand for approximately the 96% of Spanish insurance market. Spanish Insurers and reinsurers generate premium income of more than € 55 bn, directly employ 60.000 people and invest more than € 400 bn in the economy.</p> <p>The comments expressed in this response represent the UNESPA´s views at this stage of the project. As our develops, these views may evolve depending in particular, on other elements of the framework which are not yet fixed.</p> <p>The consideration of a RFF should be conditioned to both: an on going and winding up situation.</p> <p>We are concerned that the definitions proposed in this paper are far too wide and would encompass a huge range of funds which are not considered as ring-fenced funds within each market and so which should actually be excluded from the scope of this paper.</p> <p>CEIOPS has attempted to find one definition which could cover all EU markets. However, ring-fenced funds can exist in very different legal structures across the EU. We would suggest that a more granular analysis is carried out in order to determine the types of funds that exist and what treatment would be appropriate for each of these. However the establishment of a definition of RFF for all EU should be conditioned to the fulfilment of ALL the next conditions:</p> <ol style="list-style-type: none"> 1. The consideration of a RFF should be conditioned to both an on going and winding up situation 2. Beside the above mentioned, the consideration of a RFF should be conditioned to the existence of a specific and differentiated accounting treatment and transparency 	<p>Noted.</p> <p>See first comments to N° 1.</p> <p>Agreed.</p>
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			requirements.	
26.	Groupe Consultatif	1.2.	The advice of the paper also covers proposed interpretations of the term "Ring-fenced funds"	See first comments to N° 1.
27.	IUA	2.3.	We are concerned that the definitions of "ring fenced funds" within this paper will include assets which do not relate directly to policyholders, such as funds held within branches. We are keen to point out that Recital 29b refers to "assets within an undertaking" and "fund structures which give one class of policyholders' greater rights to assets within their own "fund" ". We would therefore consider assets within branch operations as falling outside the scope of the Level 1 Directive's definition of "Ring Fenced Funds".	See first comments to N° 1 and 3.
28.	Just Retirement Limited	2.3.	Our view is the greater rights to assets here will be legal / contractual rights.	Agreed.
29.	GROUPAMA	3.4.	We understand that restricted own funds could not be used to cover the entity SCR to the limit of the ring-fenced funds SCR. No limitation of diversification benefit is suggested, as the problem of transferability is analysed at the own fund level.	Agreed.
30.	DIMA	3.5.	Is it possible that a collateral arrangement giving rise to (re)insurance trusts and/or reinsurance deposit-back arrangements (funds withheld) could come within the scope of RFF, depending on the particular conditions under which the arrangement has been constituted? In most circumstances, this is not likely to be the case under Alternative B due to Condition 3, but could frequently be the case under Alternative A with particular reference to the condition	See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.

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			outlined in 3.18b.	
31.	Just Retirement Limited	3.5.	Our interpretation is that only With Profits business in the UK should fall within the definition of Ring Fenced Funds. We believe that there should be clarity from each national regulator in each jurisdiction on this, recognising point 3.8 below.	See first comments to N° 1 and 3.
32.	Just Retirement Limited	3.8.	We agree – therefore local regulators need to play a key role in clarifying what is believed to be within the scope of a “Ring Fenced Fund”.	See first comments to N° 1 and 3.
33.	DIMA	3.10.	In relation to (re)insurance collateral arrangements, the availability of certain own funds may be restricted so as to be only available to cover particular losses. Given that future losses have already been taken into account in the technical provisions for the particular liabilities, the issue in relation to the own funds in question would not be one of liability but one of recourse for the period of the arrangement, therefore the own funds in question could still represent capital, although at a level below Tier 1.	Specific business such as reinsurance has been explicitly excluded from the scope of the paper.
34.	DIMA	3.11.	In relation to (re)insurance collateral arrangements, there is typically no restriction on profits or losses of the ring fenced funds such as to reduce the overall level of diversification between risks. Losses on the non ring fenced business may have restricted recourse to the own fund items that can only be used to cover losses from (a) particular reinsurance arrangement(s). To the extent that there is diversification between non ring fenced and ring fenced funds, it would be proper to be allowed to continue to reflect this in the SCR calculation. DIMA believes the decision tree outlined in 3.58 would achieve this result.	See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.
35.	ACA	3.13.	We agree with the principles-based approach. A principles based approach is the only way of allowing for the different types of ring fenced funds across Europe.	Agreed.
36.	AMICE	3.13.	AMICE members welcome CEIOPS aim to provide a principle-based	Noted

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			treatment for ring-fenced funds.	
37.	CEA	3.13.	We agree with the principles-based approach A principles based approach is the only way of allowing for the different types of ring fenced funds across Europe.	Noted
38.	KPMG ELLP	3.13.	We are supportive of adopting a pragmatic and principles-based approach to identifying RFFs, and agree that this should not create distortions on established products and structures for each Member State.	Noted
39.	UNESPA	3.13.		
40.	ABI	3.14.	We general agree with the principle based approach however in light of the difficulty to come up with a satisfactory definition of RFF at European level we are proposing an alternative. We would recommend keeping a broad definition at this stage along the lines of proposition A but restricted to life insurance and supplemented with level 3 procedures. This would give power to local regulators to establish a list of arrangements that should be considered as RFF in each country, thus delivering the necessary legal certainty.	See first comments to N° 1 and 3. Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created

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				in the future.
41.	KPMG ELLP	3.15.	We agree that the treatment of own funds items with restricted loss-absorption capacity and that applied to RFFs should be harmonised where possible. However, we believe greater clarity is needed on the specific requirements regarding loss-absorption for RFF in this context – ie. whether this is on a going concern or wind-up basis, as the two could be different. (See 3.16 comments also)	Noted.
42.	Deloitte	3.16.	This paragraph notes CEIOPS’s intention that “...the treatment of own funds in RFFs should be consistent with the treatment of own funds in the group solvency assessment in order to prevent regulatory arbitrage.” However we note that the determination of notional SCR as set out in this CP has the effect of excluding own funds equivalent to the full diversification credit arising from a RFF (i.e. both in the SCR of the RFF and in the SCR for other parts of the entity) and is therefore more onerous than the effect of applying the proportionate calculation of notional SCR as required in the CEIOPS advice to allow for the effect of diversification arising from a non-transferable participation in the group solvency assessment.	Noted. See last comment to N° 7.
43.	KPMG ELLP	3.16.	We agree that the determination of whether a fund is, or is not, a RFF should be made on a consistent basis for solo and group purposes. However, we do not necessarily agree that this means that the treatment of RFF should be identical in the determination of solo and group solvency assessments. This is because there may be circumstances where the own funds in a RFF may become more widely available to support the insurance company’s insurance liabilities as a whole, but this would not be sufficient to enable them to be treated as transferable to another group entity with full loss-absorption capacity. For example, in the UK, a with-profits fund would usually be	Noted. See last comment to N° 7.

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			<p>considered to be a RFF, as distribution of profits would typically flow 90% to with-profits policyholders in that fund and 10% to shareholders. Regulatory requirements currently prohibit the shareholders' proportion from increasing by more than 0.5% per annum.</p> <p>Where a UK insurer writes a variety of linked and non-profit business (which would fall outside the RFF) and with-profits business (falling within a RFF), in normal business operations, the restricted own-funds of the with-profits fund would not be available to support the non-profit or linked business. However, if the company were being wound up, any guaranteed benefit (which would include the policyholders linked assets and the continued payment of fixed annuity business) would rank above the with-profit policyholders right to discretionary benefits. This could result in the former restricted own funds in the RFF being used to meet those guaranteed payments. However, in such a situation, the with-profits policyholders would clearly receive payments ahead of any other group entity.</p>	
44.	ABI	3.17.	We consider that CEIOPS definition is unclear, too wide and goes beyond initial scope objective making it unpractical.	See first comments to N° 1.
45.	ACA	3.17.	<p>We are concerned that the definitions proposed in this paper are far too wide and would encompass a huge range of funds which are not considered as ring-fenced funds and so which should actually be excluded from the scope of this paper. In general a broad scope of the definition is not desirable.</p> <p>If the protection of policyholders of a RFF should be independent from the protection of policyholders in another RFF in the same insurance undertaking or other policyholders in the remaining undertaking, this would mean that the RFF should be a separate legal entity. In the current situation (e.g. unit-linked products) this</p>	See first comments to N° 1.

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			<p>is mostly not the case. (In the current situation if an insurance legal entity is in default unit-linked policyholders will also be hit.)</p> <p>The requirement to invest according to contractual obligations and/or regulatory requirements will in many cases be applicable; however this is not a general requirement for defining a ring-fenced fund.</p>	
46.	Assuralia	3.17.	<p>The alternative definition B matches better the concept of ring fenced funds as understood in the Belgian context.</p> <p>Furthermore, we believe that this definition allows for a clearer distinction between what is a ring fenced managed fund and what is not.</p>	See first comments to N° 1 and 3.
47.			Confidential comments deleted.	
48.	CEA	3.17.	<p>This paper leaves it very unclear as to how to identify a ring-fenced fund, neither proposed definition appears appropriate</p> <p>There is significant ambiguity in Ceiops' definition (e. g. "and/or" as regard the criteria). We strongly advocate that any set of criteria should be cumulative i.e. delete "or". This would ensure more legal certainty.</p> <p>We are concerned that there are two definitions of ring-fenced funds proposed in this paper, upon which Ceiops is not yet decided, and which could result in very different interpretations of what actually constitutes a ring-fenced fund. For example, Ceiops' proposal A seems far too wide and would encompass a huge range of funds which are not considered as ring-fenced funds, including for example non-life funds and unit-linked funds.</p> <p>In our view the following should NOT be considered as ring-fenced funds:</p>	See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.

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		<ul style="list-style-type: none"> • Reinsurance • General insurance profit sharing arrangements such as pooling, finites, equalisation reserves • Guarantee scheme provisions • Unit linked products <p>The above products should be excluded from the scope of this paper. In particular, ring-fenced funds should be limited to LIFE insurance products only. Furthermore, funds should not be considered ring-fenced if there are no direct policyholder rights to these funds.</p> <p>- Furthermore, Alternative B could fail to define obvious contenders for RFF because not all the investment surplus goes to the policyholders e.g. on 90:10 with-profits funds a proportion goes to the shareholder.</p> <p>Ceiofs is attempting to find one definition which could cover all EU markets. However, ring-fenced funds can exist in very different legal structures across the EU. We would suggest that a more granular analysis is carried out in order to determine the types of funds that exist i.e. Ceiofs should draw up a list of the types of funds that are currently in existence in each market that are considered to be ring-fenced. We would be happy to work with Ceiofs to produce this list. Obviously we would not expect that level 2 contains a specific list, as this could exclude the setting-up of new ring-fenced fund structures. However, we believe it is essential to first consider what we are trying to capture under this definition before attempting to define a set of principles that can</p>	<p>See first comments to N° 3.</p> <p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new</p>
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		<p>define these, and only these, as ring-fenced funds. Furthermore, this list would be essential to consider in determining if different treatments are appropriate for each fund.</p> <p>Looking at the two alternative proposals, and Ceiops' questions, we have the following remarks:</p> <ul style="list-style-type: none"> - a) Which proposal is appropriate? <p>It is not possible to state that either proposal is suitable for all markets. Please see our discussion at the top of this paragraph. Ceiops needs to consider which funds should be included in the ring-fenced fund definition and work towards that.</p> <ul style="list-style-type: none"> - (c) What types of arrangements are considered as ring-fenced funds at national level? - Below we list what is currently considered as those arrangements which should be treated as ring-fenced funds for solvency purposes in several Members States within the EU. We note that this list should not be considered as comprehensive. - <p>There appears to be no ring-fenced funds existing in:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Finland <input type="checkbox"/> Italy <input type="checkbox"/> Germany <input type="checkbox"/> Norway <input type="checkbox"/> The Netherlands 	<p>types of RFF that may be created in the future.</p>
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			<ul style="list-style-type: none"> <input type="checkbox"/> Spain <input type="checkbox"/> Sweden - The following arrangements would be considered as RFF under the proposals in Denmark: <ul style="list-style-type: none"> <input type="checkbox"/> With-profit funds. - The following arrangements are considered as RFFs in France: <ul style="list-style-type: none"> <input type="checkbox"/> "PERP" <input type="checkbox"/> "L441" - - The following arrangements are considered as RFF in Ireland: <ul style="list-style-type: none"> <input type="checkbox"/> Closed fund (with profit fund) where all returns are to the benefit of the policyholder. <input type="checkbox"/> Participating fund (90/10 fund), where 90% of the assets belongs to the policyholder and 10% belongs to the shareholder. - Ceiops - The following arrangements are considered as RFFs in the UK: <ul style="list-style-type: none"> <input type="checkbox"/> With-profit funds. Ceiops 	
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			<p>National level arrangements are expected to vary from member state to member state. The CFO Forum believes that this should be addressed by the trade associations of the Member states and the CEA.</p> <p>The CFO Forum believes that any specific arrangements should only be used to facilitate the definition of the criteria used to identify the ring fenced fund. It is important that this definition of the criteria should be principles based, in line with the spirit of the Solvency II Directive. Any prescriptive considerations should be retained in Level 3 for guidance purposes as illustrative examples.</p> <p>Response to question (d): Comments in 3.72 and 3.74 are relevant here.</p>	Agreed.
50.			Confidential comments deleted.	
51.	CRO Forum	3.17.	<p>Questions for Stakeholders: Appropriate interpretation of ring-fenced funds (A or B)? Our preferred interpretation is 'Alternative A' because it is more principles based than 'Alternative B'. See Para 3.68 & 3.69</p> <p>What type of specific arrangements at national level would be identified as ring-fenced funds under both proposals? This is expected to vary from member state to member state and therefore should be addressed by the trade associations of the Member states and the CEA. CROF will not aim to answer this question. However, we note that any specific arrangements should only be used to facilitate the definition of the criteria/ mechanism</p>	Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem

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			<p>used to identify RFF. It is important that this definition of the criteria should be principle based, in line with the spirit of the SII Directive. Any prescriptive considerations should retained in Level 3 for guidance purposes as illustrative examples or lists (see our comment on the proposed definition in para 3.68)</p> <p>Do you agree with the treatment of SCR and/or adjustment to own funds?</p> <p>Refer to para 3.72 & 3.74</p>	<p>to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p>
52.	Deloitte	3.17.	<p>A – We support the principle set out in both interpretations that a barrier to the sharing of profits / losses should result in a reduction in diversification credit arising from such a RFF. However, we believe that the definition of RFFs at Level 2 should not be too wide: there are a number of different national arrangements and a wide definition of RFF risks to apply to contracts that should not be considered as fully-fledged RFFs.</p> <p>For example, for Italy: under both approaches (A) and (B) the following would be considered as RFFs</p> <ul style="list-style-type: none"> - Unit linked contracts; - Index linked contracts; - With-profits funds (“Gestioni Separate”) - Individual products for which separate assets are held. <p>Under the first alternative (A), some group contracts sharing profits would also be considered RFFs.</p> <p>To address national specificities, we suggest that CEIOPS foresee</p>	<p>See first comments to N° 1.</p> <p>Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p> <p>See first comments to N° 3.</p>

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			<p>that Level 3 measures could include specific arrangements in the RFF scope, beyond the definition of the Level 2 definition. Based on the above, we consider that Option B is more appropriate as a Level 2 measure, with the provision that specific national cases not addressed at Level 2 can be dealt with at Level 3.</p> <p>B – No specific comment</p> <p>C – See above an example for Italy as an illustration of comment for question A</p> <p>D – Overall, we consider the treatment proposed in the paper to be appropriate for material lines of business. We note the following areas of improvement:</p> <ul style="list-style-type: none"> - Both definitions of RFFs are likely to determine a high number of RFFs. We therefore suggest that the calculation of the notional SCR and adjusted own fund to be as simple as possible. The approach outlined in the CP requires too many calculation steps and simplifications need to be considered. - We suggest that for non-material RFFs firms should be permitted to apply simplifications in order to meet the proportionality principle within solvency II - We suggest that the adjustment to restrict diversification credit for RFFs should be reflected as an adjustment to SCR rather than as an adjustment to own funds- see our comments in more detail on this point at paragraph 3.64 - Clear specification that where surplus own funds in the RFF are available for shareholders, these should be taken into account when assessing solvency for the whole entity (i.e. not limited to the RFF). – see our comments on this point in more detail at paragraph 3.40 	<p>See last comments in N° 1.</p> <p>Agreed. See last comments to N° 8.</p> <p>Agreed. See comments to N° 3.</p>
53.	DIMA	3.17.	(a) DIMA perceives that the major distinction between interpretations (A) and (B) relates to the contemplation of wind-up	See first comments to N° 3.

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		<p>in interpretation (B) and the transferability or not of own funds held in RFF at that point. DIMA notes that neither of the tests in 3.58 and 3.59 distinguish between a going concern and wind-up.</p> <p>(b) DIMA considers that the tests outlined in 3.58 and 3.59 capture the principles that should be applied in determining restrictions on SCR and own funds in the presence of RFF. DIMA believes that these tests should be applied in the context of a going concern.</p> <p>(c) DIMA believes that reinsurance collateral arrangements, such as trust or deposit-back arrangements (funds withheld), are arrangements that might be identified as RFF depending on the particular features of each arrangement.</p> <p>(d) For RFF Type 1 and Type 2 as outlined in 3.60, DIMA agrees with the SCR calculation adjustment. The proposed Own Funds adjustment for loss of transferability seems appropriate but the Own Funds adjustment for loss of diversification seems to duplicate the proposed SCR calculation adjustment.</p> <p>DIMA believes that the paper should contemplate a third type of RFF: Type 3 (no profit sharing with restricted own funds)</p> <p>For RFF Type 3 (no profit sharing with restricted own funds), DIMA believes that the tests in 3.58 and 3.59 will give the appropriate result, i.e. calculate SCR as usual.</p> <p>For RFF Type 3 (no profit sharing with restricted own funds), DIMA does not agree with the proposed Own Funds adjustment as follows:</p> <p>Given that there is no profit sharing, future liabilities would already be taken fully into account in the technical provisions. Therefore, the issue in relation to the excess own funds for the RFF (in the case of example A.2.1 in Annex A.2, an amount of 69.7) would be recourse to the excess own funds for the period of the ring-fencing arrangement. Therefore, DIMA would contend that the own funds in question could still represent capital, although at a level below Tier</p>	<p>See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p> <p>Agreed. Advice has been clarified.</p> <p>Not agreed. See first comments to N° 1.</p>
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			<p>1, the determined level being dependent on the particular provisions of the ring-fencing arrangement. Therefore, DIMA contends that the proposal to exclude excess own funds would not be a proportionate response in this instance.</p> <p>The proposed elimination of diversification benefit as illustrated in the amount of 27.8 (i.e. 233.8 minus 130.3 minus 130.3) in A.2.1 in Annex A.2 fails to recognise that diversification benefit is a two-way street and that only one direction of the street is being impeded by the arrangement, not both. Therefore a principles-based reduction rather than an exclusion should apply.</p>	Agreed.
54.	FFSA	3.17.	<p>FFSA disagrees with both alternatives.</p> <p>FFSA disagrees with both alternatives for the identification of a ring fenced fund. The definition of ring-fenced funds under alternative A leads to major restrictions on life insurance, as well as PPI insurance in France, since this is subject to profit sharing rules. Reinsurance contracts also include quite often participation features. This paper does not address this topic, and seems to focus only on life insurance. We believe that these businesses should not be considered as ring-fenced funds, since it is not easy to separate the assets relating to these activities.</p> <ol style="list-style-type: none"> 1. 2. FFSA is in favour of a modified version of alternative B, which would be the following : 3. Ring Fenced Funds are arrangements which meet all of the following conditions: 4. Condition 1: the assets and rights supporting the contract liabilities are necessarily legally isolated from those of the other insured and this isolation of assets and liabilities also applies in case of winding up ; 	<p>See first comments to N° 3.</p> <p>See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p>

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			<p>5. Condition 2: the insurer must invest the contract holder's funds within the Ring Fenced Funds as a result of contractual obligations and/or regulatory requirements.</p> <p>Condition 3: investment performance, net of contractual loadings and insurer's part of profit sharing, must as a result of contractual or regulatory requirements be passed through to the contract holders.</p> <p>Under this alternative the following products will be considered as ring-fenced funds: PERP and L441. Unit linked products are not considered as ring-fenced funds because the isolation of assets does not apply in winding-up situations.</p>	
55.	GDV	3.17.	<p>This paper leaves it very unclear as to how to identify a ring-fenced fund</p> <p>There is significant ambiguity in CEIOPS' definition (e. g. "and/or" as regard the criteria). We strongly advocate that any set of criteria should be cumulative i.e. delete "or". This would ensure more legal certainty.</p> <p>We are concerned that there are two definitions of ring-fenced funds proposed in this paper, upon which CEIOPS is not yet decided, and which could result in very different interpretations of what actually constitutes a ring-fenced fund. For example, CEIOPS' proposal A seems far too wide and would encompass a huge range of funds which are not considered as ring-fenced funds. We favour the alternative definition B which is narrower and more related to life insurance. In general, a broad scope of the definition of RFF is not desirable.</p> <p>In our view the following should NOT be considered as ring-fenced funds:</p>	<p>See first comments to N° 3.</p> <p>See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p>

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			<ul style="list-style-type: none"> • Reinsurance • General insurance profit sharing arrangements such as pooling, finites, equalisation reserves • Guarantee scheme provisions • Unit linked products <p>The above products should be excluded from the scope of this paper. In particular, ring-fenced funds should be limited to LIFE insurance products only. Furthermore, funds should not be considered ring-fenced if there are no direct policyholder rights to these funds.</p> <p>CEIOPS is attempting to find one definition which could cover all EU markets. However, ring-fenced funds can exist in very different legal structures across the EU. We would suggest that a more granular analysis is carried out in order to determine the types of funds that exist i.e. CEIOPS should draw up a list of the types of funds that are currently in existence in each market that are considered to be ring-fenced.</p>	<p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p>
56.	Groupe Consultatif	3.17.	<p>a. Which interpretation (of two possible ways) is considered appropriate to identify a RFF?</p> <p><input type="checkbox"/> None is appropriate.</p>	See first comments to N° 1.

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		<p>b. If none of these proposals fits, what specific criteria are appropriate to identify a RFF correctly? Perhaps the best approach would be to define a "Ring-fenced fund" using high level principles and then develop the decision tree (2 tests) further to provide for a more consistent interpretation of the requirements.</p> <p>c. What type of "special arrangements" at national level fall under both proposals?</p> <p><input type="checkbox"/> E.g. Germany: "Sicherungsvermögen" (according to § 66 German Insurance Supervisory law) as well as the subdivision "Anlagestock" (according to German Insurance Supervisory Law § 54 b).</p> <p><input type="checkbox"/> E.g. UK: none</p> <p>d. For each of such arrangements, do we agree on the proposed special treatments...</p> <p>regarding the computation of the SCR and/or The answer to this question very much depends on local particularities, see General comments above.</p> <p>regarding the adjustment to the total own funds The answer to this question very much depends on local particularities, see General comments above.</p> <p>A- The institute considers option B to be appropriate.</p>	
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		<p>B- NA</p> <p>C- Under the first proposal the following would be considered as RFF</p> <ul style="list-style-type: none"> - All group contracts ("contrats collectifs") as the contracts conditions indicate a specific profit sharing method but the assets segregation is generally notional. However, under definition A, the contracts would satisfy the first condition of the definition; - All unit linked contracts; - Individual pension products (PERP) for which assets and liabilities are legally segregated; - Groups of products for which policy conditions indicate that profit sharing rates will be calculated based on profits realised on products of the same nature (although in practice, there is no segregation of assets or liabilities); - Individual life contracts with discretionary profit sharing where policy conditions indicate that profits will be based on the return on the "general (Euro) fund" (i.e. main asset fund of the company). <p>Under the second proposal the following would be considered as RFF</p> <ul style="list-style-type: none"> - Individual pension products (PERP) for which assets and liabilities are legally segregated. <p>D- Overall, we consider the treatment proposed in the paper to be appropriate for material lines of business. We note the following areas of improvement:</p> <ul style="list-style-type: none"> o Simplifications for non material RFFs <p>Clear specification that where surplus own funds in the RFF are available for shareholders, these should be taken into account when</p>	<p>See last comments to N° 1.</p>
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			assessing solvency for the whole entity (ie not limited to the RFF).	Agreed. See comments to N° 3.
57.	Institut des Actuares	3.17.	<p>A- Institut des actuares considers option B to be appropriate.</p> <p>B- NA</p> <p>C- Under the first proposal the following would be considered as RFF</p> <ul style="list-style-type: none"> - All group contracts ("contrats collectifs") as the contracts conditions indicate a specific profit sharing method but the assets segregation is generally notional. However, under definition A, the contracts would satisfy the first condition of the definition; - All unit linked contracts; - Individual pension products (PERP) for which assets and liabilities are legally segregated; - Groups of products for which policy conditions indicate that profit sharing rates will be calculated based on profits realised on products of the same nature (although in practice, there is no segregation of assets or liabilities); - Individual life contracts with discretionary profit sharing where policy conditions indicate that profits will be based on the return on the "general (Euro) fund" (i.e. main asset fund of the company). <p>Under the second proposal the following would be considered as RFF</p> <ul style="list-style-type: none"> - Individual pension products (PERP) for which assets and liabilities are legally segregated. <p>D- Overall, we consider the treatment proposed in the paper to be appropriate for material lines of business. We note the following</p>	<p>See first comments to N° 3.</p> <p>See comments to N° 1.</p>

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			<p>areas of improvement:</p> <ul style="list-style-type: none"> o Simplifications for non material RFFs o Clear specification that where surplus own funds in the RFF are available for shareholders, these should be taken into account when assessing solvency for the whole entity (ie not limited to the RFF). 	<p>See last comments to N° 1. Agreed. See comments to N° 3.</p>
58.	Just Retirement Limited	3.17.	<p>We consider that neither definition works completely satisfactorily, with each having the potential to include other business areas which ought to be excluded. We would favour a narrow definition of Ring Fenced funds, clearly relating to national legal contractual restrictions.</p> <p>We believe only With Profits Funds should be considered to be ring-fenced funds.</p>	<p>See first comments to N° 1.</p>
59.	KPMG ELLP	3.17.	<p>We believe that different countries will have different views on whether Alternative A or B is a more suitable definition of RFF, which will flow from their existing legal and regulatory positions and the nature of the products. We therefore do not anticipate either option being universally agreed, and consider that some more generic principles may need to be developed to achieve a principle-based definition of RFF which actually focuses on the peculiarities of a RFF relevant for Solvency II purposes.</p> <p>For example, from a UK perspective, Alternative A appears a more appropriate definition, but from a German perspective, Alternative B is preferable. Expanding on these two positions (as examples, other countries would have their own specific concerns:</p> <p>UK</p>	<p>Noted. See last comment to N° 7.</p>

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		<p>Consider an insurer writing UK with-profits contracts, unit linked contracts and annuity contracts.</p> <p>Currently, all the policyholder assets and liabilities would form the long-term funds, which would be subdivided into a with-profits fund (WPF) and a non-profit fund (NPF). Profits earned within the WPF would be subject to a profit sharing mechanism (typically 90:10) and the excess of assets over liabilities would not be available for general use in the business. Profits held within the NPF may, depending on the structure of the funds and the profit sharing arrangements in place, either flow to support the WPF or be available for the business as a whole and for onward distribution to shareholders. Both the WPF and the NPF must have sufficient assets to cover its liabilities (or else the deficit is made good from the shareholders' fund) but neither has to separately cover its capital requirement.</p> <p>For solo solvency purposes, excess assets (over liabilities) of both the WPF and the NPF count towards the solo capital (own funds). However, for group purposes, the excess assets (over liabilities and a notional capital requirement of each fund) is treated as a restricted asset and excluded from the group solvency assessment. In this regard, some companies have received regulatory permission not to view the NPF as restricted for this purpose.</p> <p>Looking at Alternative A (3.18), the WPF has a barrier to sharing profits so falls within (a) and it meets (b) on a going-concern basis, but not on a wind-up. Clarity re whether a) and b) both need to be complied with or just one is required (it is currently drafted as "and/or"). The WPF meets the example in 3.38, so is a type 2 RFF, meaning that we would have restricted own funds in relation to the WPF. The NPF would not appear to meet the requirements outlined in Alternative A.</p> <p>Under Alternative B, the requirement that the barrier to</p>	
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			<p>transferability (3.42) of own funds must be in a going-concern and winding-up situation would appear to exclude the WPF from the definition of RFF. However, conditions 1 to 3 in paragraph 3.43 (assets are isolated, investment must be in accordance with contractual obligations/specific investment objectives and all investment performance must flow to the individual contract holder) could potentially not only capture the NPF, but also potentially each individual unit linked fund (which would be very onerous in terms of the requirements for notional SCR calculations, and we do not believe this is what was intended).</p> <p>From a UK perspective, the preferred definition of RFF would capture the WPF only, and definitely not the individual unit linked funds, so Alternative A is preferred.</p> <p>Germany</p> <p>Alternative B is more applicable to German business results.</p> <p>We need to distinguish legally separated funds, which are bankruptcy-protected against other creditors of the insurer (Sicherungsvermögen), and the reference basis (investments to whose performance the policyholder has a participation right) of the contractual participation clauses, which determines the increase of participation rights on an annual basis.</p> <p>Although in practice funds from the legally separate funds (Sicherungsvermögen) held for participating business will not be used to cover losses from other business in a winding-up situation, that is not legally excluded.</p> <p>First, separate accounts are not necessarily established for participating business only (they can also cover non-participating business), but they usually do not exist simply because there is normally no non-participating business, or at least none requiring</p>	
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		<p>any significant technical provisions.</p> <p>Further, the participation clauses in participating contracts typically refer to all assets of the (re)insurance undertaking, which are only coincidentally (in the absence of any non-participating business) equal to the separated account. Otherwise, participating policyholders would share only proportionally in total investment earnings (i.e. the contractual reference basis for participating rights does not directly correlate with the related assets covering the obligation in a wind-up situation).</p> <p>Further, in a winding-up situation, any excess amount within the separated accounts above the current liabilities (participation rights are based on the previous year end, and are not increased by changes in respect of the assets in the meantime) can be used to satisfy any creditor of the (re)insurance undertaking.</p> <p>So from a German perspective, Alternative B will normally fit from a practical view point, but even this does not reflect the legal reality, which might mean that in individual cases the identification criteria in Alternative B is not met.</p> <p>From a German perspective, there is also a legal question of whether the participation process continues unchanged in a winding-up process (although this should be considered more widely). For example, for unit-linked contracts, where the unit value at the date of winding-up is relevant, there is no change in participation rights. However for participating business, in some instances the relevant date might be the prior year end, which could cause a difference in relation to risks borne and returns earned within the period since the last year end. In Germany, these earnings could be used to cover other business in a winding-up situation, if the fund is only "restricted" in respect of the amount needed to cover existing obligations in relation to the participating policyholders (which might date from the previous year end).</p>	
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			<p>One of the factors that might be relevant under Alternative B is therefore to focus on how timely insurance obligations react to changes in assets. A legal isolation of assets in the case of bankruptcy to protect the rights of the covered group of policyholders only affects the settlement percentage among policyholders. Those covered by a sufficiently strong fund will get 100%, while other funds could have to bear all the losses.</p> <p>As can be seen from these two examples, there is wide diversity across both the range of products and legal structures operating around Europe, which make it difficult to find a universally acceptable set of classification criteria. We believe that further consideration of the classification criteria to identify RFFs needs to be undertaken, but that the final guidance may consist of broader guidance rather than formal criteria. We believe this consideration needs to include both effective ring-fencing that arises as a result of contract clauses in a going-concern situation and the impact of different treatments in a winding-up situation.</p> <p>Above all, the identification of RFF needs to pass the "common sense" decisions of the local market. For example, reverting back to the UK situation, identifying a with-profits fund as ring-fenced, "makes sense", but anything that could require individual unit linked contracts to be treated as RFF should be avoided. We believe CEIOPS will face challenges in coming up with something that works for all markets and products, without reverting to some very high level principles.</p>	
60.	Munich Re	3.17.	<p>The paper proposes two approaches to identifying RFF ("Alternative A" and "Alternative B"). The definitions of RFF proposed could result in very different interpretations of what actually constitutes a RFF. For example, CEIOPS' proposal A seems far too broad. We favour the alternative definition B which is narrower and more related to life insurance. In general a broad scope of the definition</p>	See first comments to N° 3.

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			is not desirable, i.e. criteria should be at least seen as cumulative.	
61.	PWC	3.17.	<p>From a UK perspective, the main ring-fenced funds are with-profits funds which meet the requirements of alternative A. The proposed treatment for calculating SCR and adjustments to own funds appears generally reasonable for UK with-profits funds, although we note that strict application of the ring-fencing may be overly restrictive in cases where one with-profits fund may provide support to another.</p> <p>Alternative A is more wide-ranging and is arguably more appropriate, given that restrictions on the transferability of profits and/or funds may exist without formal separation of accounts.</p>	See first comments to N° 3.
62.	UNESPA	3.17.	<p>The consideration of a RFF should be conditioned to both: an on going and winding up situation.</p> <p>There is significant ambiguity in CEIOPS' definition (e. g. "and/or" as regard the criteria).</p> <p>We are concerned that the definitions proposed in this paper are far too wide and would encompass a huge range of funds which are not considered as ring-fenced funds within each market and so which should actually be excluded from the scope of this paper. In general a broad scope of the definition is not desirable.</p> <p>CEIOPS has attempted to find one definition which could cover all EU markets. However, ring-fenced funds can exist in very different legal structures across the EU. We would suggest that a more granular analysis is carried out in order to determine the types of funds that exist and what treatment would be appropriate for each of these.</p> <p>Looking at the two alternative proposals, and CEIOPS' questions,</p>	<p>Noted. See comments to N° 5.</p> <p>See first comments to N° 1.</p> <p>Noted. Any additional criteria that may be provided had to be solely principles based.</p>

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			<p>we have the following remarks:</p> <p>For UNESPA proposal B is the preferred option. In our viewpoint the current proposal A definition appears far to wide and would mean that funds that are currently not-considered as ring-fenced funds are actually treated as such. Anyway, we would like to remark both restrictions also established in this Consultation Paper: a RFF should meet the conditions in an ON GOING and WINDING UP situation both together. Keeping that on mind there is no RFF in Spain.</p>	See first comments to N° 3.
63.	ABI	3.18.	<p>In our view this definition might capture some unintended product such as unit linked in particular.</p>	Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.
64.	ACA	3.18.	<p>5. In letter b) in the proposed definition there is a reference to Article 93(1) (a) and/or (b) of the Framework Directive. We believe there should be a reference to Article 94(2):</p> <p>Article 94(2) clearly states that capital that substantially possesses the characteristics set out in point (b) of article 93(1), taking into consideration the features set out in article 93(2), shall be classified as Tier 2 capital. In the proposal there is no distinction between a going-concern and wind-up situation. Thus there seems to be a potential conflict between the proposal and the Framework Directive. It is our opinion that the Implementing Measures should not introduce limitations that are in conflict with the Framework Directive.</p> <p>It is not clear to us how to interpret the "and/or" between conditions a) and b).</p>	<p>Agreed.</p> <p>See first comments to N° 1.</p>

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			But, based on our experience of "fonds dédié", proposal B is the preferred option.	
65.	AMICE	3.18.	We agree with the CEA that a reference should be made to article 94(2) (Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in point (b) of Article 93(1)) and article 93(1) (in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met (subordination).	See comment N° 64.
66.	Assuralia	3.18.	In the proposed definition for Alternative A, we feel that the description doesn't reflect the reality in case of distress. Mainly, in Belgium we have situations ("sub-segments") fulfilling condition (b) but where the assets and profits or losses of the sub-segment would be mutualised with the assets and the results of the total fund, in case of losses of the fund in its totality.	See first comments to N° 3.
67.	CEA	3.18.	<ul style="list-style-type: none"> - Reference should also be made to Article 94(2) - The definition of RFF should clearly state that funds that are available in a winding-up situation are not to be considered as RFF. - In letter b) in the proposed definition from Ceiops there is a reference to Article 93(1) (a) and/or (b) of the Framework Directive. - We believe there should be a reference to Article 94(2): - Article 94(2) clearly states that capital that substantially possesses the characteristics set out in point (b) of article 93(1), taking into consideration the features set out in article 93(2), shall be classified as Tier 2 capital. In the proposal from Ceiops there is 	See comments to N° 1 and N° 5.

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			<p>no distinction between a going-concern and wind-up situation.</p> <p>- Thus there seem to be a potential conflict between the proposal from Ceiops and the Framework Directive. It is our opinion that the Implementing Measures should not introduce limitations that are in conflict with the Framework Directive.</p> <p>The definition of RFF should clearly state that funds that are available in a winding-up situation are not to be considered as RFF.</p>	
68.	DIMA	3.18.	<p>DIMA notes that there is 'and/or' between paragraph a) and b). Unfortunately the paper goes on to consider only the 'and' situation and not the 'or'. See comment on 3.60.</p>	See first comments to N° 1.
69.			Confidential comments deleted.	
70.	GDV	3.18.	<p>Reference should also be made to Article 94(2) - The definition of RFF should clearly state that funds that are available in a winding-up situation are not to be considered as RFF</p>	See comments to N° 1 and N° 5.
71.	Groupe Consultatif	3.18.	<p>Alternative A is not appropriate for all countries.</p> <p>E.g. Germany refuses Alternative A for identifying arrangements that are by no means RFFs.</p> <p>UK on the contrary supports the definition within 3.68 as a definition of ring-fenced funds as it is generic enough to cover a suitable range of funds and seems to match the principles behind the determination of own funds and the SCR for a going concern. If read broadly, this would appear to capture UK With Profits business where the surplus sitting within the With Profits Fund is used to cover the cost of options and guarantees (and potentially augment policyholder benefits). It should be noted though that the With Profits Fund will still have a liability to pay shareholder transfers</p>	See first comments to N° 3.

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			(reflecting a proportion of the cost of bonus to policyholders) and charges under unitised with-profits business which should be able to be counted as an asset of shareholder funds (as the liability of the With Profits Fund is recognised). UK would argue that assets sitting outside the With Profits Fund which provide support to the With Profits Fund but are not exclusively the property of the With Profits Fund should not be captured under the "Ring-fenced" definition. UK believes the wording supports this position, but further clarity around the definition (or the decision tress / two tests) would be helpful.	
72.	Just Retirement Limited	3.18.	In our view 3.18 below could unintentionally capture some unit-linked funds.	Conventional unit linked business has been explicitly excluded from the scope of the paper.
73.	Munich Re	3.18.	Reference should also be made to Article 94(2) - The definition of RFF should clearly state that funds that are available in a winding-up situation are not to be considered as RFF	See comments to N° 1 and N° 5.
74.	UNESPA	3.18.	-	
75.			Confidential comments deleted.	
76.			Confidential comments deleted.	
77.	Just Retirement Limited	3.30.	We believe only legal requirements / contractual clauses are relevant to the formal definition of Ring Fenced Funds.	See first comments in N° 1.
78.			Confidential comments deleted.	
79.	KPMG ELLP	3.32.	Given 3.22 specifically refers to surplus assets being fully transferable, we agree that Alternative A type 1 RFF should not generate restricted own funds.	See first comments in N° 1 and 3.
80.	CEA	3.33.	Assessing the impact of the individual risk charges at the ring	See last comments in N° 1.

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			fenced funds level could be highly burdensome for some undertakings. Indeed, well diversified companies may have a significant number of segregated funds, related for example to distribution channels or to the ALM policy. Ceiops should provide some simplifications.	
81.	FFSA	3.33.	Assessing the impact of the individual risk charges at the ring fenced funds level could be highly burdensome for some undertakings. Indeed, well diversified companies may have a significant number of segregated funds, related for example to distribution channels or to the ALM policy. CEIOPS Should provide some simplifications	See last comments in N° 1.
82.	GDV	3.33.	Assessing the impact of the individual risk charges at the ring fenced funds level could be highly burdensome for some undertakings. Indeed, well diversified companies may have a significant number of segregated funds, related for example to distribution channels or to the ALM policy. CEIOPS should provide some simplifications reflection the proportionality principle.	See last comments in N° 1.
83.	KPMG ELLP	3.33.	Since the surplus assets are fully transferable, we do not understand why diversification benefits could need to be restricted and would appreciate CEIOPS explanation of the rationale for this.	Agreed. The text will be changed.
84.	ABI	3.34.	In our view this definition might capture some unintended product such as finites in particular and would also exclude some 90/10 type of with Profit Funds that we believe should be included.	See last comments in N° 1.
85.	ACA	3.34.	6. It is unclear what is meant by "shareholders have no direct obligations to policyholders" as ultimately shareholders' interests will be subordinated to honouring policyholder obligations?	Noted.

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			<p>Shareholders are ultimately responsible for ensuring that all policyholder guarantees are met and so cannot be said to have no obligations to policyholders.</p> <p>7. We suggest that this text is replaced with "Policyholders within the ring-fenced fund have distinct rights relative to other business written by the insurer".</p>	Agreed.
86.	CEA	3.34.	<p>It is unclear what is meant by "shareholders have no direct obligations to policyholders" as ultimately shareholders' interests will be subordinated to honouring policyholder obligations?</p> <p>Shareholders are ultimately responsible for ensuring that all policyholder guarantees are met and so cannot be said to have no obligations to policyholders.</p> <p>We suggest that this text is replaced with "Policyholders within the ring-fenced fund have distinct rights relative to other business written by the insurer".</p>	<p>Noted.</p> <p>Agreed.</p>
87.	ABI	3.37.	<p>The fund's owner value within RFF should be recognised. As it stands the proposal is unclear whether the shareholder value embedded within the RFF is fungible.</p>	Agreed. See comments to N° 3.
88.	ACA	3.37.	<p>Such profit sharing mechanisms mean that there is shareholder value within such funds, i.e. not all of the assets belong to policyholders. This liability to the shareholder or shareholder asset (the value of future shareholder transfers) should be recognised.</p>	Agreed. See comments to N° 3.
89.	CEA	3.37.	<p>Such profit sharing mechanisms mean that there is shareholder value within such funds, i.e. not all of the assets belong to policyholders. This liability to the shareholder or shareholder asset (the value of future shareholder transfers) should be recognised.</p>	Agreed. See comments to N° 3.

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90.	CFO Forum	3.37.	<p>Shareholders' embedded value within a ring fenced fund should be fungible.</p> <p>The CFO Forum believes that profit sharing mechanisms mean there is shareholder value within such funds (as not all of the assets belong to policyholders). As such, the liability to the shareholder or shareholders' embedded value in a ring fenced fund (including the value of future shareholder transfers) should be recognised.</p>	Agreed. See comments to N° 3.
91.	CRO Forum	3.37.	<p>Such profit sharing mechanisms mean that there is shareholder value within such funds, i.e. not all of the assets belong to policyholders. This liability to the shareholder or shareholders' embedded value in a RFF (including the value of future shareholder transfers) should be recognised.</p>	Agreed. See comments to N° 3.
92.	GDV	3.37.	<p>Such profit sharing mechanisms mean that there is shareholder value within such funds, i.e. not all of the assets belong to policyholders. This liability to the shareholder or shareholder asset (the value of future shareholder transfers) should be recognised.</p>	Agreed. See comments to N° 3.
93.	Munich Re	3.37.	<p>The value of shareholders' rights to participate in future profit sharing should be recognised and not treated as policyholder funds and potentially excluded.</p>	Agreed. See comments to N° 3.
94.	DIMA	3.39.	<p>The Type 2 conditions implied by this paragraph extend further than those specified in 3.19 b). In this paragraph (3.39) the following qualification is added "... in addition to the barrier to the sharing of profits/losses within the undertaking." It should be noted that many reinsurance collateral arrangements lead to restricted own funds, without the barrier to the sharing of profits/losses within the undertaking. The conditions implied by 3.39 would</p>	See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.

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			generally rule reinsurance collateral arrangements out of scope of RFF, whereas those in 3.19 b) could include some of them. The table in 3.60 is consistent with 3.39 but paragraph 3.19 begs the question as to whether table 3.60 should contemplate a Type 3 (no profit sharing with restricted own funds).	
95.	AMICE	3.40.	<p>CEIOPS defines that in Type 2 RFF, Own funds available to meet losses within the ring-fenced fund (and not available to meet losses outside the fund) should be separately identified. The total amount of own funds from the undertaking should be reduced by the restricted own funds that are not being used for meeting the SCR from the ring-fenced fund. AMICE members strongly support this view.</p> <p>We understand that restricted own funds could not be used to cover the undertaking's SCR to the limit of notional SCR for the ring-fenced fund(s). No limitation of diversification benefit is suggested, as the problem of transferability is analysed at the own fund level.</p>	<p>OK</p> <p>See last comments to N° 8.</p>
96.	Assuralia	3.40.	Own funds: We agree with this view on Non Transferability of the "restricted own funds".	OK
97.	Deloitte	3.40.	<p>Where an unallocated surplus must be allocated in a contractual ratio between shareholders and policyholders but the insurer has discretion over when to make such an allocation, we consider that only the proportion of such a surplus that is attributable to policyholders should be subject to a exclusion from own funds.</p> <p>Where an insurer has discretion over the timing and allocation of the unallocated surplus , we suggest that further consideration should be given to whether , and if so in what circumstances, it would be appropriate to exclude from own funds only an appropriate best estimate of the allocation of surplus attributable to</p>	Agreed. See comments to N° 3.

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			<p>policyholders.</p> <p>The example set out in Annex A1 shows that in determining the adjustment to SCR for a RFF the existence of an agreed allocation between shareholders and policyholders is taken into account. However it is not clear from the examples in Annex A2 whether the whole of the surplus in a RFF with an agreed allocation between shareholders and policyholders is taken into account in the restriction on own funds. We suggest that the examples in Annex A2 should be consistent with the principles applied in Annex A1 and make it clear that only the amount of the surplus attributable to policyholders should be excluded, rather than the entire surplus in a RFF.</p>	Noted.
98.	KPMG ELLP	3.40.	<p>Whilst the constituent sub-modules of the SCR are determined at a sufficiently granular level, the SCR is a company level requirement. Fund specific SCR calculations are (as noted here) 'notional'. While we concur with the exclusion from the group solvency assessment of excess own funds over notional SCR in a RFF where this affects transferability to another company, we do not support the same treatment for the solo solvency assessment.</p> <ul style="list-style-type: none"> - This would lead to a lack of transparency of the actual regulatory strength of the insurance undertaking, making comparisons between companies difficult. - There would be no incentive for good risk management of the RFF, notwithstanding general policyholder requirements. - For a mutual insurer all of its business could theoretically fall to be treated as within a RFF, and this proposed treatment could render all the own funds to be treated as restricted assets, reducing own funds in excess of SCR to nil. This would give a lack of clarity as to the relative solvency of the undertaking - Apart from where there are legally enforceable ring-fencing rules that are bankruptcy remote, the excess in a RFF could 	Noted. See last comment to N° 7.

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			potentially be used to support the wider business on a winding up.	
99.	Assuralia	3.41.	SCR: According to us, and based on the Belgian framework, the constraint described is naturally and immediately fulfilled through the P&L if the P&L is appropriately modelled by integrating the constraints on the Ring-Fenced structure. It could only be a problem in case of inappropriate simplifications or model projecting only cash flows but not complete P&L.	Noted. As long as the SCR generated by the application of P&L is equivalent to the described (which reflects the reduction of diversification effects), we foresee no problem with it.
100.	KPMG ELLP	3.41.	The examples in the Annex show that the effect of removing the diversification effect between the RFF and the other business within the insurer effectively allocates the whole of the diversification benefit to the RFF. This leads to a reduction in reported solvency for the company, except where the RFF is in deficit. Whilst we recognise that the existence of RFFs will have an impact on the level of diversification assumed, the approach suggested appears to be overly prudent. In addition, it could be open to manipulation. For example, if the RFF is in deficit, the reported solvency will be different depending on whether or not the company transfers own funds into the RFF to remove the deficit (in which case it appears to lose the benefits of diversification) or it leaves the fund in deficit (in which case 3.65 allows diversification to remain up to the amount of that deficit).	See last comments to N° 8.
101.	ABI	3.42.	Currently any arrangement defined as a RFF per the definition of the CP would become protected in case of default. In our view the legal protection in case of default is not defining criteria to be considered a RFF in the UK.	See first comments to N° 1.
102.	ACA	3.42.	This section implies that certain members believe that Article 99 should be used to create additional rights for policyholders in ring-	See first comments to N° 1.

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			<p>fenced funds that shelter them from any possible losses from outside of the fund. We strongly disagree with this and believe that the legal contract between the company and its policyholders together with the company constitution should determine what rights policyholders have on both a going concern and winding up basis.</p> <p>There should be no limitations on funds that are limited to specific losses in a going concern, but with no specific rights for policyholders.</p>	<p>Partially agreed. The legal contract between the company and its policyholders together with the company constitution should determine what rights policyholders have, however, where own funds are limited to specific losses in a going concern, there are implicit restrictions in the RFF.</p>
103.	AMICE	3.42.	<p>CEIOPS defines as one of the features for the identification of ring-fenced funds, the barrier to transferability of the own funds in going concern and in winding-up situation. If the own funds hold in the RFF are transferable in a winding-up situation, the fund cannot be considered as ring fenced.</p>	<p>Noted. See first comments to N° 1.</p> <p>See comments to N° 5.</p>
104.	Assuralia	3.42.	<p>As described under 3.17, the alternative definition B matches better the concept of ring fenced funds as it is in the Belgian context.</p> <p>Furthermore, we believe that this definition allows for a clearer distinction between what is a ring fenced managed fund and what is not.</p>	<p>See first comments to N° 1 and 3.</p>
105.			<p>Confidential comments deleted.</p>	
106.	CEA	3.42.	<p>The implementing measures required under Article 99 should not be used as an excuse to create additional rights for policyholders.</p> <p>It is not clear here whether Ceiops is proposing to create additional policyholder protection in wind-up for those segregated funds for which this is not currently the case. This section could imply that certain Ceiops members believe that Article 99 should be used to create additional rights for policyholders in ring-fenced funds that</p>	<p>Noted.</p> <p>Partially agreed. The legal contract between the company and its policyholders together with the company constitution should determine what rights</p>

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			<p>shelter them from any possible losses from outside of the fund. We strongly disagree with this and believe that the legal contract between the company and its policyholders together with the company constitution should determine what rights policyholders have on both a going concern and winding up basis.</p> <p>Furthermore we note that there should be no limitations on funds that are limited to specific losses in a going concern, but with no specific rights for policyholders i.e. ring-fenced funds should only be those types of funds which offer certain specific rights for policyholders.</p>	<p>policyholders have, however, where own funds are limited to specific losses in a going concern, there are implicit restrictions in the RFF.</p>
107.	GDV	3.42.	<p>The implementing measures required under Article 99 should not be used as an excuse to create additional rights for policyholders.</p> <p>It is not clear here whether CEIOPS is proposing to create additional policyholder protection in wind-up for those segregated funds for which this is not currently the case. This section could imply that certain CEIOPS members believe that Article 99 should be used to create additional rights for policyholders in ring-fenced funds that shelter them from any possible losses from outside of the fund. We strongly disagree with this and believe that the legal contract between the company and its policyholders together with the company constitution should determine what rights policyholders have on both a going concern and winding up basis.</p> <p>Furthermore we note that there should be no limitations on funds that are limited to specific losses in a going concern, but with no specific rights for policyholders i.e. ring-fenced funds should only be those types of funds which offer certain specific rights for policyholders.</p>	<p>Partially agreed. The legal contract between the company and its policyholders together with the company constitution should determine what rights policyholders have, however, where own funds are limited to specific losses in a going concern, there are implicit restrictions in the RFF.</p>

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108.	Groupe Consultatif	3.42.	Para 3.42 has to be understood in conjunction with Para 3.43	Noted. See first comments to N° 3.
109.	KPMG ELLP	3.42.	The guidance should recognise that there is a difference potentially between the level of transferability of funds in a going-concern and wind-up situation and make it clear whether the guidance relates to both situations. See 3.17 also	Noted. See comments to N° 5.
110.	UNESPA	3.42.	<p>We welcome the CEIOPS' sentence: "The barrier to transferability of the own funds in going concern and in winding-up situation".</p> <p>If the own funds turn transferable in a winding up situation it can not be considered as a RFF.</p> <p>We would like to emphasise: If the own funds held in the RFF would become transferable in a winding-up situation, this would not seem to be in line with Article 99 (lack of transferability). According to this view, policyholders in the RFF should be sheltered from the undertaking's failure resulting from its other lines of business or other RFF, on a going-concern basis and in the case of a winding-up. Following this criteria, the protection of the policyholders in a given RFF is independant from the protection of policyholders in another RFF in the same insurance undertaking or other policyholders in the remain undertaking. Consequently to this subordination, the policyholders in a given RFF have greater rights on a going-concern and in a winding-up basis to assets within their fund and the protection is not altered by the solvency position of the undertaking outside the RFF.</p>	<p>Not agreed. If there are restrictions in a going concern situation, those restrictions should be reflected. See in line with first comments to N°1.</p> <p>Noted. See comments to N° 5.</p>

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111.	CEA	3.43.	<p>Condition 3 is ambiguous and does not appear appropriate for all ring-fenced funds</p> <p>Indeed in some markets it may be the case that a ring-fenced fund will pass all investment performance to the individual contract holder, however in others this may not be the case, for example UK with-profits funds do not pass all investment performance directly to policyholders but these should be considered as ring-fenced funds.</p> <p>Furthermore, the text "all except fees and assessments" is not clear. We do not understand what this is meant to cover. We would expect for many funds some proportion of investment performance would be passed to shareholders and some would cover management fees.</p>	See first comments to N°1.
112.	Groupe Consultatif	3.43.	<p>Alternative B is not appropriate for all countries.</p> <p>Germany e.g. supports this identification because it leads to results suitable for German business.</p> <p>From the UK point of view on the contrary, it is not clear from this definition whether Condition 1 requires the fund's assets to be ring-fenced on wind up. If this is the case then it is unlikely that any sub-funds (such as With Profits Funds) within the UK would meet the definition of being ring-fenced.</p> <p>If isolation of assets on wind up is not required then this definition would appear to capture unit linked funds and possibly to exclude With-Profits Funds. However, the profits from unit-linked policies could be used to offset losses elsewhere in the business and so arguably this is drawing a line around a wrong class of business. This therefore appears to be mixing up fungibility of capital diversity of risk from a solvency perspective.</p>	See first comments to N°1 and 3.

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113.	KPMG ELLP	3.43.	See 3.17	
114.	UNESPA	3.43.	Condition 3 is ambiguous We request clarification.	See first comments to N°1.
115.	CEA	3.46.	If there are several ring-fenced fund it makes no sense to say, that policyholders within the ring-fenced fund have additional rights relative to other business, but better policyholders within a ring-fenced fund have different rights.	Noted. The protection within a RFF is independent to the protection outside. The protection is higher regarding the remaining business, but can be lower than the existent in a different RFF (where losses may be covered by assets with a greater degree of protection to policyholders).
116.	Deloitte	3.53.	This example indicates that the restriction on own funds should be applied only to the policyholders share of surplus in a RFF. See also our more detailed comments on this issue at paragraph 3.40	Agreed.
117.	Assuralia	3.55.	Own funds & SCR for Alternative B: See our comments under point 3.40 and 3.41 (given in section over Alternative A)	
118.	KPMG ELLP	3.55.	See 3.40 and 3.41	
119.	ACA	3.57.	We do see merits to proposal B, namely in the idea that if in a winding up situation the own funds held in the RFF would become transferable there is no lack of transferability and therefore, we suppose, no need for separate SCR and OF calculations. We would suggest that an additional test should be performed in order to determine if a particular arrangement should be considered as a RFF. This additional test should be performed before test A and test B to assess if, in a particular arrangement, Own Funds become	See first comments to N°1 and 3. See comments to n° 160.

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			transferable on a winding up situation and if they do such arrangement should not be considered as a RFF and, therefore, the calculation for the OF and for the SCR should not be performed separately.	
120.	CEA	3.57.	We do see merits to proposal B, namely in the idea that if in a winding up situation the own funds held in the RFF would become transferable there is no lack of transferability and therefore, we suppose, no need for separate SCR and OF calculations. It is definitely a positive point to have a clear understanding of what should be considered as a ring-fenced fund. However, as stated in our comments to Para 3.17, we believe it is important for Ceiops to define exactly what funds it considers to be treated as ring-fenced before trying to define them in a one-size fits all approach.	See first comments to N° 1 and 3. See comments to n° 160.
121.	GDV	3.57.	We do see merits to proposal B, namely in the idea that if in a winding up situation the own funds held in the RFF would become transferable there is no lack of transferability and therefore, we suppose, no need for separate SCR and OF calculations.	See comments to n° 160.
122.	KPMG ELLP	3.57.	We believe that the tests and flowcharts that follow should form part of the assessment of whether a fund should be regarded as a RFF or not.	See first comments to N°1.
123.	PWC	3.57.	We agree that the 2 tests described in this paragraph are sufficient to identify whether the calculations of SCR and/or own funds should be modified due to the presence of ring-fenced funds. Given this, we question the importance of agreeing a more formal definition of ring-fenced funds in line with the questions set out in para 3.17. These comments also apply to para 3.71.	See first comments to N°1.
124.	UNESPA	3.57.	- We do see merits to proposal B, namely in the idea that if in	See first comments to N° 1 and

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			<p>a winding up situation the own funds held in the RFF would become transferable there is no lack of transferability and therefore, we suppose, no need for separate SCR and OF calculations.</p> <p>- We would suggest that an additional test should be performed in order to determine if a particular arrangement should be considered as a RFF. This additional test should be an performed before test A and test B to assess if, in a particular arrangement, Own Funds become transferable on a winding up situation and if they do such arrangement should not be considered as a RFF and, therefore, the calculation for the OF and for the SCR should not be performed separately.</p>	<p>3.</p> <p>See comments to nº 160.</p>
125.	ACA	3.58.	<p>8. The text used in the decision tree is confusing as companies will typically reflect profit sharing rules in their models and so calculating the SCR "as usual" will usually automatically make the adjustments is seeking. Companies normally reflect how profits and losses are shared i.e. profit sharing mechanisms, and code this into their best estimate valuation programs. Capital derived using these models will therefore also automatically reflect this and so no further adjustments will be needed i.e. A2 and A3 in the diagram will be the same.</p> <p>9. We recommend the following changes: Text in the top box is changed to "Do certain policyholders share in the profits/losses in a separate pool of assets and liabilities?" "Calculate SCR as usual" text replaced with "A ring-fenced fund arrangement does not exist"</p>	<p>Disagreed. See first comments to N°1 and 3.</p>
126.	CEA	3.58.	<p>The text used in the decision tree is confusing as companies will typically reflect profit sharing rules in their models and so calculating the SCR "as usual" will usually automatically make the adjustments Ceiops is seeking.</p> <p>Companies normally reflect how profits and losses are shared i.e. profit sharing mechanisms, and code this into their best estimate valuation programs. Capital derived using these models will</p>	<p>Disagreed. See first comments to N°1 and 3.</p>

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			<p>therefore also automatically reflect this and so no further adjustments will be needed i.e. A2 and A3 in the diagram will be the same.</p> <p>We recommend the following changes:</p> <p>Text in the top box is changed to "Do certain policyholders share in the profits/losses in a separate pool of assets and liabilities?"</p> <p>"Calculate SCR as usual" text replaced with "A ring-fenced fund arrangement does not exist"</p>	
127.	DIMA	3.58.	<p>DIMA agrees with the principles implied by this decision tree. It notes that result A2 refers to 3.60 – 3.62 whereas it should refer to 3.61 – 3.63.</p>	Noted.
128.	GDV	3.58.	<p>The text used in the decision tree is confusing as companies will typically reflect profit sharing rules in their models and so calculating the SCR "as usual" will usually automatically make the adjustments CEIOPS is seeking.</p> <p>Companies normally reflect how profits and losses are shared i.e. profit sharing mechanisms, and code this into their best estimate valuation programs. Capital derived using these models will therefore also automatically reflect this and so no further adjustments will be needed i.e. A2 and A3 in the diagram will be the same.</p> <p>We recommend the following changes:</p> <p>Text in the top box is changed to "Do certain policyholders share in the profits/losses in a separate pool of assets and liabilities?"</p> <p>"Calculate SCR as usual" text replaced with "A ring-fenced fund arrangement does not exist"</p>	<p>Not agreed. The usual calculation of SCR is not equivalent to the application of bidirectional stresses for each RFF, regarding interest rate risks, lapse risk, etc. and the selection of the shock that is worse for the solvency of the undertaking.</p> <p>Disagreed. See first comments to N°1 and 3.</p>

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129.	Groupe Consultatif	3.58.	The two supplemental tests [3.58 + 3.71 a) as well as 3.59 + 3.71 b)] should be looked into more detailed, further advice / modification is needed.	See first comments to N°1 and 3.
130.	KPMG ELLP	3.58.	In our opinion, "in full" could represent too high a standard for limitations on ability to offset losses. We would suggest that the wording be changed to a material contribution be made to cover losses elsewhere.	Not agreed. Where it is not possible to cover losses "in full", SCR should not be calculated as usual, but there would be a barrier to share profits and losses that had to be taking into account.
131.	UNESPA	3.58.		
132.	DIMA	3.59.	DIMA agrees with the principles implied by this decision tree. It notes that result B2 refers to 3.63 – 3.66 whereas it should refer to 3.64 – 3.67.	Noted.
133.	Groupe Consultatif	3.59.	See comment on Para 3.58	
134.	DIMA	3.60.	DIMA believes that the table in 3.60 is consistent with 3.39 but 3.19 is silent on profit sharing and implies that table 3.60 should contemplate a Type 3 (no profit sharing with restricted own funds). The 'and/or' in 3.18 (instead of just 'and') also implies this. Under Type 3, Test A would give rise to result A1 or A3 - Calculate SCR as usual; and Test B would give rise to result B2 – OF should be adjusted.	Noted. The table will be removed.
135.	CEA	3.61.	It is sufficient to assume the worst case scenario at the level of the undertaking. See comment on Para 3.66.	Agreed.
136.	CFO Forum	3.61.	Clarification of the reference to future bonus rates. In paragraph (c), it is unclear whether the references to future	Noted. Management actions are referred to future bonuses.

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			<p>bonus rates are made as an illustration or whether the “future discretionary benefits” considered are being limited to future bonuses. The CFO Forum interprets the paragraph to allow for all management actions possible to manage the future discretionary benefits of a ring fenced fund (such as future bonus rates or asset management strategies).</p> <p>The CFO Forum requests CEIOPS to confirm that the scope of management actions referred to in this paper are in respect of discretionary elements of future discretionary benefits only and not just limited to future bonuses.</p>	
137.	CRO Forum	3.61.	<p>Point c - “Where the ring-fenced fund relates to the existence of profit sharing mechanisms, the assumptions on the variation of future bonus rates should be realistic The relevant (downward) adjustment for the loss absorbency capacity of technical provisions should not exceed, in relation to a particular ring-fenced fund, the amount of future discretionary benefits within the ring-fenced fund”</p> <p>It is unclear whether the reference to future bonus rates is made as an illustration in this paragraph or whether the “future discretionary benefits” considered are being limited to future bonuses. Our interpretation is that the paragraph allows for all management actions that an undertaking can take to manage the future discretionary benefits of a RFF, such as future bonus rates or asset management strategies.</p> <p>We propose that the paper clarified that the scope of management actions referred to in this paper are in respect of discretionary elements of future discretionary benefits only (not just limited to future bonuses), so as not to misinterpret the advice in CP32. It should also be stated that the management actions in the scope of this CP would be taken in the context of all the other management actions that would take place in the stressed scenario (such as changes in investment policy, or “kicking-in” of dynamic hedging</p>	Noted. Management actions are referred to future bonuses.

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			strategies) – for which we provide comments in CP32.	
138.	Groupe Consultatif	3.61.	See our comment on 3.66.	
139.	CEA	3.62.	See comment on Para 3.61.	
140.	Groupe Consultatif	3.62.	See comment on 3.66.	
141.	CEA	3.63.	See comment on Para 3.61.	
142.	Groupe Consultatif	3.63.	See comment on 3.66	
143.	PWC	3.63.	<p>We agree that the overall SCR for a firm should be based on risk charges calculated at a more granular level for each ring-fenced fund and, separately, for the rest of the company’s business taking account of barriers to the sharing of profits/losses. Ignoring such arrangements and calculating SCR charges which look at the overall impact at the undertaking level could potentially lead to material underestimation of the overall SCR.</p> <p>However, there are practical implications to carrying out such a calculation especially where a firm has several ring-fenced funds with complex profit-sharing arrangements. It would be useful to provide guidance on proportionality considerations, e.g. a lower limit on size of the ring-fenced fund below which a separate calculation is no longer required.</p>	<p>Noted.</p> <p>See last comments in N° 1. Examples will be added to the CP.</p>
144.	CEA	3.64.	Excess own funds held in ring-fenced funds should be considered when picturing the total entity’s solvency situation. A possible way could be to show them separately as “non-transferable own funds”	Noted. See comments to N° 5.

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			at the level of the undertaking.	
145.	Deloitte	3.64.	<p>As noted below at 3.67 we suggest that the adjustment required for the restricted diversification applicable to the SCR arising from RFFs should be reflected as an adjustment to the determination of SCR rather than as an adjustment to own funds. Where such adjustments for diversification are significant it is important that SCR and own funds are determined appropriately due to the significance of SCR to other aspects of the Solvency II supervision regime (e.g. determination of MCR corridor and allocation of different tiers of capital to cover SCR).</p> <p>Although this suggested revision would not be consistent with the treatment of non-transferable own funds arising in an entity subject to group solvency assessment, we note that the proposed treatment of RFFs proposed in this CP is also not consistent with the treatment of non-transferable own funds arising in an entity subject to group solvency assessment</p>	Agreed. See last comments to N° 8.
146.	GDV	3.64.	Excess own funds held in ring-fenced funds should be considered when picturing the total entity's solvency situation. A possible way could be to show them separately as "non-transferable own funds" at the level of the undertaking.	Noted. See comments to N° 5.
147.	Groupe Consultatif	3.64.	<p>This aspect has to be analysed very carefully at national level.</p> <p>In Germany for example, we determine generally no lack of transferability of own funds. Own funds in context of SII should reflect the economic value of the considered business which is the value payable by third parties in case of purchase or transfer of the underlying business. Therefore own funds could always be</p>	Not agreed. See last comments to N° 8.

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			<p>considered as transferrable even if own funds are related to ring-fenced funds. Furthermore, in Germany the transferability can always be achieved because the economic value coming from the ring-fenced fund can for example be used outside the ring-fenced fund to issue some sort of covered bond or to enter a cashflow swap with a third party. This would be also consistent to the "third party valuation principle".</p> <p>Regarding the diversification, e.g. in Germany one wouldn't agree with the advice that "...loss of diversification should be reflected through an adjustment". From the German point of view, diversification should be fully applied even if there is a ring fenced fund. The existence of a ring-fenced fund does not influence the common distribution function of the overall risk that is expressed by applying diversification on modular calculated SCRs relating to single risk drivers. Why should the existence of ring-fenced funds lead to simultaneous occurrence of risk events?</p>	
148.	Assuralia	3.65.	<p>The restriction on transferability of own fund is in some aspects in conflict with current Belgian regulation.</p> <p>There are situations where transferability can be considered (A transfer from the General fund to a Ring Fenced fund in case of distress of this last one, with possibility to transfer the Money back to the Main Fund when the circumstances would be better.)</p>	Noted. These specific cases should be carefully analysed further but the main principles are maintained.
149.	DIMA	3.65.	<p>DIMA finds the numerical example in Annex A2 is very helpful.</p> <p>DIMA believes that the paper should contemplate a third type of RFF: Type 3 (no profit sharing with restricted own funds).</p> <p>For Type 3 (no profit sharing with restricted own funds), DIMA does not agree with the proposed treatment of the Own Funds adjustment.</p>	<p>See first comments to N° 1.</p> <p>See comments to N° 160.</p>

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			<p>Given that future losses have already been taken into account in the technical provisions for the particular liabilities, the issue in relation to the excess own funds for the RFF (69.7 in the case of example A.2.1 in Annex A.2) would not be one of liability but one of recourse for the period of the arrangement and therefore the own funds in question could still represent capital, although at a level below Tier 1, the determined level being dependent on the particular provisions of the arrangement. Therefore, the proposal to exclude excess own funds is not a proportionate response to the issue.</p> <p>The proposed elimination of diversification benefit as illustrated in the amount of 27.8 (i.e. 233.8 minus 130.3 minus 130.3) in A.2.1 in Annex A.2 fails to recognise that diversification benefit is a two-way street and that only one direction of the street is being impeded by the arrangement, not both. Therefore a principles-based reduction rather than an exclusion should apply.</p>	<p>Noted. See comments to N° 5.</p> <p>See last comments to N° 8.</p>
150.	ABI	3.66.	We agree with the importance of highlighting diversification across funds in case of deficit.	Noted
151.	ACA	3.66.	<p>This requirement will result in a higher confidence level than the 99.5th confidence level specified in Article 101 of the Framework Directive – it is excessively prudent. A common up or down scenario should be used depending upon which in aggregate is more onerous at the company level.</p> <p>We note that in Annex A.1, the examples show that the most onerous stress at the level of the company is assumed across all ring-fenced funds. Therefore, we hope that the wording of Para 3.66 is actually an error as it is in contradiction with this example.</p>	<p>Agreed. See comments to n° 206.</p> <p>Noted.</p>
152.	AMICE	3.66.	As already mentioned in paragraph 3.66, we agree with the CEA that the calculation of individual risk charges at ring-fenced level should not yield to different stresses where there are bidirectional	Agreed. See comments to n° 206.

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			scenarios (i.e interest rate, currency and lapse risk).	
153.	CEA	3.66.	<p>We strongly oppose a requirement for different directional stresses for each ring fenced fund across the same currency area</p> <p>This requirement will result in a higher confidence level than the 99.5th confidence level specified in Article 101 of the Framework Directive – it is excessively prudent.</p> <p>Bidirectional stresses are set for interest rates, currency risks and lapses in the standard formula. Whether interest rates or currency movements go up or down is independent of the situation of a company or the actions of its policyholders. It is therefore inappropriate to potentially require the notional SCRs to be individually calculated assuming the more onerous of a rise or fall in these stresses. Doing so would imply a confidence level in excess of the 99.5th percentile at the company level. A common up or down scenario should be used depending upon which in aggregate is more onerous at the company level.</p> <p>We note that in Ceiops’ Annex A.1, the examples show that the most onerous stress at the level of the company is assumed across all ring-fenced funds. Therefore, we hope that the wording of Para 3.66 is actually an error as it is in contradiction with this example.</p> <p>For Para 3.66 b) see comment on Para 3.64.</p> <p>The treatment of ring-fenced funds is deficit needs more clarification</p> <p>We support the fact that Ceiops has attempted to capture part of the one-way diversification effects that exist for RFF by allowing for diversification up to the deficit, if it exists, in a RFF. However, in the</p>	<p>Agreed. See comments to n° 206.</p> <p>Noted.</p> <p>Agreed. See last comments to N° 8.</p>

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			<p>case where a ring fenced fund is not in deficit, suppression of the diversification effect should only be analysed for the part of own funds that are not transferable.</p> <p>Furthermore, in Para 3.66 c), the last bullet point includes a link to case b) which is not easy to understand without knowing the concrete example in the Annex (A.2.3.). Therefore the second bullet point in 3.66 c) should be explained in more detail or at least a link to the example in A.2.3. should be added.</p> <p>This is because we would be concerned if, according to our reading of Ceiops' text, the allowance for diversification would be binary i.e. diversification effects should only be allowed if the deficit exceeds diversification. We would consider it important to also allow diversification in the case that the deficit is less than the diversification effects, up to the amount of the deficit. Therefore the allowance for diversification would be expected to increase in line with the deficit.</p>	<p>Noted.</p> <p>See comments to nº 160.</p>
154.	CFO Forum	3.66.	<p>The CFO Forum opposes a requirement for different directional stresses for each ring fenced fund.</p> <p>Interest rates and currency movements are independent of the situation of a company or the actions of its policyholders. It is therefore inappropriate to potentially require the notional SCRs to be individually calculated assuming the more onerous of a rise or fall in these stresses. Doing so would imply a confidence level in excess of the 99.5th percentile at the company level and hence overly prudent.</p> <p>The CFO Forum proposes that the undertakings should only use the scenario that better reflects the worst case position, i.e. either an</p>	<p>Agreed. See comments to nº 206.</p> <p>Agreed.</p>

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			upward or a downward shock, not both.	
155.	CRO Forum	3.66.	<p>We oppose a requirement for different directional stresses for each ring fenced fund</p> <p>This requirement will result in a higher confidence level than the 99.5th confidence level specified in Article 101 of the Framework Directive – it is excessively prudent.</p> <p>Bidirectional stresses are set for interest rates, currency risks and lapses in the standard formula. Whether interest rates or currency movements go up or down is independent of the situation of a company or the actions of its policyholders. It is therefore inappropriate to potentially require the notional SCRs to be individually calculated assuming the more onerous of a rise or fall in these stresses. Doing so would imply a confidence level in excess of the 99.5th percentile at the company level.</p> <p>We propose that the undertakings should only use the scenario that better reflects the worst case position; i.e. either an upward or a downward shock, not both.</p>	See comments to n° 206.
156.	FFSA	3.66.	FFSA disagrees with the concept of considering that the notional SCR for each ring-fenced fund shall be calculated as if they were standalone entity, ie based on the worst case scenario for each ring-fenced fund. Diversification effects should clearly be taken into consideration.	See comments to n° 206.
157.	GDV	3.66.	<p>We strongly oppose a requirement for different directional stresses for each ring fenced fund across the same currency area</p> <p>This requirement will result in a higher confidence level than the 99.5th confidence level specified in Article 101 of the Framework Directive – it is excessively prudent.</p>	Agreed. See comments to n° 206.

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			<p>Bidirectional stresses are set for interest rates, currency risks and lapses in the standard formula. Whether interest rates or currency movements go up or down is independent of the situation of a company or the actions of its policyholders. It is therefore inappropriate to potentially require the notional SCRs to be individually calculated assuming the more onerous of a rise or fall in these stresses. Doing so would imply a confidence level in excess of the 99.5th percentile at the company level. A common up or down scenario should be used depending upon which in aggregate is more onerous at the company level.</p> <p>However, it may be appropriate to have bidirectional lapse assumptions a simultaneous increase and decrease in lapses is experienced for different product groups.</p> <p>We note that in CEIOPS' Annex A.1, the examples show that the most onerous stress at the level of the company is assumed across all ring-fenced funds. Therefore, we hope that the wording of Para 3.66 is actually an error as it is in contradiction with this example.</p> <p>The treatment of ring-fenced funds is deficit needs more clarification</p> <p>We support the fact that CEIOPS has attempted to capture part of the one-way diversification effects that exist for RFF by allowing for diversification up to the deficit, if it exists, in a RFF. However, in the case where a ring fenced fund is not in deficit, suppression of the diversification effect should only be analysed for the part of own funds that are not transferable.</p>	<p>Not agreed because it would not be in line with the standard formula regarding the calculation of lapse risk charge.</p> <p>Noted.</p> <p>Agreed. See last comments to N° 8.</p>
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			<p>Furthermore, in Para 3.66 c), the last bullet point includes a link to case b) which is not easy to understand without knowing the concrete example in the Annex (A.2.3.). Therefore the second bullet point in 3.66 c) should be explained in more detail or at least a link to the example in A.2.3. should be added.</p> <p>This is because we would be concerned if, according to our reading of CEIOPS' text, the allowance for diversification would be binary i.e. diversification effects should only be allowed if the deficit exceeds diversification. We would consider it important to also allow diversification in the case that the deficit is less than the diversification effects, up to the amount of the deficit. Therefore the allowance for diversification would be expected to increase in line with the deficit.</p>	Noted.
158.	Groupe Consultatif	3.66.	<p>Para 3.66 a) demands for the worst case scenario for each RFF. This is excessively prudent. Furthermore it is not very reasonable to assume e.g. falling interest rates in one RFF and rising in another. The worst scenario at the level of the undertaking is sufficient.</p> <p>In Para 3.66 c), the last bullet point includes a link to case b) what is not easy to understand without knowing the concrete example in the Annex (A.2.3.). Therefore 3.66 c) second bullet point should be explained more detailed or at least a link to the example in A.2.3. should be added.</p> <p>It is not clear if the SCR needs to be calculated using the worst scenario for each RFF. Although 3.66a appears to indicate that the worst scenario for each RFF should be used, the numerical example</p>	<p>Agreed. See comments to n° 206.</p> <p>Noted. New examples will be added to the CP.</p>

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			<p>in the appendix (p22 A.1.8) shows that the scenario used is the worst for the undertaking.</p> <p>We believe that it would be overly prudent to use the worst scenario for each RFF and that the SCR should be calculated using consistent scenarios across all RFF and the general fund, at least for externally driven risks (e.g. the SCR should not assume rising interest rates in one RFF and falling interest rate in another one).</p>	
159.	Institut des Actuaire	3.66.	<p>It is not clear if the SCR needs to be calculated using the worst scenario for each RFF. Although 3.66a appears to indicate that the worst scenario for each RFF should be used, the numerical example in the appendix (p22 A.1.8) shows that the scenario used is the worst for the undertaking.</p> <p>We believe that it would be overly prudent to use the worst scenario for each RFF and that the SCR should be calculated using consistent scenarios across all RFF and the general fund, at least for externally driven risks (e.g. the SCR should not assume rising interest rates in one RFF and falling interest rate in another one).</p>	See comments to n° 206.
160.	KPMG ELLP	3.66.	<p>We agree that it is appropriate to recognise the diversification benefit if the own funds of the insurer are being used to support the RFF. However, on balance this seems to adopt a rather prudent approach. By assessing the notional SCR of each fund as if it were a stand alone entity, it is possible for example to have a negative interest rate stress in one fund and a positive stress in another. If it is possible that the non-RFF could support the RFF, even if this is not currently happening as the RFF is in surplus, then it seems odd to effectively ignore the offset of these stresses. We would appreciate further consideration of when it is and is not appropriate to disallow diversification benefits.</p>	Noted. Advice has been revised. The only adjustment that should be made to OF is the value of OF in excess of SCR arising from the RFF, that cannot compensate losses outside the RFF. Thus, diversification effects between the remaining business and the RFF are not excluded.
161.	ACA	3.67.	We request examples showing how multiple ring-fenced funds	Examples will be added to the CP.

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			<p>should be treated. For example, how would be the methodology applied if there were several ring-fenced funds, some in deficit, others in surplus? How would diversification be treated within the own funds in this case?</p> <p>Also, would simplifications be available for those insurers for which calculations of separate SCR's would be excessively burdensome for each ring-fenced fund, given the number of such arrangements in place? Quantitative thresholds might be appropriate to restrict the special treatment of such funds to those with material effect on the solvency position of the undertaking.</p>	See last comments in N° 1.
162.	AMICE	3.67.	<p>CEIOPS allows some adjustments to be made for undertakings with a large number of ring-fenced funds which contain restricted own funds. More guidance on such adjustments and concrete examples on the application of the principle of proportionality should be provided in CEIOPS paper (i.e there should be some allowance for not computing the SCR for each fund)</p>	See last comments in N° 1.
163.	CEA	3.67.	<p>Further consideration and guidance is needed on proportionality where there is more than one ring-fenced fund</p> <p>Ceiops raises the treatment of multiple ring-fenced funds as an issue but does not offer any solutions as to how to deal with the problem. In some markets we understand there could be as many as 100 ring-fenced funds existing within an insurer.</p> <p>We request examples showing how multiple ring-fenced funds should be treated. For example, how would the methodology be applied if there were several ring-fenced funds, some in deficit, others in surplus? How would diversification be treated in this case?</p> <p>Also, would simplifications be available for those insurers for which calculations of separate SCR's would be excessively burdensome for each ring-fenced fund, given the number of such arrangements in</p>	See last comments in N° 1.

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			place? Quantitative thresholds might be appropriate to restrict the special treatment of such funds to those which with material effect on the solvency position of the undertaking.	
164.	Deloitte	3.67.	The adjustment to the total eligible own funds in the presence of RFFs should only take into account restrictions to the transferability of capital. We envisage that the adjustment to the total eligible own funds is simplified and set to be equal to the sum of own funds in excess of the SCR for each RFF. We suggest that the lack of diversification arising from a RFF should be taken into account through the SCR. (We comment on this point in more detail at paragraph 3.64.)	See last comments to N° 8. See comments to N° 160.
165.	GDV	3.67.	Further consideration and guidance is needed on proportionality CEIOPS raises the treatment of multiple ring-fenced funds as an issue but does not offer any solutions as to how to deal with the problem. In some markets we understand there could be as many as 100 ring-fenced funds existing within an insurer. We request examples showing how multiple ring-fenced funds should be treated. For example, how would the methodology be applied if there were several ring-fenced funds, some in deficit, others in surplus? How would diversification be treated in this case? Also, would simplifications be available for those insurers for which calculations of separate SCR's would be excessively burdensome for each ring-fenced fund, given the number of such arrangements in place? Quantitative thresholds might be appropriate to restrict the special treatment of such funds to those which with material effect on the solvency position of the undertaking.	See last comments in N° 1.
166.	Groupe	3.67.	<input type="checkbox"/> It is positive that CEIOPS states an adequate consideration	See last comments in N° 1.

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	Consultatif		<p>of the principle of proportionality, but further advice is needed here.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Also the principle of materiality should be observed. <input type="checkbox"/> The principle of proportionality and the principle of materiality should be mentioned in the blue-box-advice. <p>Although this paragraph makes reference to using « simplified calculation methods », this is not repeated in CEIOP’s advice. We would recommend that this is repeated CEIOP’s advice (section 3.2).</p>	
167.	Institut des Actuaire	3.67.	<p>Although this paragraph makes reference to using « simplified calculation methods », this is not repeated in CEIOP’s advice. We would recommend that this is repeated CEIOP’s advice (section 3.2).</p>	See last comments to N° 1.
168.	PWC	3.67.	<p>It would be useful to provide guidance on possible adjustments or simplifications that may be used where a firm has a large number of ring-fenced funds with restricted own funds and would otherwise have to carry out a notional SCR calculation for each of these ring-fenced funds.</p>	See last comments to N° 1.
169.	ABI	3.68.	<p>In our view none of the proposal is appropriate by themselves:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Proposal A could apply to any profit sharing arrangement <input type="checkbox"/> Proposal B could capture unit linked funds and fail to recognise 90/10 WPF <p>Taking a pragmatic approach, we are proposing to keep a broad definition at level II such as proposition A supplemented by a list of the products that should be considered as RFF to be established by local regulators.</p>	<p>See first comments in N° 1 and 3.</p> <p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem</p>

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				to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.
170.	ACA	3.68.	See comments on 3.17.	
171.	AMICE	3.68.	Some CEIOPS members consider that a ring-fenced fund is any arrangement where there is a barrier to the sharing of profits/losses arising from different parts of the undertaking 's business. This definition is too large and could include a large part of insurance industry business and conduct to inconsistencies on the global architecture of the SCR assessment. Ring fenced funds should not be confused with "profit sharing segments", which are groups of contracts which benefit from a specific clause of profit sharing and/or have their own profit sharing reserves. AMICE is against this approach.	See first comments in N° 1. Noted. Due to the existence of these "profit sharing segments", an adjustment in SCR has to be made, that is, the separate calculation of bidirectional scenarios for each RFF to capture possible increases of liabilities arising from positive effects, however, diversification effects between RFF and the remaining business are allowed.
172.			Confidential comments deleted.	
173.	CEA	3.68.	Please see response to Para 3.17. The alternative A definition of ring-fenced funds is too wide For example the first condition could lead to the consideration that all life contracts in France are ring-fenced funds, as well as many	See first comments to N° 3. See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded

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		<p>reinsurance contracts (non proportional), PPI business, disability business...etc.</p> <p>We would suggest, in particular, that ring-fenced funds do not cover any products that currently exist in non-life insurance.</p> <p>In addition, the suggested definition would lead to the recognition of different ring fenced funds within a single segregated fund, mainly when there are smoothing reserves such as equalisation reserves. By categorising these as ring fenced funds, undertakings will have to create sub-portfolios of assets and liabilities, within the segregated fund, in order to calculate the notional SCR. This is impossible when assets are not identified and allocated to liabilities (The allocation will be completely arbitrary). Creating different sub-portfolios within the segregated fund would lead to major inconsistencies when there are profit sharing clauses which consider the whole performance of the segregated fund (underwriting and financial).</p> <p>Proposed Solution</p> <p>It is our interpretation that Ceiops does not intend to change the way RFF business is written, but provide a mechanism for identifying RFF for Solvency II purposes. We also highlight that the directive only makes reference to ring-fenced funds in the context of life insurance business (Art 305b) and therefore should not consider general insurance business.</p> <p>We consider some kind of principle based approach to be the right basis for designing an interpretation for RFF. Additionally, any application of a principles-based approach for the life insurance business would need to be applied on a "comply or explain" basis to insure that it does not inadvertently include funds for life insurance</p>	<p>from the scope of the paper.</p>
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			<p>business which would not be considered as RFF. For instance, funds with ring fenced accounting should not automatically be considered as RFF.</p> <p>However, using the principles and rules outlined in this paper would create high level of uncertainty for the definition of RFF. A practical approach to this issue would be for each member state to identify a list of all funds it considers RFF with a view to ensure harmonisation through guidance at Level 3. Despite being a very prescriptive approach we believe that this is the best approach to address the issue of identifying RFF in a market place where a set of principles would struggle to capture all ring fenced funds products across the EU region.</p> <p>We support an approach where Member States retain a list of funds it considers to be RFF and harmonisation across the EU is achieved through Level 3 guidance as a practical solution to identifying RFF.</p>	<p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p>
174.	CFO Forum	3.68.	<p>Specific comments on current proposals</p> <p>The CFO Forum believes that current proposals of Alternatives A & B, as outlined in the advice, could lead to funds inadvertently being included in scope of RFF while some RFF being excluded from the scope, for example:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Alternative A could define profit sharing arrangements on general insurance contracts as ring fenced funds; <input type="checkbox"/> Alternative B could define funds with ring fenced accounting (e.g. each unit linked fund, or funds with separate accounting for tax purposes) as ring fenced funds; and 	<p>See first comments to N° 1 and 3.</p>

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		<p><input type="checkbox"/> Alternative B could fail to define obvious contenders for ring fenced funds because not all the investment surplus goes to the policyholders but is split between policyholders and shareholders such as for 90:10 with profits funds.</p> <p>Care should be taken when designing a mechanism for identifying ring fenced funds because these funds have a legal structure in their own right. Any prescriptive attempt at identifying a ring fenced under Solvency II could have unintended consequences.</p> <p>Alternative solution</p> <p>The CFO Forum believes that the definitions of a ring fenced fund, as they are currently set out in CP68, are too broad. We believe the CP is aiming to mainly capture UK-style with profit funds within the definition and would instead support a more principles-based solution, restricted to life business, in which local regulators would work with undertakings to agree the funds that would be defined as ring fenced.</p> <p>The CFO Forum believes that the current definition of ring fenced fund is too broad and excludes diversification benefits that exist in stress scenarios from the calculation of the SCR and recognition of own funds.</p> <p>Our interpretation of the CP is that the definition is trying to capture UK-style with profits funds as ring fenced funds. We believe that the definition should be more principles based and allow flexibility for local regulators to work with undertakings to agree the definition of a ring fenced fund for their territory. In addition, we propose that the scope is reduced to only cover life business and should allow an undertaking to depart from the local regulator’s definition if this is considered more appropriate and the rationale is suitably explained and disclosed.</p>	
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			<p>The current definition would encapsulate unit linked funds. We do not agree that funds of this type should fall within the definition of ring fenced.</p> <p>CFO Forum proposes an alternative definition which would include only those rare cases where there are legal barriers against extraction of capital. That is, only funds that are "legally isolated" and require separate accounts should be classed as "ring fenced".</p>	<p>Noted. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p>
175.	CRO Forum	3.68.	<p>Current proposals</p> <p>The current proposals of Alternatives A & B, as outlined in the advice, could lead to funds inadvertently being included in scope of RFF while some RFF being excluded from the scope, for instance:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Alternative A: <ul style="list-style-type: none"> o could define profit sharing arrangements on general insurance contracts as RFF; <input type="checkbox"/> Alternative B: <ul style="list-style-type: none"> o could define funds with ring fenced accounting (e.g. each unit linked fund, or funds with separate accounting for tax purposes) as RFF; and o could fail to define obvious contenders for RFF because not all the investment surplus goes to the policyholders i.e. some goes to the shareholder e.g. on 90:10 with profits funds. <p>CEIOPS need to be careful when designing a mechanism for identifying RFF because these funds have a legal structure in their own right. Any prescriptive attempt at identifying a RFF under Solvency II could have unintended consequences.</p> <p>Proposed Solution</p>	<p>See first comments to N^o 1 and 3.</p>

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		<p>It is our interpretation that CEIOPS does not intend to change the way RFF business is written, but provide a mechanism for identifying RFF for Solvency II purposes. We also highlight that the directive only makes reference to ring-fenced funds in the context of life insurance business (Art 305b) and therefore should not consider general insurance business. Moreover, any mechanism for identifying a RFF should take into consideration the underlying legal structure and arrangements of the company.</p> <p>We consider "Alternative A", a principle based approach, to be the right basis for designing an interpretation for RFF. However, it needs to be updated to be aligned with the directive. On that basis we propose the following amendment to para 3.68:</p> <p>" ... a ring-fenced fund is any arrangement within a life insurance business where:"</p> <p>Additionally, any application of "Alternative A" for the life insurance business would need to be applied on a "comply or explain" basis to insure that it does not inadvertently include funds for life insurance business which would not be considered as RFF. For instance, funds with ring fenced accounting or unit-linked funds, both of which should not be considered as RFF.</p> <p>We appreciate the challenges of determining a set of principles that would capture all types of RFF arrangements across Europe. Therefore, to ensure that the principles are not in breach of the legal arrangements in place re. RFF we propose that the local supervisors prepare an informal list of RFF, prepared in consultation with the industry, as part of level 3. CEIOPS would review these lists against the principle based definition being proposed here to ensure harmonisation across EU.</p> <p>We also note that there will be instances where a RFF has several sub-funds. Such arrangements should not be considered as separate RFF as they fall under the same legal framework. Due</p>	<p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may</p>
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			<p>consideration would need to be given to such sub-fund arrangements when applying the principles based definition for identifying RFF.</p> <p>We support an approach of identifying RFF using "Alternative A" for life insurance business on a "comply or explain" basis, supported by a list of RFF maintained by each member state regulator as part of Level 3 to ensue harmonisation.</p>	<p>exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p>
176.	FFSA	3.68.	<p>Ring-fenced funds definition: Alternative A</p> <p>As indicated above, FFSA considers that the definition of ring-fenced fund is too large, and that first condition should be deleted. This could lead to consider all life contracts in France are ring-fenced funds, as well as many reinsurance contracts (non proportional), PPI business, disability business...</p> <p>In addition, the suggested definition would lead to recognise different ring fenced funds within a single segregated fund, mainly when there are smoothing reserves such as equalisation reserves. By recognising these ring fenced funds, undertakings will have to create sub-portfolios of assets and liabilities, within the segregated fund, in order to calculate the notional SCR (delta nav approach). This is impossible when assets are not identified and allocated to liabilities (The allocation will be completely arbitrary). Creating different sub-portfolios within the segregated fund would lead to major inconsistencies when there are profit sharing clauses which consider the whole performance of the segregated fund (underwriting and financial).</p>	<p>See first comments to N° 3.</p> <p>See comments to N° 1. Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p>
177.	GDV	3.68.	<p>The alternative A definition of ring-fenced funds is too wide</p> <p>For example the first condition could lead to the consideration of</p>	<p>See first comments to N° 1 and 3.</p>

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			<p>arrangements which do not really appear as "ring-fenced".</p> <p>We would suggest, in particular, that ring-fenced funds do not cover any products that currently exist in non-life insurance.</p> <p>In addition, the suggested definition would lead to the recognition of different ring fenced funds within a single segregated fund, mainly when there are smoothing reserves such as equalisation reserves. By categorising these as ring fenced funds, undertakings will have to create sub-portfolios of assets and liabilities, within the segregated fund, in order to calculate the notional SCR. This is impossible when assets are not identified and allocated to liabilities (The allocation will be completely arbitrary). Creating different sub-portfolios within the segregated fund would lead to major inconsistencies when there are profit sharing clauses which consider the whole performance of the segregated fund (underwriting and financial).</p> <p>Proposed Solution</p> <p>It is our interpretation that CEIOPS does not intend to change the way RFF business is written, but provide a mechanism for identifying RFF for Solvency II purposes. We also highlight that the directive only makes reference to ring-fenced funds in the context of life insurance business (Art 305b) and therefore should not consider general insurance business.</p> <p>Any application of a principles-based approach for the life insurance business would need to be applied on a "comply or explain" basis to insure that it does not inadvertently include funds for life insurance business which would not be considered as RFF. For instance, funds with ring fenced accounting should not be considered as RFF.</p>	<p>Specific products such as reinsurance and conventional unit linked business have been explicitly excluded from the scope of the paper.</p>
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			<p>However, using the principles and rules outlined in this paper would create high level of uncertainty for the definition of RFF. A practical approach to this issue would be for each member state to identify a list of all funds it considers RFF with a view to ensure harmonisation through guidance at Level 3. Despite being a very prescriptive approach we believe that this is the best approach to address the issue of identifying RFF in a market place where a set of principles would struggle to capture all ring fenced funds products across the EU region.</p> <p>We support an approach where Member States retain a list of funds it considers to be RFF and appropriate harmonisation across the EU is achieved through Level 3 guidance as a practical solution to identifying RFF.</p>	<p>Not agreed. The aim is to establish a principles based guidance to the treatment of RFF. The creation of an exhaustive list would be against such perspective and, beyond this, does not seem to be an efficient way to capture the treatment of all RFF that may exist across the EU and there is the risk that such list would not be able to capture possible new types of RFF that may be created in the future.</p>
178.	Groupe Consultatif	3.68.	<p>Difficulties with Alternative A</p> <p>We prefer the definition within 3.68 as a definition of ring-fenced funds as it is generic enough to cover a suitable range of funds and seems to match the principles behind the determination of own funds and the SCR for a going concern. If read broadly, this would appear to capture UK With Profits business where the surplus sitting within the With Profits Fund is used to cover the cost of options and guarantees (and potentially augment policyholder benefits). It should be noted though that the With Profits Fund will still have a liability to pay shareholder transfers (reflecting a</p>	<p>See first comment to n° 1 and 3.</p>

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			<p>proportion of the cost of bonus to policyholders) and charges under unitised with-profits business which should be able to be counted as an asset of shareholder funds (as the liability of the With Profits Fund is recognised).</p> <p>We would argue that assets sitting outside the With Profits Fund which provide support to the With Profits Fund but are not exclusively the property of the With Profits Fund should not be captured under the "Ring-fenced" definition. We believe the wording supports this position, but further clarity around the definition (or the decision tress / two tests) would be helpful.</p>	
179.	Just Retirement Limited	3.68.	None of the definitions works completely satisfactorily, with each having the potential to include other business areas which ought to be excluded. We would favour a narrow definition of Ring Fenced funds, clearly relating to national legal contractual restrictions.	See first comment to n° 1 and 3.
180.	Legal & General Group	3.68.	If the decision is left to the local regulator then the key point is to define the principles that should apply.	See first comment to n° 1 and 3.
181.	Munich Re	3.68.	<p>The paper proposes two approaches to identifying RFF ("Alternative A" and "Alternative B"). The definitions of RFF proposed could result in very different interpretations of what actually constitutes a RFF. For example, CEIOPS' proposal A seems far too broad.</p> <p>We favour the alternative definition B which is narrower and more related to life insurance. In general a broad scope of the definition is not desirable, i.e. criteria should be at least seen as cumulative.</p>	See first comment to n° 1 and 3.
182.	ACA	3.69.	See comments on 3.17.	
183.	AMICE	3.69.	CEIOPS writes in Condition 2 that the insurer must invest the contract holder's funds within the Ring Fenced Funds as a result of	See first comment to n° 1 and 3.

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			contractual obligations and/or regulatory requirements. The Ring Fenced Fund definition applies only if the Ring Fenced Fund is legally or contractually separated from the remainder of the entity. Practical consequences should be tested in QIS 5. In particular, definition criteria should be written not only based on life insurance contracts but also where collateralization agreements (e.g. funds withheld) fit into this definition.	
184.			Confidential comments deleted.	
185.	CEA	3.69.	Please see response to Para 3.17.	
186.	CFO Forum	3.69.	The CFO Forum disagrees with alternative B on the basis that it is not a principle-based approach for identifying ring fenced funds.	See first comment to n° 1 and 3.
187.	CRO Forum	3.69.	(Alternative B): The second option proposed in the advice sets out three conditions, all of which have to be met in order for a fund to classify as a RFF. We disagree with alternative B on the basis that it is not a principles based approach for identifying RFF.	See first comment to n° 1 and 3.
188.	DIMA	3.69.	To be absolutely clear and consistent with the discussion articulated in the CP, the word 'other' should be added immediately after the (first word) 'Some', so that the paragraph would read 'Some other CEIOPS members.....'	See first comment to n° 1.
189.	FFSA	3.69.	FFSA disagrees with the treatment of own funds in this alternative (diversification between ring-fenced funds not recognised). Condition 3 is unclear: what is meant by: - All investment performance? - Assessment	See first comments to N° 1 and 3. See last comments to N° 8. See comments to N° 160.

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190.	Groupe Consultatif	3.69.	<p>Preference for Alternative B</p> <p>It is not clear from this definition whether Condition 1 requires the fund's assets to be ring-fenced on wind up. If this is the case then it is unlikely that any sub-funds (such as With Profits Funds) within the UK would meet the definition of being ring-fenced.</p> <p>If isolation of assets on wind up is not required then this definition would appear to capture unit linked funds and possibly to exclude With-Profits Funds. However, the profits from unit-linked policies could be used to offset losses elsewhere in the business and so arguably this is drawing a line around a wrong class of business. This therefore appears to be mixing up fungibility of capital diversity of risk from a solvency perspective.</p>	See first comment to n° 1 and 3.
191.	Just Retirement Limited	3.69.	None of the definitions works completely satisfactorily, with each having the potential to include other business areas which ought to be excluded. We would favour a narrow definition of Ring Fenced funds, clearly relating to national legal contractual restrictions.	See first comment to n° 1.
192.	Legal & General Group	3.69.	This alternative set of criteria seems to be drawn too narrowly to include all things that could be thought of as ring-fenced funds. In particular, it is not clear that UK with-profits funds would be caught by this definition. See 3.68	See first comment to n° 1 and 3.
193.	Munich Re	3.69.	We suggest following additional text to condition 1: This isolation also applies in case of winding-up.	See first comment to n° 1 and N° 5.
194.			Confidential comments deleted.	
195.	CFO Forum	3.70.	Comments in 3.17, 3.68 and 3.69 are also relevant here.	
196.	CRO Forum	3.70.	See response in Para 3.17, 3.68 & 3.69	

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197.	FFSA	3.70.	<p>Ring-fenced funds definition: FFSA suggests the following definition</p> <p>6. FFSA is in favour of a modified version of alternative B (§3.42 - §3.55), which would be the following :</p> <p>7. Ring Fenced Funds are arrangements which meet all of the following conditions:</p> <p>8. Condition 1: the assets and rights supporting the contract liabilities are necessarily legally isolated from those of the other insured and this isolation of assets and liabilities also applies in case of winding up ;</p> <p>9. Condition 2: the insurer must invest the contract holder's funds within the Ring Fenced Funds as a result of contractual obligations and/or regulatory requirements.</p> <p>Condition 3: investment performance, net of contractual loadings and insurer's part of profit sharing, must as a result of contractual or regulatory requirements be passed through to the contract holders.</p>	See first comment to n° 1 and 3.
198.	Groupe Consultatif	3.70.	<p>See above comments on 3.17.</p> <p>For the identification of "Ring-Fenced-Business" it is necessary to give further guidance at a country level because of the dependence of national regulatory framework and national business models.</p> <p>It is worth noting that there are some specific balance sheet items (such as deferred tax assets) which can only be used against certain lines of business although this does not create a barrier to (net of tax) profits from this line of business being used to offset losses elsewhere in the business. This should not constitute a "ring-fenced fund" but should be considered appropriately when valuing the balance sheet item (so in the case of Deferred Tax Assets, by considering its recoverability against the future profits</p>	<p>See first comments to N° 1 and 3.</p> <p>See last comments to N° 8.</p> <p>See comments to N° 160.</p>

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			<p>arising from the specific block(s) of business it can be offset against).</p> <p>In the UK e.g., it is common to have non-profit business within a With Profits Fund, where the profits on the non-profit business are payable to the with-profits policies. The standard segmentation rules do not really consider this scenario and the ring-fenced paper is silent on this issue. We would argue that the ring-fencing would be around the whole with-profits fund and not just the with-profits business within the WPF since the profits from the non-profit business can be used for the With-Profits business and the With-Profits business can supply capital for the non-profit business if it is suffering adverse experience. Correspondingly, we believe it is appropriate to allow full diversification (even in the risk margin) for the with –profits business and non-profit business which sits within the With Profits Fund.</p>	
199.	Just Retirement Limited	3.70.	<p>Within the UK, only With Profits business should fall within the definition of Ring Fenced Funds. We believe that there should be clarity from each national regulator in each jurisdiction on the application of Ring Fenced Funds, in the context of national law.</p> <p>Given the fact that legal applicability will differ in each national jurisdiction, national regulators ought to clarify their intended application in advance of implementation.</p>	See first comment to n° 1 and 3.
200.			Confidential comments deleted.	
201.	CEA	3.71.	<p>In general, the alternative B definition would not always appear appropriate</p> <p>As alternative B:</p> <p><input type="checkbox"/> Could define funds with ring fenced accounting (e.g. each unit linked fund, or funds with separate accounting for tax</p>	See first comment to n° 1 and 3.

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			<p>purposes) as RFF; and</p> <p><input type="checkbox"/> Could fail to define obvious contenders for RFF because not all the investment surplus goes to the policyholders i.e. some goes to the shareholder e.g. on 90:10 with profits funds.</p> <p>Ceiops need to be careful when designing a mechanism for identifying RFF because these funds have a legal structure in their own right. Any prescriptive attempt at identifying a RFF under Solvency II could have unintended consequences.</p>	
202.	CRO Forum	3.71.	<p>"As a practical explanation of the definition in order to determine if a particular arrangement should be considered a ring-fenced fund, the following 2 tests should be performed. A positive answer in at least one of these tests is a sufficient condition:" [test A – impact on total SCR and test B – impact on total eligible own funds]</p> <p>We consider this as a practical explanation of the definition proposed under 'Alternative A' because the two tests are based around the two arguments presented in the proposal, namely barriers to sharing of profits/losses and generation of restricted own funds.</p> <p>We find this practical explanation useful, however, we propose that this practical explanation should be removed from the blue text on the account that it runs the risk of contradicting with the principles based approach of Alternative A – See para 3.68 for comments.</p>	See first comment to n° 1 and 3.
203.	Groupe Consultatif	3.71.	<p>The tests should be modified, further advice is needed here.</p> <p>The steps described to identify a RFF appear to be linked to</p>	See first comment to n° 1 and 3.

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			definition A, this paragraph should be updated if another definition is chosen.	
204.	Institut des Actuaire	3.71.	The steps described to identify a RFF appear to be linked to definition A, this paragraph should be updated if another definition is chosen.	See first comment to n° 1.
205.	PWC	3.71.	Refer to comments at para 3.57.	
206.	ACA	3.72.	<p>The current text does however create some uncertainty as to whether the calculation requires consideration of the worst case scenario at the fund level in cases of bi-directional risks.</p> <p>While Annex A.1.1 provides clarity that the calculation of the SCR does not require consideration of the worst case position at the individual ring fenced fund level, there is some potential for this to be interpreted from 3.72 – in which case the resulting SCR would be calibrated to a level of confidence greater than 99.5%.</p> <p>As stated in our comments to Para 3.66, we would strongly oppose a requirement for different directional stresses for each ring fenced fund.</p>	Noted. It should be the worst result for the capital charge of the whole undertaking, referent to each risk where a bidirectional scenario is applied. Advice has to be revised.
207.	AMICE	3.72.	<p>For the calculation of total eligible own funds where Ring Fenced Fund leads to restricted own funds, CEIOPS' advice proposes to exclude from the calculation (1) the surplus in any RFF over the notional SCR for that fund, where such surplus cannot be used to cover risks in the rest of the firm and (2) any diversification benefits between the RFF and other funds.</p> <p>As already mentioned in paragraph 3.66, we agree with the CEA that the calculation of individual risk charges at ring-fenced level should not yield to different stresses where there are bidirectional scenarios (i.e interest rate, currency and lapse risk).</p>	<p>See last comments to N° 8.</p> <p>See comments to N° 160.</p> <p>See comment to n° 206.</p>
208.			Confidential comments deleted.	
209.	CEA	3.72.	We strongly oppose a requirement for different directional stresses	See comments to N° 206.

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			<p>for each ring fenced fund</p> <p>The current text does create some uncertainty as to whether the calculation requires consideration of the worst case scenario at the fund level in cases of bi-directional risks.</p> <p>While Annex A.1.1 provides clarity that the calculation of the SCR does not require consideration of the worst case position at the individual ring fenced fund level, there is some potential for this to be interpreted from 3.72 – in which case the resulting SCR would be calibrated to a level of confidence greater than 99.5%.</p> <p>As stated in our comments to Para 3.66, we would strongly oppose a requirement for different directional stresses for each ring fenced fund.</p> <p><input type="checkbox"/> We request the following additional text “- in the case of bi-directional risks, a consistent stress direction should be assumed across each ring fenced fund and the remaining sub-portfolio” to be added at the end of “The total capital charge for the individual risk is given by the sum of the capital charges calculated at the level of each ring-fenced fund and that calculated at the level of the remaining sub-portfolio of business”</p> <p>We also note that the methodology should be allowed to differ for partial or internal models which could be set up to properly reflect any restrictions on the transferability of capital.</p>	<p>It could not be measured without such calculation.</p> <p>Agreed.</p>
210.	CFO Forum	3.72.	<p>The CFO Forum believes that there should be no requirement to hold a higher capital charge in respect of ring fenced funds.</p> <p>The CP suggests that if you cannot take money out of a fund, you should hold a higher capital charge. This confuses the concepts of</p>	<p>Not agreed. See last comments to N° 8.</p> <p>See comments to N° 160.</p>

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			<p>diversification and fungibility. If you cannot take money out, you cannot use any surplus to decrease the requirements of other funds, which should be taken into account when determining own funds. There should be no requirement to hold a higher capital charge in respect of these funds.</p> <p>In defining a fund as ring fenced, consideration should be given to whether, in exceptional circumstances there are other mechanisms available to release surplus from otherwise segregated funds. Such mechanisms will come into effect in adverse scenarios creating diversification benefits.</p> <p>CP68 also mixes up the concepts of liquidity and solvency. This is more a liquidity issue than a capital one. It would be more appropriate to perform additional liquidity stresses on the fund to ensure ring-fenced funds are able to meet cash flow requirements in stressed scenarios.</p>	<p>See last comments to N° 1.</p> <p>Noted. Such mechanisms should be considered. The aim is to capture the real restrictions/compensations that can occur between funds.</p> <p>Noted.</p>
211.	CRO Forum	3.72.	<p>We agree that an SCR calculation at the level of the undertaking can lead to an understatement of the 'true' capital charge in an insurance undertaking where a RFF exists. However it is unreasonable to claim that this could lead to a "significant" underestimation of the capital charges. The effect of the capital charge will vary from insurer to insurer and the size of the RFF compared to other funds.</p>	<p>Noted, see comment n° 212.</p>
212.	GDV	3.72.	<p>We strongly oppose a requirement for different directional stresses for each ring fenced fund</p> <p>The current text does create some uncertainty as to whether the calculation requires consideration of the worst case scenario at the fund level in cases of bi-directional risks.</p> <p>While Annex A.1.1 provides clarity that the calculation of the SCR does not require consideration of the worst case position at the</p>	<p>See comment to n° 206.</p>

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			<p>individual ring fenced fund level, there is some potential for this to be interpreted from 3.72 – in which case the resulting SCR would be calibrated to a level of confidence greater than 99.5%.</p> <p>As stated in our comments to Para 3.66, we would strongly oppose a requirement for different directional stresses for each ring fenced fund.</p> <p><input type="checkbox"/> We request the following additional text “- in the case of bi-directional risks, a consistent stress direction should be assumed across each ring fenced fund and the remaining sub-portfolio” to be added at the end of “The total capital charge for the individual risk is given by the sum of the capital charges calculated at the level of each ring-fenced fund and that calculated at the level of the remaining sub-portfolio of business”</p> <p>We also note that the methodology should be allowed to differ for partial or internal models which could be set up to properly reflect any restrictions on the transferability of capital.</p>	Agreed. (3.21 modified).
213.	Groupe Consultatif	3.72.	See above comment on 3.64.	
214.	Legal & General Group	3.72.	For a given risk, ignoring diversification between a ring-fenced fund and another fund is only appropriate if the ring-fenced fund is in surplus. If a ring-fenced fund is in deficit, then the ring-fencing has effectively broken down as own funds from outside the ring-fenced fund are being used to support the ring-fenced fund’s SCR. In this situation it does not seem appropriate to combine different scenarios for a given risk (for the bidirectional risks) – rather the scenario which gives the worst results at the total level should be used.	Agreed. See last comments to N° 8. See comments to N° 160.

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			Put another way, in the example given in A.2.2, if Risk A were a bidirectional risk (e.g. interest rates) and different directions were biting for the RFF and other, then the SII Balance Sheet amount should be less than 135 due to diversification between the two funds.	
215.	ACA	3.73.	See comments on 3.72.	
216.	AMICE	3.73.	We agree with the CEA that the amounts of own funds should not be restricted based on diversification benefits. Own funds can only be decreased due to potential lack of transferability.	Agreed. See comments to N° 160.
217.	CEA	3.73.	Please see comments to Para 3.72 and 3.74	
218.	FFSA	3.73.	<p>Transferability</p> <p>Undertakings net future profits, after allowance for contractual profit sharing, should be considered as transferable and should be included in the calculation of the undertaking's own funds.</p> <p>For restricted own funds taken into account in the calculation of the Best Estimate (i.e. projected along the projection horizon) and not fully used to absorb losses at the end of the projection, the residual part of own funds should be recognised as transferable and included in the calculation of the undertaking's own funds.</p> <p>Diversification</p> <p>Amounts of own funds should not be restricted based on diversification benefits. Indeed, diversification of risks means that all risks do not happen at the same time and in consequence when the business is more diversified the SCR should be decreased.</p>	<p>Noted.</p> <p>Agreed.</p> <p>See last comments to N° 8.</p> <p>See comments to N° 160.</p>

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			<p>There is no link between the amount of diversification and the amount of own funds. Own funds can only be decreased due to potential lack of transferability.</p> <p>Diversification effects and transferability should be taken into account as illustrated in the following example:</p> <ul style="list-style-type: none"> - Diversification benefits are not removed in the calculation of own funds - The ring fenced fund has own funds that are made of future undertaking's profit. These own funds are considered as transferable. <p>□</p>	<p>Partially agreed. Advice has been clarified to remove references to diversification in respect of the own funds adjustments. Where they are not transferable (restricted OF), they have to be removed from total OF.</p>
219.	Groupe Consultatif	3.73.	See above comments on 3.64 and 3.66.	
220.	ABI	3.74.	<p>The advice is unclear on the recognition of the shareholders'/fund owner embedded value within a RFF. The following arguments need to be considered in light of the proposal set out in the advice;</p> <p>We welcome CEIOPS recognition that where a legal arrangement exists between policyholders and shareholders'/fund owner however, this contradicts with the advice in bullet 1 where CEIOPS fails to recognise any shareholders'/fund owner embedded value in the RFF.</p> <p>It is our interpretation that CEIOPS recognises the existence of shareholders' embedded value, which is consistent with the economic based approach that underpins Solvency II. We support this interpretation and strongly recommend CEIOPS to clarify this in their final advice to indicate that recognition of shareholders'</p>	<p>Agreed. See comments to N° 3.</p>

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			<p>embedded value is allowed. We consider that the shareholders' embedded value can be reliably calculated using the valuation approaches in Solvency II.</p> <p>2nd bullet. We agree with the principle being considered here by CEIOPS where SCR diversification between RFF and other funds is allowed when the RFF is in deficit.</p>	
221.	ACA	3.74.	See comments on 3.72.	
222.	AMICE	3.74.	<p>CEIOPS proposes to limit diversification benefits where ring-fenced funds could generate restricted own funds. This approach is very conservative, and contradictory with an economic approach. Restricted items should be analysed on a case by case basis and can potentially be reduced from the total amount of eligible own funds if they are not transferable.</p> <p>Furthermore, this would be in contradiction to the treatment suggested in the CP 60 on the assessment of group solvency.</p>	<p>See last comments to N° 8. See comments to N° 160.</p>
223.			Confidential comments deleted.	
224.	CEA	3.74.	<p>Please see comments to Para 3.72</p> <p>We request the following adjustments to the treatment of Own Funds:</p> <p><input type="checkbox"/> All shareholder value within ring-fenced funds should be recognised at entity level.</p> <p>The own funds held within each ring-fenced funds can be split into two components, the part that belongs to policyholders and the</p>	Agreed. See comments to N° 3.

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			<p>account, however, we understand that this may be difficult to capture in a simple manner and we support the fact that Ceiops has attempted to capture part of these effects for those RFF in deficit. However, Ceiops should also allow for diversification with the part of the ring-fenced fund that belongs to the shareholder, and as discussed above, this shareholder value, as well as its effect on diversification, is ignored. We would expect that those companies using Internal and Partial models should have the freedom to adopt more sophisticated approaches allowing accurately for fungibility and transferrability constraints, e.g. using Monte Carlo simulations to reflect the different directional effects.</p>	Agreed.
225.	CFO Forum	3.74.	<p>The advice is unclear as to the treatment of shareholders' embedded value within a ring fenced fund.</p> <p>Annex A1.1 describes an example where 20% of emerging profit can be released to shareholders. This contradicts bullet 1 in paragraph 3.74 which makes a generic claim that any surplus over the notional SCR is not fungible. No reference is made to the treatment of shareholders' embedded value.</p> <p>It is our interpretation that CEIOPS recognises the existence of shareholders' embedded value (as outlined in paragraph A1.1) which is consistent with the economic approach that underpins Solvency II.</p> <p>We support this interpretation and recommend that CEIOPS confirm that the recognition of shareholders' embedded value is permitted in the final Level 2 advice.</p>	Agreed. See comments to N° 3.
226.	CRO Forum	3.74.	<p>[bullet 1] "If the ring-fenced fund has sufficient own funds to cover the notional SCR for that ring-fenced fund, then any surplus over the notional SCR that cannot be used to cover risks in the rest of the firm and diversification between the ring-fenced fund(s) and</p>	

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			<p>shareholders' embedded value is allowed. We consider that the shareholders' embedded value can be reliably calculated using the valuation approaches in Solvency II.</p> <p>[bullet 2] "... Diversification between the ring-fenced fund(s) and other funds may be included but only, as a maximum, to the extent that it is required to cover the deficit arising from within the ring-fenced fund (i.e. the burn-through amount) and to the extent the other funds are not themselves ring-fenced funds."</p> <p>We agree with the principle being considered here by CEIOPS where SCR diversification between RFF and other funds is allowed when the RFF is in deficit.</p>	See last comments to n° 8.
227.	FFSA	3.74.	<p>for contracts with restricted own funds, the CP is considering both adjustments to own funds based on:</p> <ul style="list-style-type: none"> - The nature of own funds (transferable or not): excluding the surplus vs notional SCR from total own funds - The diversification, considering there is no diversification impact in some cases. <p>It appears to be very conservative. FFSA considers that the adjustment should be limited to the excess of surplus vs notional. As indicated above, there can be diversification between segregated funds that should be taken into account.</p>	See last comments to n° 8. See comments to n° 16.
228.	GDV	3.74.	<p>We request the following adjustments to the treatment of Own Funds:</p> <ul style="list-style-type: none"> - All shareholder value within ring-fenced funds should be recognised at entity level. <p>The own funds held within each ring-fenced funds can be split into</p>	Agreed. See comments to N° 3.

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			<p>two components, the part that belongs to policyholders and the part that belongs to shareholders. The shareholder part, i.e. the value of shareholders' rights to participate in future profit sharing, should be recognised in the own funds shown in the entity's balance sheet and should not be treated as policyholder funds.</p> <p>- All other value within ring-fenced funds should be shown as "non-transferable own funds" at entity level.</p> <p>These should not be set to zero at entity level. Clearly an entity with a significant amount of excess own funds held within a RFF is in a much stronger position than an identical entity but with no excess own funds within the RFF. However, under CEIOPS' proposal the entities would appear equally well capitalised looking at their balance sheets.</p> <p>- Diversification benefits should not reduce Own Funds, but should be taken into account in the SCR.</p> <p>CEIOPS seems to be mixing-up the restrictions to transferability in the SCR and Own Funds. We suggest that no artificial decrease is made to the Own Funds to counter-act diversification effects captured in the SCR. Any reduction to diversification effects should be recognised within the SCR, not the own funds.</p>	<p>Agreed.</p> <p>Partially agreed. See comments to N° 5.</p> <p>Agreed. See comments to N° 160</p>
229.	GROUPAMA	3.74.	<p>CEIOPS is suggesting limiting the diversification benefits where ring-fenced funds could generate restricted own funds. This is very conservative, and contradictory with an economic approach. Restricted items should be analysed case by case and potentially reduce the total amount of eligible own funds if these are not transferable.</p>	<p>See last comments to n° 8.</p> <p>See comments to N° 160</p>
230.	Groupe Consultatif	3.74.	<p>See above comments on 3.64 and 3.66.</p>	

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231.	Legal & General Group	3.74.	This section needs also to recognise any formal arrangement that allows shareholders to automatically receive a benefit, such as the 90/10 rule in the UK. If however the arrangement is not automatic then the shareholders "value" has to be assessed under a stressed position and is likely to be have a "haircut" depending upon the arrangement.	Agreed. See comments to N° 3.
232.	Munich Re	3.74.	We request the following adjustments to the treatment of Own Funds: <ul style="list-style-type: none"> - All shareholder value within ring-fenced funds should be recognised at entity level. - All other value within ring-fenced funds should be shown as "non-transferable own funds" at entity level. 	Agreed. See comments to N° 3.
233.	Deloitte	A.2.1.	The example set out in Annex A1 shows that in determining the adjustment to SCR for a RFF the existence of an agreed allocation between shareholders and policyholders is taken into account. However it is not clear from the examples in Annex A2 whether the whole of the surplus in a RFF with an agreed allocation between shareholders and policyholders is taken into account in the restriction on own funds. We suggest that the examples in Annex A2 should be consistent with the principles applied in Annex A1 and make it clear that only the amount of the surplus attributable to policyholders should be excluded, rather than the entire surplus in a RFF.	Noted. The examples will be further changed to reflect the principles defined.
234.	PWC	A.2.1.	We accept that the calculations in Appendix A.2 are provided as examples. However, we note that extending this to several ring-fenced funds with different surplus/deficit positions may prove complicated.	Noted. Further examples will be developed and included in the paper.
235.	CFO Forum	A.2.2.	The CFO Forum considers the text supporting the table in this paragraph to be misleading	Noted. Further examples will be changed and included in the

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			<p>The paragraph states that there “should be no allowance for diversification between the ring fenced fund and other funds”. However, the numeric illustration in the table shows how the diversification benefit between RFF and other funds can be used to cover any deficits in a ring fenced fund.</p> <p>The CFO Forum proposes that section (a) should be amended to ensure a consistent message to paragraph 3.74 (bullet 2).</p>	<p>paper.</p> <p>To identify the principles: See last comments to n° 8. See comments to n° 16.</p>
236.	CRO Forum	A.2.2.	<p>The text supporting the table in this paragraph is misleading. For instance;</p> <p>The paragraph states that there “should be no allowance for diversification between the ringfenced fund and other funds”. However, the numeric illustration in the table shows how the diversification benefit [between RFF and other funds] can be used to cover any deficits in a RFF.</p> <p>We propose that A2.2(a) should be amended to ensure that the message in this paragraph is consistent with the message provided in Para 3.74 (bullet 2).</p>	<p>Noted. Further examples will be changed and included in the paper.</p> <p>See last comments to n° 8. See comments to n° 16.</p>
237.	Legal & General Group	A.2.2.	See comments on paragraph 3.72	
238.	PWC	A.2.2.	See above	
239.	ACA	A.2.3.	Own funds in excess of the SCR in the ring fenced fund should be 120.0 -130.3 = (10.3)	Noted.

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			The assets in the SII Balance Sheet must be 1 320 instead of 1 250.	Noted.
240.	CEA	A.2.3.	<p>There are errors in this example:</p> <p><input type="checkbox"/> The Own funds in excess of the SCR in the ring fenced fund should be $120.0 - 130.3 = (10.3)$ and not (10.5). A deficit of (10.3) is needed to derive the restriction due to the transferability of the capital i.e. diversification effects of $(130.3 + 130.3 - 233.8) = 26.8$, the first 10.3 of which are used to cover the deficit resulting in a restriction of $26.8 - 10.3 = 16.5$ being needed.</p> <p><input type="checkbox"/> The assets in the SII Balance Sheet must be 1 320 instead of 1 250.</p> <p>Due to comment to Para 3.64 in Case 1 the value of 69.7 own funds in excess of SCR of the ring fenced fund should be shown in a special category "non-transferable own funds".</p>	Noted.
241.	CFO Forum	A.2.3.	<p>We highlight that there is a mathematical error in this example.</p> <p>There is a difference of 0.2 in the example. The Own funds in excess of the SCR in the ring fenced fund should be $120.0 - 130.3 = -10.3$ and not -10.5. The difference propagates to other totals/ subtotals in the example.</p> <p>Additionally, the assets in the SII Balance Sheet should be 1,320 instead of 1,250.</p> <p>Comments in A.2.2. are also relevant here.</p>	Noted.
242.	CRO Forum	A.2.3.	The text supporting the table in this paragraph is misleading. For instance;	Noted.

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			<p>The paragraph states that there “should be no allowance for diversification between the ringfenced fund and other funds”. However, the numeric illustration in the table shows how the diversification benefit [between RFF and other funds] can be used to cover any deficits in a RFF.</p> <p>We propose that A2.3(a) should be amended to ensure that the message in this paragraph is consistent with the message provided in Para 3.74 (bullet 2).</p> <p>There is a mathematical error in this example</p> <ul style="list-style-type: none"> - There is a difference of 0.2 in the example. The Own funds in excess of the SCR in the ring fenced fund should be $120.0 - 130.3 = (10.3)$ and not (10.5). The difference propagates to other totals/ subtotals in the example. - The assets in the SII Balance Sheet should be 1,320 instead of 1,250. 	<p>Further examples will be changed and included in the paper.</p> <p>See last comments to n° 8. See comments to n° 16.</p>
243.	GDV	A.2.3.	<p>There are errors in this example</p> <ul style="list-style-type: none"> - The Own funds in excess of the SCR in the ring fenced fund should be $120.0 - 130.3 = (10.3)$ and not (10.5). A deficit of (10.3) is needed to derive the restriction due to the transferability of the capital i.e. diversification effects of $(130.3 + 130.3 - 233.8) = 26.8$, the first 10.3 of which are used to cover the deficit resulting in a restriction of $26.8 - 10.3 = 16.5$ being needed. - The assets in the SII Balance Sheet must be 1 320 instead of 1 250. 	Noted.

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			Due to comment to Para 3.64 in Case 1 the value of 69.7 own funds in excess of SCR of the ring fenced fund should be shown in a special category "non-transferable own funds".	
244.	Groupe Consultatif	A.2.3.	Miscalculation in column "Ring fenced fund": 120.0 – 130.3 equals 10.3 and not 10.5.	Noted.
245.	PWC	A.2.3.	See above	
246.	PWC	A.2.4.	See above	