Summary of comments on CEIOPS-CP-29/09

CEIOPS-SEC-93/09

Consultation Paper on the Draft L2 Advice on Own Funds - Criteria for supervisory approval of ancillary own funds

CEIOPS would like to thank **Munich Re, AVIVA, PEARL GROUP LIMITED, FFSA, ROAM, International Underwriting Association of London (IUA), German Insurance Association – Gesamtverband der Deutschen Versicherungswirtschaft (GDV), European Union member firms of Deloitte Touche Tohmatsu, XL Capital Group (including XL Insurance Company Ltd and XL Re Europe Ltd) ("XL"), UNESPA (Association of Spanish Insurers), KPMG ELLP, CRO Forum, Lloyd's, PricewaterhouseCoopers LLP UK, RBS Insurance (confidential– it will be taken out before publication), Groupe Consultatif, ASSOCIATION OF BRITISH INSURERS (ABI), AMICE, CEA**

The numbering of the paragraphs refers to Consultation Paper No. 29 (CEIOPS-CP-29/09).

No.	Name	Reference	Comment	Resolution
1.	Munich Re	General Comment	Altogether we support the comments devised by GDV. Additionally we would like to emphasise the following.	Noted.
2.	AVIVA	General Comment	We welcome the intention to recognise available capital not presented on the balance sheet. However the recognition of ancilliary own funds should be dealt with properly at Level 2 and not deferred to Level 3. Examples of what is or not recognised, plus the methods to determine the amount of ancilliary own funds, should be provided. In addition it is not clear whether the rules would be subject to local regulatory rules for each business or only to the ultimate Group. We support a consistent approach across all EU countries and require further clarification on how the rules would apply to both individual business and Groups.	Noted.
3.	PEARL GROUP LIMITED	General comment	We welcome this opportunity to respond to CEIOPS' consultation on supervisory approval of ancillary own funds. We agree that a principles-based approach is the best way of assessing these funds. We agree that the legal enforceability of the contract governing an item of ancillary own funds is the first step in establishing its eligibility.	Noted.

			However, the three-step process seems onerous and time consuming. Steps 2 and 3 are hard to differentiate. Where the supervisor declines approval of ancillary own funds or limits them then the supervisor should provide a rationale for this, including recommending changes to the construction of these own funds that would make them eligible if this can be done. We also believe that the process for re-approval should be proportionate i.e. light touch where there has been no material change in circumstances affecting the ancillary own funds since it was last approved by supervisors. We are also not sure how the criteria and steps work together in the process of determining the eligibility of ancillary own funds. Public disclosure of the ancillary own funds should be carefully assessed to ensure that the details of counterparties, if released, do not result in wider financial instability in the market. Harmonization of supervision should be a high priority. This can be done by supervisors sharing factors that are influencing their decisions on this issue. One method of doing this may be to create a database with sufficient data fields for supervisors to reference.	Noted.
4.	GDV	General comment	We suggest that CEIOPS takes into account in its Level II advice our following general comments: **Generally the GDV supports the comments given by the CEA.**	Noted.
5.	GDV	General comment	**1. Micro and macro prudential view is required** Implementing measures as regard own funds should not discourage insurance and reinsurance undertakings from using all tools to be capitalized adequately - in normal and in crisis situations - and	Noted.

[1] In CP 35 CEIOPS states the following: "Recent circumstances have highlighted the importance of funding sources during periods of stress."

			investors should not be prevented to invest in insurance undertakings. A stable financial sector is a prerequisite for sustainable economic growth. In particular in these times, new rules on own funds should not destabilise investment markets and refinancing of the insurance industry – nor on individual or market level. Now is not the time to narrow sources of capital or to make investing in the financial industry more difficult. Confidence of investors – equity or non-equity – has to be build up again in and after the financial crisis. Also and especially in stressed conditions companies have to be able to refinance.[1] Being too strict at individual level might result in damaging markets or investors. This could result in severe problems of recapitalisation of insurance companies in times of stressed market conditions. . It is not sufficient to assume only normal market conditions from the micro-prudential view, i. e. if supervisors assume stressed scenarios in assessing ancillary own funds at individual company level, these scenarios have to be taken into account in the impact assessment on markets and financial stability as well. We consider it essential that CEIOPS widens its assessment and starts rethinking micro-prudential regulation in the light of macro-prudential oversight to capture potential systemic risks by the capital allocation within the European financial sector via ancillary own funds.	
6.	GDV	General comment	**2. Economic view on own funds is crucial and marketability of own funds has to be considered** As guiding principle capital requirements and eligible capital to cover them (own funds) should reflect a risk-based economic view. Hence, we strongly support the total balance sheet approach in determining own funds, i. e. assets – liabilities = basic own funds (Art. 87). We are convinced that this difference resulting from the valuation in the	Noted.

			solvency balance sheet fully qualifies for tier 1 capital. It does not matter if some elements arise because of valuation differences due to accounting (e. g. including those of equalisation provisions → see GDV's specific position paper). Starting from a pure accounting perspective contradicts the idea of an harmonised approach of own funds across Europe, does not create a level playing field and distorts competition in the Single Market. The total balance sheet approach reflects a correct economic view and should therefore be independent of national accounting or taxation rules. Ancillary own funds being not within the solvency balance sheet should not be understood as not applying economic principles to them as well. Their economic risk-absorbency has of course to be taken into account. We would like to see consistency with the future implementing measures on the list of own funds. Having just said that stable capital markets should be an objective when designing any implementing measures for own funds we remind CEIOPS to keep a close look to the marketability of capital instruments. This issue was raised already by the industry in the consultation of the draft QIS4 technical specifications (see CEA [2008]). Requirements in accepting capital instruments as eligible to cover capital requirements should make sure that capital markets can deliver sufficient capital, i. e. the willingness of investors to accept instruments which comply with features and characteristics for regulatory reasons. Otherwise formally there's acceptance but in practice such instruments are not available at reasonable costs.	Noted – reference to own funds.
7.	GDV	General comment	**3. Accepting the funding model of mutuals** In GDV's brochure on own funds, dating from October 2007, we argued	Noted.

			already in favour of accepting the funding model of mutuals. We would like to remind CEIOPS that mutuals' refinancing cannot be based on capital markets as in the case of stock holding companies. Supplementary member calls are a primarily way of financing mutuals in crisis situations with a long tradition and somehow the heart of insurance. Setting criteria for ancillary own funds that are too strict could affect the level playing field between mutuals and other insurers. However, we do agree that the recognition of supplementary member is subject to the fact that policyholders are informed beforehand about their eventual obligation.[2] This is the case in Germany. It shouldn't be in the interest of CEIOPS to force legal forms of insurance companies away from mutuals. Therefore CEIOPS should give advice on implementing measure in that respect very carefully and should closely monitor negative effects on mutuals, e. g. also indirectly by extensive public disclosure requirements (3.64).	
8.	GDV	General comment	**4. Legal certainty has to be acknowledged** We think it is necessary to be precise in language and linking level II advice clearly to the wording used in level I text. For example the legally binding effect of commitments should not be minimised by just saying that counterparties "promise" to provide assets neglecting the fact that obliged themselves and can be forced to transfer assets if called. The legal system including sanctions in the EU and in Member States as regard capital ties is sound. The legal framework for capital instruments is highly regulated. We have no evidence that trust in legal	See comments on para 3.5.

2 Cf. CEA [2008], p. 5: "It is essential that communication towards policyholders of mutuals about possible supplementary calls is clear."

			certainty is not justified today or in the future.	
9.	GDV	General comment	**5. Principle based-approach at Level II is fully supported** We acknowledge that the given advice is principle-based to allow a proper case-by-case assessment (as required by the framework directive) within appropriate guidance on level II criteria. As ancillary own funds are assessed individually the scope for standardization might be limited and hence underlines the need of a more principle-based approach. However, we would like to highlight the need of common criteria at level II – for international groups it is crucial that they do not face different application in different jurisdictions across Europe. Compared to Solvency I it is desirable that provisions for items subject to supervisory approval are more harmonised and applied under Solvency II.[3] If problems arise it might be appropriate to establish a consultative and mediation role of CEIOPS in the approval of ancillary own funds (see 6.). It is yet to decide which details have to be set at level II. We advocate being consistent when designing all implementing measures. It would be not useful if too many details are prescribed in one area and only principles are given in other areas. With regard to harmonisation we recommend sticking to level II. It is desirable that Solvency II is applied in all Member States in the same manner. National guidance might be counter-productive in this respect.	Noted but process needs to be expeditious and giving CEIOPS a role in the approval process may not help this.
10.	GDV	General comment	**6. Transparency of supervisory actions and oversight of ancillary own funds on EU level is crucial**	Noted – but this is a wider issue.

3 See for differences in today's treatment for example: http://www.ceiops.eu/media/files/publications/submissionstotheec/Reportonimplementationoftheinsurancedirectiveswithregardtotheeligibleelementstomeetthesolvencymargin.pdf

			With the ongoing convergence in financial services, regulators have a responsibility to ensure a level playing field among insurers domiciled in different countries but operating in overlapping markets. With an issue as important as eligible capital there should be as little differences in regulation and practice as possible, e. g. workshops for supervisors with ancillary own funds as topic could further promote convergence on regulatory level. Transparency of supervisors serves this goal of harmonisation across Europe. We acknowledge the efforts done in this area by the implementing measures on transparency and accountability (CP34). We think that supervisory actions have to be made transparent also in respect to ancillary own funds. This includes, inter alia, clear criteria used, a standardised application form and justifying non-approval of ancillary own funds. Solvency II requires Member States to aggregate statistical data on key aspects of the application of the prudential framework (Art. 30 (2) c)). As part of aggregated data on own funds we ask the Commission to include requirements as regard ancillary own funds in the implementing measures as set out in Art. 30 (4). Art. 51 requires explicitly CEIOPS to report similarly on the distribution of capital including capital add-ons Appropriate IT-systems have to be developed for statistical analysis by supervisors on EU level to start from the beginning of Solvency II. This is essential if a macro-prudential overview is aimed at. The increased workload and efficient handling of these tasks should be duly considered in equipping CEIOPS with adequate resources. If ancillary own funds are granted approval for an entity in a group this should be part of the regular exchange of information on capital structures in the group. The exchange of information should be not	than AOF.

			limited in ex-post information of granted approval. There is the possibility of delegation of tasks within a team of supervisors, e. g. to the group supervisor, to avoid duplication of work in groups. For example supervisory authorities may base their approval on the status of the counterparties concerned which is fully or partly analysed by an other supervisory authority. If supervisors disagree in the assessment of ancillary own funds the supervisors concerned should be encouraged to refer that case to CEIOPS for mediation. We think that supervisors should be not prohibited in referring to CEIOPS for consultation on a case by case basis or a group of similar cases, if confidentiality is assured. Recital 69a (refers to Art. 229) states clearly that playing a mediation or a consultation role for CEIOPS should be possible even without explicit provisions in the Directive. We think ancillary own funds is an area worth to be considered in this respect. CEIOPS voluntary mediation role could become more legally binding over time.	
11.	GDV	General comment	**We would like to summarise our main positions as follows:** • **re-approval of ancillary own funds should not be required regularly after a short timeline and approval should only be withdrawn if circumstances and/or assumptions at approval have significantly** • **there is broad support for a principle-based approach, yet the so called "three step approach" should be reviewed taking into account the economic characteristics of different categories of ancillary own funds (e. g. supplementary member calls)** • **we do not support the special requirements concerning**	See comments on paras 3.62-3.63, 3.42-3.47 and 3.64.

			public disclosure of ancillary own funds • **changed transparency of supervisory criteria and cooperation of supervisor as well as short-term action (e. g. within one month) in the approval process of ancillary own funds – being not an ongoing process - would be appreciated** **GDV's and CEA's comments on CP29 are consistent in views.**	
12.	Deloitte Touche Tohmatsu	General comment	We believe that while the proposals within the consultation paper appear reasonable in respect of the process and application of prudent and realistic assumptions on the recoverability of Ancillary Own Funds, there remains a need for further guidance in a number of areas, namely: - the principle of loss absorbency to be applied in determining whether Ancillary Own Funds should be approved; - the judgements on whether Ancillary Own Funds are classified as tier 2 or tier 3; and - the period for which an approval of Ancillary Own Funds should be granted	See comment 31 re CP 46.
13.	XL Capital Group	General comment	XL welcomes the opportunity to comment on CEIOPS' draft advice on "Supervisory approval of ancillary own funds". (CP No. 29). In CP 29 CEIOPS recognise the heterogeneity of ancillary own funds (Para 3.15) but do not provide precise guidance on their possible	Disagree. Covered in paragraphs 3.7. Article 87 relates to basic own funds.

			nature. Hence (re)insurance undertakings need to refer to Article 87 of the Solvency 2 Directive and to the QIS4 guidance. Even under a principle based definition more clarity will be needed.	
14.	UNESPA	General comment	UNESPA considers that the approval of Ancillary Own Funds by supervisors must be based on clear criteria in order to guarantee convergence of supervisory practices throughout Europe, avoiding purely national criteria. From this point of view, this is something which can be achieved if an adequate framework of harmonisation and flexibility is established in Level 2. All the CP criteria should take into account the principle of proportionality, based on the nature, size and complexity of the risks faced by the undertakings**.**	Noted.
15.	KPMG ELLP	General comment	The issue of the extent to which own funds should be eligible to cover the SCR is a contentious one particularly in the light of recent events. Section 1.4 of CEIOPS-SEC-107/08 (Lessons learned from the crisis (Solvency II) and beyond) refers to the differing loss absorbing capacity of various elements of own funds and the negative experiences in the banking sector. Under existing Directives, the inclusion of ancillary own funds is limited and as noted in CEIOPS-SEC-107/08 'the existing provisions regarding Insurers' own funds may have helped them maintain relatively stronger capital positions compared to banks'. The supervisory approval process for ancillary own funds should have regard to the comment in paragraph 104 of Section 4 of CEIOPS-SEC-107/08 that 'Solvency II should ensure a sufficient quality of capital that guarantees its loss absorbing capacity, in particular under stressed conditions'. Consideration of the ability to	Noted.

			call ancillary own funds in times of financial crisis is something which needs to be a key element of the supervisory review process and insurers should be required to provide modelling and documentation to the supervisory authority to support this.	
16.	CRO Forum	General comment	This paper mainly addresses major steps of the approval process for ancillary Own Funds. Even if we agree with the main steps, we see 4 major areas of disagreement: 1. The approval period restricted to 12 months irrespectively of the length of the instrument. Our proposal is that the approval period should be aligned with the length of the instrument unless the ongoing assessment of the undertaking or regulator reveals that recoverability of the Ancillary Own Fund is impaired. 2. The non-homogeneous treatment among all EU members. We recommend that harmonization of practices is strengthened (timeframe for granting approval, criteria to be recognized, recoverability rate/ counterparty risk, etc.). In particular, CEIOPS should proceed with an annual review of all acceptances and refusals by supervisors and that appropriate disclosures be made (and discussed as part of CP 34). 3. The application of recoverability rate/hair cuts applied on the ancillary own funds amount to be recognized. Our proposal would be to calculate the associated counterparty risk in the SCR instead of adjusted the amount of ancillary own funds to be recognized. 4. The power of the regulator to withdraw its approval at any time. Stressed market/ economic conditions are continuously and	See comment 65 and 69 below. The comment on the 12 month approval period is also relevant to paragraph 3.39 and paragraph 3.63.

			dynamically reflected in the SCR with the counterparty risk. The goal is to avoid pro-cyclical effects. So, withdrawal of approval should only occur in cases of impairment. In addition, we understand the decision to adopt a principles-based approach, aligned with the Solvency II benchmark, but it brings a lot of uncertainties/ misunderstandings. On a practical view, we would suggest that Level 2 measures includes more specific instructions on: - what is systematically approved (credit letter, unpaid share capital), and classification attached (Tier2 or Tier3) - what is under legally binding commitments (e.g. intra-group guarantee) - how to assess the risk of legal enforceability of a commitment (recoverability rate/ counterparty risk) We have set out below our suggestions. To conclude, we strongly believe that (a) the recognition of Ancillary Own Fund should be dealt with properly at Level 2 and not deferred to Level 3 and (b) examples of what is or not recognized (tied back with principles of recognition) and methods to determine the counterparty risk SCR associated to the Ancillary Own Fund should also be provided.	
17.	Lloyd's	General comment	Lloyd's welcomes CEIOPS' Consultation Paper 29 on 'Advice of Own Funds – Criteria for supervisory approval of ancillary own funds' and broadly welcomes its content. In particular Lloyd's agrees with CEIOPS that the criteria for supervisory approval of ancillary own funds (AOF) should be principles-based rather than rules-based. The flexibility of a principles-based	Noted.

			approach is more suited to the approval of AOF, in view of their divergent and specialist nature. However, Lloyd's considers that the proposed requirement for supervisory approval to be renewed annually is inflexible and will create uncertainty. It suggests that supervisory approval be given on a one-off basis, with provision for supervisory review when this is warranted by relevant circumstances, such as a material change in the insurer's or the counterparty's financial position.	See comment on para 3.13.
18.	PricewaterhouseCoopers LLP UK	General comment	We support the clear articulation of the key issues and possible options for the approach to supervisory approval of ancillary own funds. Also the detailed criteria that a supervisory authority should consider in the approval process. However we are concerned that our clients may find the approval process unduly burdensome particularly the re-approval required every 12 months or in the eventuality of significant changes in circumstances of the counterparty providing the funds. This will be of particular relevant to the Lloyds market where use of letters of credit are currently permitted to support solvency. In addition, for clients that may need to rely on ancillary own funds to support their solvency, uncertainty of withdrawal of approval at short notice may give rise to solvency issues. It would be helpful to set out the expected maximum time frame for granting approval once a complete application has been received.	See comment on para 3.13.
19.	RBS Insurance	General comment	Thank you for giving us the opportunity to provide comments on this consultation paper. The responses and views expressed in this letter are purely those of RBS Insurance, a division of the Royal Bank of Scotland Group. RBS Insurance is a European business with operations in Germany and Italy.	Noted.

			We would be grateful if you would please treat this response as confidential.	
20.	RBS Insurance	General feedback	We agree with the principle based approach to the supervisory approval of ancillary own funds.	Noted.
21.	ABI	General comment	The ABI welcomes this opportunity to respond to CEIOPS' consultation on supervisory approval of ancillary own funds. We agree that a principles-based approach is the best way of assessing these funds. We agree that the legal enforceability of the contract governing an item of ancillary own funds is the first step in establishing its eligibility. However, the three-step process seems onerous and time consuming. Steps 2 and 3 are hard to differentiate. Where the supervisor declines approval of ancillary own funds or limits them then the supervisor should provide a rationale for this, including recommending changes to the construction of these own funds that would make them eligible if this can be done. In order to provide stability to markets, the approval period for these funds should be aligned with the length of the instrument unless an ongoing assessment indicates that the recoverability of these funds is impaired. We are also not sure how the criteria and steps work together in the process of determining the eligibility of ancillary own funds. Public disclosure of the ancillary own funds should be carefully assessed to ensure that the details of counterparties, if released, do not result in wider financial instability in the market. Harmonization of supervision should be a high priority. This can be done by supervisors sharing factors that are influencing their decisions on this issue. One method of doing this may be to create a database with sufficient data fields for supervisors to reference.	See comment on para 3.13 relating to the 12 month approval period.

			It is also unclear how the rules would apply in the case of individual entities and groups. A consistent approach across the EU and across different entity structures is required. Should Solvency II introduce significant changes in the eligibility of ancillary own fund items, there must be some method of grandfathering or some transition regime that allows the change in funding to be managed sensibly.	
22.	ABI	General comment	The ABI welcomes this opportunity of commenting on CEIOPS' draft advice on the supervisory approval of ancillary own funds. We believe that stability of markets depends on the certainty of capital funding. In the case of ancillary own funds we believe that the approval period should be aligned with the length of the instrument unless ongoing assessment of these funds indicates that the recoverability of these funds is impaired.. If the cycle of re-approval is the same for all types of funds and/ or the period for which the funds remain approved is too short, this will increase the uncertainty of funding prior to re-approval, forcing (re)insurers to "double-up" on their capital reserves. More, rather than less volatility will be introduced into markets and since many firms will be re-evaluated at the same time, these effects will be magnified. We agree that supervisors should have the ability to re-evaluate the suitability of ancillary own funds, but it is firms that should perform this continuous re-evaluation of the eligibility of these own funds. We have some questions on how the process described in the paper would work in practice. We have included these comments as well as our other detailed comments in the attached template.	Noted. Detailed in specific paras 3.42-3.47

			The issue of public disclosure is complex and we believe that the approach suggested here does not take this sufficiently into account. Before disclosure is required, it must be established that releasing the details of counterparties does not result in wider financial instability in the market. The current financial turmoil should not result in valid sources of funding being arbitrarily excluded. Any changes in the eligibility of ancillary own funds introduced by Solvency II would need an appropriate grandfathering regime or transition mechanism to allow firms the ability to adjust to these new requirements without unsettling capital markets.	
23.	AMICE	General comment	CEIOPS seems to start from the assumption that mutuals call for supplementary funds from their members only in times of stress. This is not the case; conditions and preconditions for such calls may be defined in very diverse ways in the statutes of mutual insurers. This, on the one hand, leads us to our comment on par. 3.9., and on the other hand to our comment on par. 3.26 (see below). We see no reason why there should be automatically a time limit for the validity of supervisory approval of the method to determine the amount of ancillary funds. We think that a timeframe should be set for the approval by the supervisor of ancillary own funds and that reasons should be provided for any rejections. Neither in this advice nor in other "technical" ones should there be	See the comments on para 3.9 and para 3.26.

			isolated provisions on disclosure. Level 2 measures relating to disclosure should be concentrated in the respective pillar III advice.	
24.	FFSA	General comment	The consultation paper proposes a re-approval of each ancillary own fund every 12 months. We believe it is inappropriate for most of ancillary own funds. *As the approval process should concern the nature and valuation method, we recommend that the granting period is the useful life of the instrument*.	See comments on para 3.13.
25.	FFSA	General comment	We recommend a homogenous treatment of the called-up and the non called-up instruments recognizing 100% of their "economic" value, corresponding to a best estimate, and calculating the associated counterparty risks in the SCR.	We do not consider this proposed approach is consistent with Level 1 text
26.	CEA	Introductory remarks	The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 29 on Own Funds - Criteria for supervisory approval of ancillary own funds. It should be noted that the comments in this document should be considered in the context of other publications by the CEA. 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. 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.	Noted.
27.	CEA	Key comments	**We strongly believe that an arbitrarily limited approval period is**	Summary. Dealt with in

			not appropriate. Continuous re-approval will introduce volatility. We believe that in cases where there have been no material changes in circumstances since the previous supervisory approval of Ancillary Own Funds, then should remain approved. Only when the supervisory authority is informed (or observes) that the ability of the counterparty to pay has been altered, should the approval of ancillary own funds be subject to review. **We are strongly opposed to capital requirements for off-balance sheet assets** recognised as ancillary own funds for the reasons described in our comments to 3.6. While **we agree that a principles-based approach at Level 2** is necessary to reflect the heterogeneity of ancillary own funds, we believe that the approval of certain standardised types of AOF with well known characteristics should be facilitated and harmonised through the use of clearly pre-defined criteria in level 2 as set out in our comments to 3.35. **We are concerned that the time required for the supervisory approval of ancillary own funds may vary from one jurisdiction** to another depending on the ability and the resources of supervisors to assess innovative instruments. We believe that supervisory convergence will be strengthened by setting common time frames for the supervisory approval process and by enhancing transparency of supervisory process (as discussed as part of CP34).	comments to paras 3.6, 3.11, 3.13 and 3.15 – 3.17.
28.	CEA	General Comments	The Solvency II Directive proposal adopted by the European Council and Parliament should be the basis for CEIOPS' final advice. For example: *"In line with the eligibility criteria set forth in Article 98,*	Agreed.

			ancillary own funds can cover <u>at maximum</u> two-thirds of the Solvency Capital Requirement, provided that Tier 3 ~~ancillary~~ own funds do not exceed one-third of the Solvency Capital Requirement."	
29.	GDV	1.2	*The Solvency II Directive proposal adopted by the European Council and Parliament should be the basis for CEIOPS' final advice.* *For example:* "In line with the eligibility criteria set forth in Article 98, ancillary own funds can cover **<u>at maximum</u>** two-thirds of the Solvency Capital Requirement, provided that Tier 3 ~~ancillary~~ own funds do not exceed one-third of the Solvency Capital Requirement."	Agreed.
30.	GDV	2.2	To be updated.	Disagree – extract is correct
31.	Deloitte Touche Tohmatsu	3.1 & 3.2	These paragraphs make the distinction of tier 3 Ancillary Own Funds and note their eligibility to cover the SCR. However, we note that the consultation paper makes no further comment on the distinction between those Ancillary Own Funds that should be classified as either tier 2 or tier 3. While the text of articles 93, 94 and 96 in the directive provide some narrative around this judgement, we believe that further guidance is necessary to avoid inconsistency of interpretation among firms, i.e. in determining whether Ancillary Own Funds "substantially possess the characteristics" noted in those articles. Examples include: - article 96, 2) notes features of letters of credit and guarantees that determine whether they may be classified as tier 2 or tier 3. We suggest that these features are significant in relation to the supervisory criteria included within the consultation paper, and	Disagree. The classification of ancillary own funds between Tier 2 and Tier 3 is set out in CP 46. Broadly this indicates that classification should be tested against the characteristics and features of the own funds item that arises through making the claim. For example, if the ancillary own funds item is unpaid ordinary shares then this will be classified as Tier 2, as once called up and paid in the ordinary shares will be eligible as Tier 1. So, effectively the own funds item

			should be reflected in that advice; - article 96, 3) notes that *any future claims which mutual or mutual-type associations of ship owners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in point A of Annex I may have against their members by way of a call for supplementary contributions, within the next twelve months , shall be classified in tier 2* – we suggest that the advice within the consultation paper should address the supervisory determination of whether Ancillary Own Funds should be classified as tier 2 or tier 3, as an element of judgement will need to be applied in determining whether Ancillary Own Funds not falling within the above text of article 96 "substantially possess the characteristics" noted.	is "notched" down a Tier to reflect the fact that the capital has not been unpaid.
32.	GDV	3.2	*The Level I text will include only minimum requirements on the limits which have to be specified at Level II. Basic own funds are also allowed explicitly to be included in tier 3 (see Art. 94 (3)).* „In line with the eligibility criteria set forth in Article 98, ancillary own funds can cover **at maximum** two-thirds of the Solvency Capital Requirement, provided that Tier 3 ~~ancillary~~ own funds do not exceed one-third of the Solvency Capital Requirement."	Agreed. Total Tier 3, including both Tier 3 basic own funds items and Tier 3 ancillary own funds items, are limited to less than 1/3 third of the amount of eligible own funds used to meet the SCR. It should be noted that CP 46 proposes revising the limit for Tier 3 to 15%.
33.	KPMG ELLP	3.2	Paragraph 3.2 refers to the limits set out in Article 98 for eligibility to cover the SCR of total ancillary own funds (two-thirds) and tier 3 ancillary own funds (one third). The allocation of ancillary own funds to the 3 tiers of capital is therefore an important consideration that needs to be considered in accessing the amount of ancillary own funds	See response to comment 31 above. This is outlined in CP 46.

			to approve, but this is not currently mentioned in the CEIOPS advice. We suggest that this is taken into account in both the information that insurers are required to provide to the Supervisory Authority and reviewed as part of supervisory approval process.	
34.	AVIVA	3.3	Agree that supervisory approval should be required for ancillary own fund items before they can be used. The final sentence of this paragraph is potentially contradictory - "must be based on prudent and realistic assumptions". This wording should be clarified - e.g. "must be based on prudent assumptions taking into account circumstances which could reasonably / realistically be anticipated".	Agreed. While the language of prudent and realistic assumptions has certain parallels with the articles on technical provisions in the Level 1 text, the suggested wording "must be based on prudent assumptions taking into account circumstances which could realistically be anticipated" is helpful in clarifying what we mean here. * Consistent with Article 89 prudent and realistic assumptions.
35.	Deloitte Touche Tohmatsu	3.3, 3.9 & 3.20	In each of the paragraphs listed, the text notes that Ancillary Own Funds will need to be assessed on the basis of "loss-absorbency". While we agree with this principle, we believe that further guidance is required on what is meant by this term and how it may be assessed by both the (re)insurer and the supervisor, in order to mitigate the possibility of inconsistent or incorrect interpretation across firms. In particular, para. 3.9 notes that loss-absorbency is a feature that is available when losses arise, i.e. that the Ancillary Own Funds are not repayable to the extent used to meet losses. We feel that it is not clear	Noted. The classification of ancillary own funds items is set out in CP 46. We can confirm that CEIOPS' view is that in the event that a (re) insurer is in a position of financial stress it may not actually receive the full amount anticipated when ancillary own funds are called up.

			why loss absorbency is lower for Ancillary Own Funds of a (re)insurer facing losses unless the implication is that the Ancillary Own Funds may not actually be received when called by a (re)insurer facing losses. Again we believe that further clarification in respect of this point is required.	
36.	PEARL GROUP LIMITED	3.5	We agree that legal enforceability is essential in the recoverability and hence the eligibility of ancillary own funds.	Noted.
37.	FFSA	3.5	In this paragraph we recommend to change "promised" by "committed" to reinforce the existing and proven legal certainty of ancillary own funds.	Agreed. Drafting suggestion taken on board, promised has been replaced with committed.
38.	IUA	3.5	IUA agree that recoverability is the main risk relating to ancillary funds and that the legal enforceability is a key consideration.	Noted.
39.	GDV	3.5	*The binding effect of commitments should not be minimised by just saying that counterparties "promise" to provide assets neglecting the fact that obliged themselves and can be forced to transfer assets if called. It's not in our interest that non-legally binding "commitments" will be accepted. High quality of capital for supervisory purposes has to be ensured. We recommend sticking to the language used in the Level I text.* "Ancillary own funds carry the inherent risk that the (re)insurance undertaking does not receive the amount of basic own funds that the counterparty has ~~promised~~ **committed** to provide." *In addition, we would add that there are also economic constraints of the counterparty which supplement legal enforceability of undertakings against the counterparty. A good example might be loosing insurance*	Agreed. Drafting suggestion taken on board, promised has been replaced with committed. CEIOPS considers the legal enforceability of the contract to be a prerequisite to the ancillary own funds item being considered by supervisors. The example of an economic constraint given, namely the loss of insurance cover, is already contemplated by the advice and would be considered in the assessment of willingness to pay (see paragraph

			cover if supplementary member calls are not paid. In general, counterparties are under pressure to fulfil their commitments (loss of confidence, damage to reputation, etc.). This makes it highly probable that ancillary own funds are recovered (see 3.52). "A key consideration in assessing this risk is the legal enforceability of the commitment **and economic constraints of counterparties which supplement their legal enforceability**."	3.54 of the draft CP). However, given industry views on this point we agree that it would be helpful to add a reference to economic considerations in paragraph 3.5 for clarification purposes. Text has been amended accordingly
40.	XL Capital Group	3.5	We strongly agree with this paragraph.	Noted.
41.	ABI	3.5	We strongly agree that legal enforceability is essential in the recoverability and hence the eligibility of ancillary own funds.	Noted
42.	CEA	3.5	**Both legal and economic considerations are key -** CEIOPS in this introductory paragraph is considering the legal aspect as the key consideration. However later in the paper importance is also given to economic considerations such as the counterparties default risk, delay to pay and its willingness to pay. Thus both legal and economic considerations are assessed, and this should also be emphasised in the explanatory text of the paper: "*~~A~~ key consideration**s** in assessing this risk ~~is~~ are the legal enforceability of the commitment and the economic considerations with regard to the counterparty*." In addition, we feel that the existing and proven legal certainty of ancillary own fund instruments is minimised when referring to "promises" instead of "commitments". We strongly recommend sticking to the language of the Framework Directive in that respect: "*Ancillary own funds carry the inherent risk that the (re)insurance undertaking does not receive the amount of basic own funds that the counterparty*	Agree, see comment 39 above and drafting suggestions taken on board.

			has ~~promised~~ committed to provide."	
43.	Munich Re	3.6	We would like to verify, that our understanding of 3.6 is correct: Munich Re would like to emphasise, that a capital requirement for ancillary own funds is only acceptable at the point of time the funds have been called up and thus entered the balance sheet. This will happen automatically with the balance sheet recognition of called up funds. A capital charge for off-balance sheet items must not be meant here.	Noted. Paragraph 3.6 should not be interpreted as CEIOPS proposing capital charges for off-balance sheet items. The risks in relation to ancillary own funds items are reflected in the amount approved. Drafted amended to clarify this point.
44.	FFSA	3.6	We recommend a homogenous treatment of the called-up and the non called-up instruments recognizing 100% of their "economic" value, corresponding to a best estimate, and calculating the associated counterparty risks in the SCR.	Disagree. The suggestion here would not be consistent with the Level 1 text.
45.	ROAM	3.6	We recommend a homogenous treatment of the called-up and the non called-up instruments recognizing 100% of their economic value, corresponding to the best chance for recovering them, and calculating the associated counterparty risks in the SCR.	Disagree, see comment 44 above.
46.	GDV	3.6	We are strongly opposed to assuming a fictive capital charge for off-balance sheet assets covering commitments recognised as ancillary own funds. If the commitment is provided in cash the Solvency II capital charge is zero. In general the amount of ancillary own funds should reflect their net effect of risk-absorbency.	Noted, see comment 43 above.
47.	KPMG ELLP	3.6	We do not believe that insurers should suffer a capital hit once ancillary own funds are actually paid in or called up and recognised in the balance sheet. Whilst we recognise that the assets received will be	Noted. Paragraph 3.6 notes the consequences of the requirements in the Level 1 text

			subject to a solvency capital requirement, it seems incongruous that this should result in a lower value when the assets are certain than occurred when they were contingent capital. We believe that Supervisory Authorities should assess the likely reduction in own funds resulting from application of the solvency capital requirement as well as the recoverability adjustment with respect to ancillary own funds, so that when the ancillary funds are received there is no overall capital reduction.	i.e. that the capital requirement for the on-balance sheet asset may in some case be higher than the adjustment made to reflect the recoverability of the ancillary own funds items. This is more likely to be the case where either the asset has been called up but not paid in or when the ancillary own funds item is paid in the form of an asset other than cash. Cash account would attract charge. Only 'hard cash' attracts no capital charge. Drafted amended to clarify this point.
48.	CEA	3.6	**We are strongly opposed to capital requirements for off-balance sheet assets recognised as ancillary own funds -** We agree with the interpretation that the Level 1 text keeps ancillary own funds off the solvency balance sheet until they are paid in or called up. Normally the AOF received when called would be in cash so no adjustment to risk would be incurred. Therefore once paid in or called up, the assets recognised on the balance sheet are not subject to a capital requirement in most cases in practice. As own funds are subject to tier limits introduced by the Level 1 text there is already an allowance being made for the fact that AOF are of	Noted. See comments 43 and 47 above.

			lower quality than tier 1 capital. If in addition to this, capital requirements were to be imposed on AOF, there would implicitly be a double counting of the uncertainty inherent in these instruments. These instruments should be valued on economic basis which recognises risks such as counterparty default risk on an expected value basis. Further allowance for counterparty default risk or any other risks bared by these instruments, above the one already made on an expected value basis, is made by limiting the amount of AOF that can be used as eligible elements of capital to cover the SCR through the tiering system as defined in Level 1.	
49.	GDV	3.8	A comparison between Solvency I and II with respect to the treatment of ancillary own funds should take into account of the differences in the balance sheet valuation and capital requirements. The blunt comparison of the treatment of ancillary own funds made between in Solvency I and II is a shortcut. In Germany, QIS4 showed that the SCR for non-life insurers was three times the solvency margin under Solvency I. If 1/3 of the SCR has to be covered by tier 1, Solvency II is quite stricter as ancillary own funds will be only allowed to qualify for tier 2 and tier 3. Maximum eligibility criteria are set in article 98. Economically it is incorrect to limit any own funds which are risk-absorbent – therefore, increasing the amounts of ancillary own funds could never be seen as problem from a prudential view. It is obvious that clear criteria for approval have to be fulfilled. In this area a "race to the bottom" would be not acceptable for supervisors.	Noted – paragraph deleted. Quantitative limits for AOF are considered as part of CP 46
50.	CEA	3.8	A comparison between Solvency I and II with respect to the treatment of ancillary own funds should take into account of the differences in the	See comment 49 above.

			balance sheet valuation and capital requirements. The blunt comparison of the treatment of ancillary own funds made between in Solvency I and II is a shortcut. In Germany for example, QIS4 showed that the SCR for non-life insurers was three times higher than the solvency margin under Solvency I. If 1/3 of the SCR has to be covered by tier 1, Solvency II is quite stricter as ancillary own funds will be only allowed to qualify for tier 2 and tier 3. Furthermore, it should be noted that Solvency I gives only a very limited recognition of AOF.	
51.	FFSA	3.9	We recommend to consider a broader scope of possibilities to call-up ancillary own funds and change "as a result of losses" by "as a result of capital needs whether they are the consequence of losses or an increase of the SCR.	Agree. Suggestion taken on board. Wording suggested by the GDV incorporated into the final advice.
52.	GDV	3.9	*The need of additional own funds does not only arise when faced with a loss but more generally when the risk exposure increased.* "Ancillary own funds are generally called when a (re)insurance undertaking is in need of additional funds, frequently as a result of losses or **of an increase of the risk exposure of the undertaking**. "	Agree. Suggested wording incorporated into the final advice.
53.	UNESPA	3.9	**Alternative to requiring Ancillary Own Funds** The need to amortise ancillary own funds occurs not just when the undertaking is facing a loss, but also when the risks faced increase.	Agree see comments 51 and 52 above.
54.	AMICE	3.9	The level 1 text acknowledges that mutuals may call for supplementary contributions from their members in order to increase the amount of financial resources that they hold to absorb losses. For mutuals, we reject the comment by CEIOPS that ancillary own funds (supplementary calls) are called up "frequently as a result of losses". We emphasise that a mutual – or indeed any insurer – can call	Noted. Paragraph 3.9 should not be interpreted to mean that ancillary own funds can only be called up in the event of losses, only that frequently this is why they are called up. Given other

			for supplementary funds at any time, for example when (but not necessarily only when!) its risk exposure increases or when facing a loss. In other words: The financial condition of the undertaking or the assessment of its risk exposure should not be seen as the only possible trigger for calling for additional funds.	comments made by industry participants we have revised this wording to indicate that ancillary own funds are also frequently called up where there has been an increase in the risk exposure of the undertaking.
55.	CEA	3.9	The need for additional own funds does not only arises when faced with a loss but more generally when the risk exposure of the undertaking increases: *"Ancillary own funds are generally called up when a (re)insurance undertaking is in need of additional funds, frequently as a result of losses or of an increase of the risk exposure of the undertaking".*	Agree see comments 51 and 52 above.
56.	PEARL GROUP LIMITED	3.10	We strongly agree with this point.	Noted.
57.	IUA	3.10	We strongly agree that (re)insurance undertakings should be responsible for managing its own funds, including the value of the ancillary own funds.	Noted.
58.	GDV	3.10	*The term "valuation" could refer to accounting and should be replaced by "amount" because the value and the approved amount for supervisory purposes could differ.* "The (re)insurance undertaking is at all times responsible for managing its own funds, including the ~~valuation~~ **the approved amounts** of ancillary own funds, maintaining adequate financial resources to operate as a going concern and being able to meet its obligations	Partially taken on board.

			towards policyholders and beneficiaries in full in a winding-up."	
59.	XL Capital Group	3.10	We agree that the (re)insurance undertaking should be responsible for managing its own funds.	Noted.
60.	ABI	3.10	We strongly agree with this point.	Noted.
61.	PEARL GROUP LIMITED	3.12	If the supervisor declines the approval of ancillary own funds or approves a lower amount than that requested, an explanation should be given including any possible measures the (re) insurer could take to improve the quality of these funds.	See comments to 154 and 159.
62.	IUA	3.12	We understand that in some cases the supervisor may decline the approval of ancillary own funds or approve a lower amount than requested. However, supervisors should be required to respond promptly to the requests made so that the (re)insurance undertaking can take any necessary action (see comments to paragraph 3.21). Additionally, the supervisor should be required to provide an explanation of why the request was rejected. Thought should also be given to allowing the (re) insurance undertaking to resubmit a revised request after consideration of the supervisors rationale behind its initial decision.	In relation to the comments made about supervisors being required to respond promptly, CEIOPS considers that the length of time it takes to approve ancillary own funds is highly dependent on the complexity of the instrument and the assessment of the status of the counterparties involved. See comments 154 and 159. Outstanding point is timing. Text has been amended to reflect the supervisor will provide an explanation to the (re)insurer of why the request was rejected.
63.	XL Capital	3.12	We would like to see further clarity around the process by which a	

	Group		supervisor may refuse approval, whether an explanation of the grounds for refusal would be provided, and the subsequent process of reapplication including timeframes.	See comments 154 and 159. Text has been amended to reflect the supervisor will provide an explanation to the (re)insurer of why the request was rejected.
64.	ABI	3.12	If the supervisor declines the approval of ancillary own funds or approves a lower amount than that requested, an explanation should be given including any possible measures the (re) insurer could take to improve the quality of these funds.	See comments 154 and 159. Text has been amended to reflect the supervisor will provide an explanation to the (re)insurer of why the request was rejected.
65.	Munich Re	3.13	From the view of the applying undertaking it would be desirable to get approval not limited in time and only in justified circumstances to apply for re-approval. If circumstances did not change, we see no reason why supervisors would come to another decision. Short-term limits in approval would make it difficult to rely on ancillary own funds for the long-term which is required e. g. in the ORSA process. The capital structure of an undertaking has a strategic dimension and also investors would like to able to predict future capital needs. "With this in mind, CEIOPS considers that **a once granted approval should only be reassessed if due to new information or new developments a new assessment is required.** ~~The period for which approval is granted should not exceed 12 months~~."	Partially agreed – see redrafted paragraph. The rationale for requiring re-approval annually was to align with the SCR which is based on a 12 month time horizon. However, this requirement may not be necessary if firms are required to notify supervisory authorities of any change in circumstances.
66.	AVIVA	3.13, 3.62-3.63	We are concerned with points around recognition of loss absorbency and recoverability relating to regulatory approval. It appears that it gives power to the regulator to change its decision at any point in time.	Partially agreed. Nature of the own funds is volatile.

			This increases the volatility of the available capital in difficult markets and makes it more difficult for insurers to manage their solvency position. The goal is to avoid pro-cyclical effects. Approval period should be related to the length of instrument and not restricted to 12 months unless there is an impairment. Therefore, we propose a clear timetable on the minimum period for which such funds can be recognised before another review is required in addition to the specified maximum period of 12 months after which a review has to be undertaken in any case which we believe should be extended in some cases. Withdrawal of approval should only occur in cases of impairment. A critical issue for Para 3.13 - which isn't mentioned in the CP - is how critically the insurer relies on the item. This is likely to be a factor in deciding how long to grant the permission for. Maybe, this should be stated more explicitly.	Paragraph 3.13 should be interpreted to mean that if there is a change in circumstances of either the undertaking or the counterparty then this may lead to the supervisor to revise their approval of the amount of ancillary own funds that can be used to meet the SCR. CEIOPS does not consider a minimum period before another review in the event that there is a change in circumstances during this time. It should be noted that the solvency requirements in Solvency 2 are ongoing requirements that must be met at all times. In relation to the comment on how critically the amount is relied on CEIOPS' view is that the amount of reliance on ancillary own funds is already restricted in the Level 1 text and it is therefore not considered necessary to amend the advice.
67.	FFSA	3.13 & 3.14	Supervisory approval on the nature of the ancillary own funds and on	Circumstances may change which

			the method to value them. Only the assessment of the value should be an ongoing assessment. In case of rejection, the reasons should be clearly notified by the Supervisory authority. The approval process should start when the application is received by the Supervisory authorities. This process should not longer than a period of one month. If there's no answer from the Supervisory authority after that period, then the nature and the ancillary own funds and the valuation method should be considered as approved. As the approval process should concern the nature and valuation method, we recommend that the granting period is the useful life of the instrument.	also mean that the method to approve ancillary own funds may require modification. Article 89 states that the "that method shall be granted for a specified period of time". Disagreed. No response from the supervisor should not be taken to mean that it has been approved. See comment 159
68.	ROAM	3.13 & 3.14	Supervisory approval on the nature of the ancillary own funds and on the method to value them. Only the assessment of the value should be an ongoing assessment. In case of rejection, the reasons should be clearly notified and motivated by the Supervisory authority. The approval process should start when the application is received by the Supervisory authorities. This process should not be longer than a period of one month. If there is no answer from the Supervisory authority after that period, then the nature and the ancillary own funds and the valuation method should be considered as approved. As the approval process should concern the nature and valuation	Disagree, See comments 154 and 159

			method, we recommend that the granting period is the useful life of the instrument.	
69.	IUA	3.13	IUA understand why continuous monitoring of ancillary own funds might be required and that this monitoring should therefore not be restricted to one point in time. However, that monitoring should fall on the (re)insurance undertaking rather than the supervisor and that the supervisor should only review the arrangements at the initial submission and at intervals when the supervisor reviews the undertaking. For UK regulated firms, for example, this might be during ARROW II visits, or any successor thereof. IUA therefore do not believe that the supervisor should renew its approval every 12 months. We would prefer that there is a presumption that renewal is approved at 12 months intervals, with the exception being if there have been material changes to the security of the ancillary own funds, or a material change in the composition of the firm's capital base. Both of which undertakings should have the duty to inform the supervisor of. This provides firms with some certainty with regards to its ancillary own funds. In these cases the request could be re-submitted and re-assessed as at the initial submission.	The comment on the 12 month approval period is also relevant to paragraph 3.39 and paragraph 3.63. See above to 65.
70.	GDV	3.13	*Supervisory approval is not an ongoing process but starts with the received application and ends with approval or the fully-reasoned rejection. The primary assessment by the (re)insurance undertaking should of course be continued.* "~~Supervisory approval~~ **The assessment by the (re)insurance undertaking** is not restricted to one point in time." *From the view of the applying undertaking it would be desirable to get approval not limited in time and only in justified circumstances to apply for re-approval. If circumstances did not change, we see no reason*	See comments above. Partially agreed overall.. See comment 65 Disagree on this point.

			why supervisors would come to another decision. Short-term limits in approval would make it difficult to rely on ancillary own funds for the long-term which is required e. g. in the ORSA process. The capital structure of an undertaking has a strategic dimension and also investors would like to able to predict future capital needs. *Legal certainty in the respect of relying on long-term financing is key.* "With this in mind, CEIOPS considers that **a once granted approval should only be reassessed if due to new information or new developments a new assessment is required.** ~~the period for which approval is granted should not exceed 12 months~~."	The proposed drafting is too restrictive. Need wider, more flexible wording.
71.	XL Capital Group	3.13	See comment below on Para 3.39	Noted.
72.	UNESPA	3.13, 3.39 & 3.40	**The maximum period of 12 months guaranteed for the acceptance of Ancillary Own Funds may cause difficulties in practice. The approval should be granted for the duration of the AOF.** As mentioned in the paragraph, ancillary own funds have a maximum period of acceptance of 12 months. This period may not be sufficient (it would leave the company in a situation of relative uncertainty) as it could be that the (re) insurance undertaking would have to calculate its SCR at least once during this period without being able to include the Ancillary Own Funds, which would be in the approval process. An arbitrarily limited approval period is not appropriate. Continuous re-	See comment 65.

			approval will introduce volatility. We believe that in cases where there have been no material changes in circumstances since the previous supervisory approval, these ancillary own funds should remain approved.	
73.	KPMG ELLP	3.13, 3.39 - 40, 3.63	We agree that (re)insurance undertakings should notify the supervisory authority as soon as possible if there are any significant changes affecting the recoverability of own funds. Whilst we recognise the need to revisit the amount of ancillary own funds that may be counted should there be a significant change in a counterparty's willingness or ability to pay, it would be helpful for (re)insurance undertakings to understand the process involved. Given the significant information required in order to gain approval in the first instance, it would be helpful to understand the information needs regarding re-approval. Similarly, (re)insurance undertakings will wish to understand the likely timeframe for the supervisory re-approval process and will also need to know whether they can continue to recognise the previously agreed level of ancillary own funds while this review is on-going. We do not agree with the proposal that approval for ancillary own funds can only be granted for a period not exceeding 12 months. Capital is meant to be available over the longer-term and this runs contrary to this principle. Given capital items are unlikely to change significantly in their structure or design, it appears to us more appropriate to build on this aspect of the requirements rather than providing only a limited time duration approval. For example, as well as the notification when there is a change, (re)insurance undertakings could be required to provide	Agree. Partially agreed. Cross refer to comment 65. However, CEIOPS does not intend to require supervisors to approve or re-approve ancillary own fund items within a pre-set timeframe.

			confirmation on an annual basis that there has been no changes to the structure of the arrangement, contractual terms or other event that could affect the recoverability of the capital should it be called. This would have the advantage of requiring a full approval process only once, and allow the (re)insurance undertaking to better manage its capital position.	
74.	RBS Insurance	3.13 & 3.62-63	We are concerned that the requirement for re-approval every twelve months may place undue burden on the companies. Since the management is responsible for monitoring the ancillary own funds and reporting any significant changes to the supervisor on ongoing basis, together with annual public disclosure requirement of ancillary own funds, we believe twelve months re-approval period would not add any value to the supervisors or the industry. An extended period of, say, 24 months for review/re-approval process would appear to be more proportionate.	See comments above.
75.	Groupe Consultatif	3.13	As we understand it CEIOPS envisages retaining the right to change the amount of ancillary own funds at any time. In which case a 12 month approval period seems irrelevant. A strict deadline can cause problems if new approval is sought and no decision is reached before the deadline (see 3.21) , as the entity in question will then (maybe) have to make rapid changes to adapt to the short fall	See comments above.
76.	ABI	3.13	See comments to Paras 3.39 and 3.40.	Noted.
77.	AMICE	3.13, 3.14 & 3.39	Any time limit for the validity of supervisory approval (as e.g. the 12 months period suggested by CEIOPS) is in our view completely arbitrary. Supervisory approval should be granted for the duration of the financial instruments. The supervisor should only have the opportunity to re-assess the	Disagree, the rationale for requiring re-approval annually was to align approval with the SCR which is based on a 12 month time horizon. CEIOPS therefore does not view this as

			maturity of financial instruments when exceptional events or major changes occur. In our opinion, undertakings should not have to periodically re-apply for approval of an instrument that has already been approved and for which no significant modifications arise. Undertakings should only have to inform supervisory authorities of major changes (e.g change in the financial conditions) that could prompt the need for supervisory review of earlier approvals. Additionally, we share CEA´s opinion that Art. 89 (4)(b) (in the numbering of the EP) of the Framework Directive refers to an approval for a limited period of time for the method used to determine the amount of each ancillary own fund item	arbitrary. However, the approach has been modified – see comment 65 above.
78.	CEA	3.13	See comments to 3.39 and 3.40	Noted.
79.	GDV	3.14	*The wording should better reflect the Level I text (Art. 89 (3)).* *It is not clear to us what is meant by "source evidence".* "The (re)insurance undertaking's request for approval of **either** an amount of ancillary own funds or a method to determine this amount requires adequate detailed information ~~that can be supported by reliable source evidence~~."	Agree. Drafting amended to refer to reliable evidence rather than "reliable source evidence".
80.	CEA	3.14	It is not clear what is meant by "source evidence" In addition, we feel the wording does not reflect the Level I text (Art. 89 (3)): "*The (re)insurance undertaking's request for approval of either an amount of ancillary own funds or a method to determine this amount requires adequate detailed information ~~that can be supported by reliable source evidence~~.*"	Agree. See comment 79 above. Agree to add either to make consistent with Level 1.

81.	AVIVA	3.15	Agree that principles-based approach to assessing validity / value of own fund items is preferable. However, some examples here would be useful and would provide more context.	Noted. This is the intention of the advice overall.
82.	GDV	3.15 – 3.18	We fully agree with CEIOPS applying a principles-based approach which is implemented in an appropriate manner.	Noted
83.	UNESPA	3.15 - 3.18	A flexible framework must be generated which is not governed by rules which are excessively detailed We consider that using a methodology based on principles would be adequate, although for certain capital items some criteria would have to be provided in order to harmonise treatment in all undertakings and markets.	Noted The latter is done in the list of tiers.
84.	CEA	3.15 – 3.19	We fully support a principles-based approach - However, the approval of certain standardised types of AOF with well known caracteristics should be facilitated and harmonised through the use of clearly pre-defined criteria. (see comments to 3.35)	Noted. Disagree with standardised types of AOF, that will always need to be approved. In terms of classification this is covered by CP46.
85.	PEARL GROUP LIMITED	3.18	We agree that a principles-based approach is a better way of assessing ancillary own funds than a rules based approach as this provides more flexibility.	Noted
86.	IUA	3.18	IUA strongly agree that a principle-based regulation is more appropriate for the assessment of ancillary own funds. However, it might be useful to offer some guidance and examples at Level 3,	Agreement. Providing of level 3 guidance already stated in 3.24.

			although supervisors should be advised to ensure that any examples are for illustration purposes only and do not represent best practice, for example.	
87.	KPMG ELLP	3.18 - 19, 3.33 - 35	We agree that a principles-based approach is more appropriate than a rules-based approach and that recoverability is the main risk that needs to be evaluated.	Agreement
88.	Groupe Consultatif	3.18	We agree	Noted
89.	ABI	3.18	We agree that a principles-based approach is a better way of assessing ancillary own funds. However, we believe that broad guidelines could be supplied at Level 2 including: • What is systematically approved • What instruments are included under legally-binding commitments (e.g. intra-group guarantees) • How to assess the risk of legal enforceability of a contract (recoverability rate/ counterparty risk) Examples of what is or is not recognised together with principles of recognition as well as the implementation of counterparty default risk with regard to ancillary own funds so that double counting is avoided, should be supplied at Level 2. See comments to Para 3.20.	Noted – cross reference 1st bp: Follows later in the CP (3.42 ff., Approval process) 2nd bp: Listing that up would introduce a rules-based approach through the backdoor; examples are already mentioned in the Art. 92 IM (list of tiers). 3rd bp: follows later in the CP (3.48 ff., criteria).
90.	FFSA	3.19	We support setting criteria for all ancillary own funds consistently and therefore suggest to stick to the three categories foreseen in the level	Cross reference to comment 31. This is relevant to classification dealt with CP46. Does not completely comply with

			1 text: 1. unpaid share capital or initial fund that has not been called up 2. supplementary members' calls 3. any other legally binding commitments (including letters of credit and guarantees) We recommend that: - the first category should be recognized as a Tier 2 element; - the second category should not be limited by principle; - the third category should be recognized as a Tier 3 element.	the level 1 text. Unpaid share capital or initial fund are tier 2 indeed because they have unrestricted loss-absorbency after they have been paid in and would theoretically be tier 1. Due to their nature as ancillary own funds they are tier 2. Respecting supplementary members´ calls it depends from the statutes of the company. In most cases they would be indeed tier 2 because the same logic applies as above. But maybe there are cases in which the statutes contain a redemption clause in better times. So they could not even be tier 1 so that the notching down has to be made from tier 2 to tier 3. Vice versa a legally binding commitment could also be tier 2 (because when the money is paid in it goes theoretically for tier 1).

			We recommend that level 2 implementing measures clearly define a list of documents to provide for the application.	It is difficult to foresee in any case which information is needed exactly. In any case it is crucial that the authority has the right to claim further information (cp. 3.38). Disagreed Too detailed for Level 2.
91.	GDV	3.19	Although we support setting principles for all ancillary own funds consistently, we suggest having a close look at differences in instruments, e. g. a differentiation in categories is already mentioned in the level I text (unpaid share capital or initial fund that has not been called up, supplementary members' calls, letters of credit and guarantees any other legally binding commitments () Such a categorization is reasonable to have an appropriate approval process. It might facilitate harmonisation of supervisory practices and address the proportionality principle. "Unpaid share capital" and "initial fund that has not been called up" are defined via company law and well-known in accounting. The	Noted

			counterparty is considered as owner of the (re)insurance undertaking and is liable up to amount of already paid-in share capital and the not-paid-in share capital. It is involved in the control of that undertaking. In Germany company law requires that share capital has to be paid in by at least 25 %. Therefore, such capital is already partly paid in. A high paid in-quota provides evidence that the commitment to pay in the rest is likely. In addition, such capital items have a fixed nominal value which reflects the loss-absorbency of that item. The amount approved as ancillary funds item should hence be equal to its nominal value (Art. 89 (2)). Art. 74 does not apply to such instruments (assets and liabilities in the solvency balance sheet have to be valued economically, but not equity instruments).Supplementary members' calls are claims of mutual or mutual-type associations against policyholders based on a statuary or a contractual basis. The framework directive restricts the recognition of supplementary members' calls as ancillary own funds to supplementary contributions within the forthcoming twelve months. Because of the high number of individual counterparties we expect that approval is not granted for a fixed amount but for a method to determine the amount. Solvency I required supervisory authorities to develop guidelines for granting approval for supplementary members' calls (Art. 17 of 2002/13/EC: "The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;..."). They could be a starting point and	The legal requirement of a high paid-in quota says nothing about the likeliness of the fact that the outstanding payment will be transferred. Nominal value: compare Art. 89 par. 2 of the level 1 text, the nominal value is taken when it reflects loss-absorbency appropriately). Does that not depend from the request? Developing these guidelines is the purpose of CP 29. General remark. General remark.

			should be reflected in the criteria under Solvency II. Letters of credit, guarantees or other legal binding commitments do not have to be standardized as the items mentioned before. In general an individual assessment of the instrument and the counterparty would be necessary. The assessment of the counterparty might be relatively easily done if the counterparty is supervised, even more easy if part of the same group with a single supervisor or a college of supervisors or in groups with centralised risk management according subsection 6 of Title III of the Solvency II directive. Taking into account these main characteristics would facilitate the approval and is in line with that is said in 3.21 ("Approval is highly dependent on the complexity of the commitment and of the assessment of the status of the counterparties involved.")	
92.	PEARL GROUP LIMITED	3.20	This paper seems to view every ancillary own fund item as different from every other one. We believe that broad categorizations exist already and these may be used to aid the process of approval of these funds. Some of these categories are dealt with already under accounting standards or company law, particularly across Europe. The emphasis on supervisory judgement could conflict with the requirement for harmonization.	Disagreed. Holistic approach to AOF and not be reference to categories because of significance of counterparties to each item. Which categories are meant here? We do not see that accounting standards provide criteria for the approval of aof because these are off-balance sheet. If company law does, the emphasis on it would conflict with the requirement for harmonization because it would

				be national rules.
93.	IUA	3.20	It should be noted that broad categorisation of ancillary own funds already exist and that each ancillary own fund item should not automatically be considered as different from another. Some of these categories can be found in accounting standards and company law. IUA believe that the emphasis on supervisory judgment might be counter to the requirement of harmonisation, an issue on which we shall return in our comments on paragraph 3.24.	See 92
94.	ABI	3.20	This paper seems to view every ancillary own fund item as different from every other one. We believe that broad categorizations exist already and these may be used to aid the process of approval of these funds. Some of these categories are dealt with already under accounting standards or company law, particularly across Europe. The emphasis on supervisory judgement could conflict with the requirement for harmonization. See also comments to Para 3.18.	See 92
95.	PEARL GROUP LIMITED	3.21	The process needs to have an appropriate time frame to reduce uncertainty as to the eligibility of these own funds. If the time taken is too long, the result will be that firms will have to hold extra capital in the same volume as those funds that are still uncertain. This will lead to inefficiencies in the management of capital holdings.	Noted. The text has been worded to clearly reflect why CEIOPS does not consider it appropriate to add further prescription around the timing for supervisory approach.
96.	FFSA	3.21 & 3.40 & 3.47	Supervisory authorities should reach a decision on the application as quickly as possible without exceeding one month from the date of	Partially agreed. It cannot be guaranteed that the decision could be reached within

			receipt of the completed application. Any decision by the supervisory authorities to reject the application for the inclusion of an ancillary own funds in own funds should be accompanied by the reasons therefore. Any other views expressed by other supervisors concerned or by CEIOPS, if referred to in a consultation or mediation process, should be included. If there's no decision provided by the supervisory authorities within this timeframe we recommend the level 2 implementing measures to specify that the instruments is approved by nature as an ancillary own funds and the valuation method is also approved.	one month. That depends on the complexity of the issue. Of course a rejection contains the reasons. The latter proposal depends on the institutional question how CEIOPS will be organized in the future (e.g. escalating process) which cannot be answered by the own funds subgroup.
97.	ROAM	3.21	Supervisory authorities should reach a decision on the application as quickly as possible without exceeding one month from the date of receipt of the application. Any decision by the supervisory authorities to reject the application for the inclusion of an ancillary own funds in own funds should be accompanied by the reasons of the (partial) rejection. Any other views expressed by other supervisors concerned or by CEIOPS, if referred to in a consultation or mediation process, should be included. If there is no decision provided by the supervisory authorities within this timeframe we recommend the level 2 implementing measures to specify that the instruments is approved by nature as an ancillary own funds and the valuation method is also approved.	It cannot be guaranteed that the decision could be reached within one month. That depends on the complexity of the issue. Of course a rejection contains the reasons. The latter proposal depends on the institutional question how CEIOPS will be organized in the future (e.g. escalating process) which cannot be answered by the own funds subgroup.
98.	IUA	3.21	As per our comments to paragraph 3.12, a prompt response is	A certain timeframe cannot be

			necessary from the supervisor to any request for ancillary own funds from an (re)insurance undertaking. Therefore, we believe that a timeframe is required to ensure that undertakings are aware of the eligibility of their own funds. If this process takes too long, undertakings should be required to hold extra capital in the same volume as those funds that are still uncertain and which lead to inefficiencies.	guaranteed. The timing depends on the complexity of the issue.
99.	GDV	3.21	We are not convinced why "at this stage" it should not be possible to set a time frame for granting approval. It seems that CEIOPS is not sure that all supervisory authorities would be able to comply with such a requirement. This issue is addressed in Recital 13 a + Art. 27: Member States are required to equip their supervisory authorities with the necessary resources. The development of Level II implementing measures is the right place to think about procedural aspects of the approval process. The CEIOPS statement to revisit the issue of an appropriate time frame "once supervisory authorities have gained more experience" is vaguely in time and not comprehensible having regard to the practices today, e. g. in the area of supplementary member calls. Therefore, we suggest the following: Supervisory authorities should do everything to reach a decision on the application as quickly as possible but within one month from the date of receipt of the complete application. This time line appears appropriate to prescribe a maximum time frame in which all supervisory authorities across Europe must grant their approval. It	It cannot be guaranteed that the decision could be reached within one month. That depends on the complexity of the issue. A certain timeframe cannot be guaranteed. The timing depends on the complexity of the issue.

			would be not fair if the approval process is excessively more time consuming in one Member State than in another Member State. One month seems appropriate compared to an internal model validation which has to be done in six months (Art. 229). If other supervisors concerned have to be involved we agree to a longer period of two months for granting approval. If CEIOPS is referred to in a consultation and mediation process an additional month is appropriate. The suggested prompt time lines reflect that supervisory power have to be applied in a timely manner (Art. 34 (6): "Supervisory powers shall be applied in a timely and proportionate manner."). Non-approval has to be accompanied by full reasoning and any other views expressed by other supervisors concerned or by CEIOPS, if referred to in a consultation or mediation process. We urge CEIOPS to work on a standard form for the application of approval of ancillary own funds. Supervisors should provide undertakings with a check list which documents will have to accompany the standard form to make the application complete. This would contribute to a prompt approval or denial in the proposed time line. Supervisors should name in advance which information they think is needed from the applicant. This would limit duplication of information gathering in the case that supervisors will obtain information from sources other than the undertaking concerned (e. g. the counterparty is supervised). We urge supervisors to ensure that granting approval with	Maybe on a later stage after CEIOPS has gained more experience. Transition is a basical question which does not only apply to aof. It cannot be answered by the own funds subgroup in this context. The issue of "grandfathering" is recognized and will be dealt with separately.

			implementing Solvency II is assured in appropriate time lines. To smooth transition undertakings should be allowed to seek approval in advance of Solvency II entering in force at national level. Approval of ancillary own funds under Solvency I should be continued, if necessary by appropriate transitory rules. Appropriate rules for existing own funds items are necessary to smoothen the transition and avoid overstressing capital markets for investors in reinsurance and insurance undertakings (grandfathering). In the CRD review the Commission proposed transition provisions (Art. 154 (8) and (9)). Although the situations in banking and insurance are different, the rationale is valid here as well.	
100.	UNESPA	3.21	A maximum period should be established by the supervisor for use of Ancillary Own Funds We do not see why the period for which this approval is granted cannot be established in this CP. The supervisory authorities should do everything possible to take a decision about the approval of Ancillary Own Funds. We consider a period of 1-2 months from the date of receipt of a complete request to be reasonable for this. Furthermore, this should be the same in all Member States in order to avoid differences between markets.	A certain timeframe cannot be guaranteed. The timing depends on the complexity of the issue.
101.	KPMG ELLP	3.21	We appreciate that it is difficult to prescribe a timeframe in which all	A certain timeframe cannot be

			Supervisory Authorities must grant their approval (or refuse an application), however in our view this is something which (re)insurance undertakings would find helpful to know. Whilst we recognise that there will be on-going dialogue between (re)insurance undertakings and the Supervisory Authorities throughout the process, we believe there should be some set timeframe within which a formal response should be given. We would suggest that this could follow a similar principle to that proposed in CP 37 regarding internal model approval – a set timeframe that is triggered once all the documentation is received, can be paused as a result of minor clarifications sought, or stopped due to major concerns.	guaranteed. The timing depends on the complexity of the issue.
102.	Lloyd's	3.21	Lloyd's disagrees with the suggestion that it is not appropriate to prescribe a timetable in which all supervisory authorities must grant approval. It considers that setting a clear timetable from the outset would be more transparent and will facilitate capital planning processes.	A certain timeframe cannot be guaranteed. The timing depends on the complexity of the issue.
103.	Groupe Consultatif	3.21	Whilst we understand the difficulties, in order to facilitate planning, a suitable time horizon must be defined as soon as possible	A certain timeframe cannot be guaranteed. The timing depends on the complexity of the issue.
104.	ABI	3.21	The process needs to have an appropriate time frame to reduce uncertainty as to the eligibility of these own funds. If the time taken is too long, the result will be that firms will have to hold extra capital in the same volume as those funds that are still uncertain. This will lead to inefficiencies in the management of capital holdings.	A certain timeframe cannot be guaranteed. The timing depends on the complexity of the issue.

105.	AMICE	3.21 & 3.40	We suggest that a prescribed timeframe should be defined for the approval of ancillary own funds. Like the process foreseen for the approval of internal models, this timeframe should be set on level 2. We suggest in this context that supervisory authorities shall decide on the application within one month from the receipt of the complete application. Any rejection decision by the supervisory authority not to proceed with the formal assessment of the application shall be accompanied by the reasons therefore.	It cannot be guaranteed that the decision could be reached within one month. That depends on the complexity of the issue.
106.	CEA	3.21	We are concerned that in some cases the supervisory approval of ancillary own funds will take too long - We do not see the reason why "at this stage" it is not possible to set a time frame for granting approval. It seems that CEIOPS is not sure that all supervisory authorities will be able to comply with such a requirement. This issue is addressed in Recital 13 a + Art. 27: "Member States are required to equip their supervisory authorities with the necessary resources. The development of Level II implementing measures is the right place to think about procedural aspects of the approval process." We do not agree with CEIOPS' intention to revisit the issue of an appropriate time frame "once supervisory authorities have gained more experience". Instead we suggest the following: • Supervisory authorities should do everything to reach a decision on the application as quickly as possible and within one month from the date of receipt of the complete application. This time line appears appropriate to prescribe a maximum time frame in	It cannot be guaranteed that the decision could be reached within one or two months. That depends on the complexity of the issue.

			which all supervisory authorities across Europe must grant their approval. It would be not fair if the approval process is excessively more time consuming in one Member State than in another Member State. • If other supervisors concerned will be involved we agree in a longer period of two months for granting approval. • If CEIOPS is referred to in a consultation and mediation process an additional month is appropriate. The suggested prompt timelines is in line with the Framework Directive requirement that supervisory power have to applied in a timely manner (Art. 34 (6): "Supervisory powers shall be applied in a timely and proportionate manner.") Non-approval has to be accompanied by full reasoning and any other views expressed by other supervisors concerned or by CEIOPS, if referred to in a consultation or mediation process. We urge CEIOPS to work on a standard form for the application of approval of ancillary own funds. Supervisors should provide undertakings with a check list which documents will have to accompany the standard form to make the application complete. This would contribute to a prompt approval or non-approval within the proposed time line. Supervisors should announce in advance the information from the requesting undertaking they think is needed in granting approval. This would also limit duplication of information gathering in the case that supervisors will obtain information from sources other than the undertaking concerned (e. g. When the	Of course in case of rejections the reasons are communicated to the undertakings. Maybe on a later stage once CEIOPS has gained more experience. Disagree: Ecofin letter dated 9 June 2009 indicates that CEIOPS will not have supervisory powers in relation to (re)insurance undertakings. Transition is a basical question which does not only apply to aof. It cannot be answered by the own funds subgroup in this context. The issue of "grandfathering" is recognized and will be dealt with separately.

			counterparty is supervised). Appropriate rules for existing own funds items are necessary to smoothen the transition to Solvency II and avoid overstressing capital markets for investors in reinsurance and insurance undertakings (grandfathering). In the CRD review the Commission proposed transition provisions (Art. 154 (8) and (9)). Although the situations in banking and insurance are different, the rationale is valid here as well.	
107.	AVIVA	3.23, 3.64	The proposal appears reasonable, however it is worth pointing out that some of the elements like valuation methodology disclosures are not specific enough in providing the extent of the disclosures expected. Our recommendation is to limit the disclosure to the basis used for valuation rather than full calculation. In addition, the issue concerning disclosure of the name of the counterparty should be carefully considered.	Noted Disclosure should enhance market discipline and has to be reasonable. This includes the calculation rather than only the basis but could be developed further, e.g. in level 3.
108.	IUA	3.23	IUA believe that supervisory discretion should be applied as to what information should be disclosed.	Disagreed. Harmonisation in relation to disclosure. We prefer full disclosure in general. Otherwise a second approval process (what are we allowed not to disclose) would apply which enhances bureaucracy and leads to an even longer approval period.

109.	KPMG ELLP	3.23, 3.64	We agree that detailed information on ancillary own funds should be publically disclosed as part of Pillar III. Insurers may however be unwilling to publically disclose the name of the actual counterparty involved in all cases. You might therefore wish to consider requiring disclosure of the name of the counterparty to be private information to the supervisory authority only, with the public disclosure limited in this respect to just whether it is internal or external to the group and any significant concentrations.	Disclosure should enhance market discipline which is better reached better if the market knows about the counterparty. Private data protection is dealt with the wording "if there are no legal obstacles".
110.	ABI	3.23	See comments to Para 3.64.	Cp. 3.64
111.	IUA	3.24	IUA welcome this suggestion. This should be used to ensure that a supervisor in a Member State is not imposing extra obligations on its regulated firms, which would be counter to the requirement for harmonisation.	Noted
112.	PEARL GROUP LIMITED	3.25	We agree that ancillary own funds have a different function in the capital component of an insurer's balance sheet compared with that of a bank.	Noted
113.	IUA	3.25	IUA agree with CEIOPS assessment.	Noted
114.	KPMG ELLP	3.25	Whilst we appreciate that the actual rules with respect to the recognition insurers' ancillary own funds come from the Solvency II Directive, care must nevertheless be taken not to introduce a regime which is less prudent than the banking sector and significantly less prudent that the current insurance regime. We believe that the proposals set out in this paper should prevent this.	Noted

115.	ABI	3.25	We agree that ancillary own funds have a different function in the capital component of an insurer's balance sheet compared with that of a bank.	Noted
116.	CEA	3.25	We agree that ancillary own funds have a different function in the capital component of an insurer's balance sheet compared with that of a bank.	Noted
117.	GDV	3.26	We agree in CEIOPS stating that the approval process of ancillary own funds has to be seen separately from the ORSA process. Our view is that companies should be free to organise their risk management function including the ORSA in a manner that is appropriate for their risk-profile, i. e. proportionate to the nature, scale and complexity of risks. Therefore, adequate overview other ancillary own funds might be reached in an effective risk management system without using the regular ORSA process. Supervisors should not require companies to include or not to include the ongoing assessment of ancillary own funds in their ORSA process. We think that the initial assessment of ancillary own fund before the application would differ from the regular ORSA process. Of course, information gathered via the ORSA process, especially as regard capital management, could be useful in the decision if re-approval would be necessary.	Noted but paragraph combined with 3.10 for greater clarity. Agreement that ORSA and approval of AOF are two different things.

			Capital-add-ons should not be set to compensate ancillary own funds.	
118.	Groupe Consultatif	3.26	Whether or not the approval process is integrated into the ORSA process, the ORSA process should analyse the risks associated with ancillary own funds	Agreement that ORSA and approval of AOF are two different things.
119.	AMICE	3.26	We agree with CEIOPS that the approval process of ancillary own funds has to be seen separate from the ORSA process. ORSA should not be another quantitative limit and therefore should not be linked to the amount of own funds. The possibility to call for supplementary contributions, including the definition of the possible reasons for doing so, must be left to definition in the statutes of the mutual entity.	Agreement that ORSA and approval of AOF are two different things. That is the case
120.	GDV	3.27 – 3.32	QIS4 may be not as meaningful as regards ancillary own funds because companies could not be sure if approval would be granted under Solvency II. Especially if the capital requirements were covered already by other own funds undertakings did not include those items. As to the little feedback on QIS4 qualitative questions we want to recall the enormous workload for companies to produce the required calculations and to answer all the questions under the time pressure given by delayed excel sheets (and their reversions) and the amount of technical specifications (partly vague and only in English). As regard current instruments there is no evidence of recovery being a significant risk in the past. CEIOPS findings (August 2007) as regard supplementary member contributions1 revealed no explicit concerns	Noted Noted Not agreed : the lack of experience indeed introduces an issue on the valuation of recoverability rate

			("No noteworthy recovery problems have been reported." respectively "110. There have been some significant unbudgeted calls, but no noteworthy recovery problems.").	
121.	KPMG ELLP	3.27 – 3.32	We note that very little quantitative and qualitative information is currently available on the recoverability and valuation of ancillary own funds, which to some extent is due to their current limited eligibility under the existing Directives. It is therefore difficult to assess at this stage the extent to which insurers will actually be in a position to provide the detailed information required to obtain supervisory authority approval. A related concern is the extent to which supervisors have the expertise required to assess applications for approval. We note that although valuation is discussed here, there is no conclusion reached (either here or in the CEIOPS recommendations) regarding how ancillary own funds should be valued.	Noted Not agreed: valuation is not a part of that CP. See Art 74 for valuation
122.	CEA	3.27 – 3.32	For QIS4 it was still unclear whether these assets were going to be granted approval under Solvency II. In particular, when the capital requirements were covered already by other own funds, undertakings did not report those items. With regard to the recoverability of supplementary member calls, there is no evidence of these constituting a significant risk in the past. CEIOPS findings (August 2007) as regard supplementary member contributions revealed no explicit concerns ("No noteworthy recovery problems have been reported." respectively "110. There have been some significant unbudgeted calls, but no noteworthy recovery	Noted Not agreed (see 120.)

			problems."). Reporting on recoverability assumes that ancillary own funds have been called up in the past which has rarely been the case in practice. Therefore, it is understandable that information was not available to QIS4 participants. We disagree with the statement that "undertakings were either not able or willing" to provide feedback on AOF as part of QIS4. The industry has so far demonstrated its willingness to engage in a constructive dialogue with supervisors in general on Solvency II. **delete paragraph**	Clarified in 3.28 and 3.29 Agreed – paragraph deleted.
123.	GDV	3.28	Reporting on recoverability assumes that ancillary own funds have been called up. There are very rare cases in German market. Therefore, it is not surprising that information was not delivered by QIS4 participants.	See comment 122
124.	AVIVA	3.29	Except in very specific cases, permitting supplementary member calls to be considered as part of the capital base of an insurer seems highly imprudent. In many cases where individual policyholders are involved, the recoverabiltiy of member calls is highly uncertain. I would guess that most such individuals would have no idea that they may be liable. I would suggest that, unless a clear process exists for collecting these calls and members are fully aware of this liability, then no value should be ascribed to these items.	Not agreed: Not in line with Level 1 text.
125.	AMICE	3.30	In our opinion, ancillary own funds in the form of supplementary calls from members should be valued following best estimate considerations and using – if this is possible – entity specific data. We do not agree with those that suggest adjusting the best estimate amounts to take into account expected losses due to default of the	Not agreed. This is the process covered by the advice.

			counterparty, the "counterparties" in this case being a large number of policyholder-members.	
126.	IUA	3.32	IUA strongly disagree with this statement and urge that this sentence is deleted from the paper. This issue has received more participation in other enquiries and the problem was with the timing of QIS4.	Agreed – paragraph deleted – see above.
127.	GDV	3.32	We are not happy with the notion that "undertakings were either not able or willing". Generally, undertakings are of course able and willing to provide information on ancillary own funds. **delete paragraph**	Agreed – paragraph deleted.
128.	ABI	3.32	We strongly disagree with this statement and believe this sentence should be removed from the paper. There have been other enquiries into this issue in which many firms and member states participated. Furthermore, the timing of QIS4 resulted in time and resource implications that meant that firms were not always able to respond to requests for information. This also contradicts Para 3.27.	Partially agreed: the wording could be offending. paragraph deleted. See 122 and 127.
129.	AVIVA	3.33, 3.56	Our interpretation is that the amount of recognised ancillary own funds can be adjusted by the local supervisor to reflect risks associated with the funds. We propose it is more meaningful to recognise 100% of the ancillary own funds amount and to calculate the associated counterparty risk in the SCR rather than adjusting the ancillary own funds. Therefore we recommend section 3.56 be removed.	Not agreed See comment 44. Disagree not in line with Level 1 text.
130.	FFSA	3.33	Supervisory approval should be based on clear objective criteria. We believe that fixed criteria will lead in legal certainty and convergence of supervisory practice across Europe as regards ancillary own funds. National or case-by-case discretions should be avoided. The approval should be given on the nature of the instrument and on the method to	Point to discuss

			determine its economic value, the amount of which has the best chance to be called up.	
131.	ROAM	3.33	Supervisory approval should be based on clear objective criteria. We believe that fixed criteria will lead to legal certainty and convergence of supervisory practice across Europe as regards ancillary own funds. National or case-by-case discretions should be avoided. The approval should be given on the nature of the instrument and on the method to determine its economic value, the amount of which has the best chance to be called up.	Point to discuss
132.	GDV	3.33	Supervisory approval should be based on clear objective criteria. We believe that only fixed criteria will result in legal certainty and convergence of supervisory practice across Europe as regards ancillary own funds. National or case-by-case discretions should be avoided. The wording should reflect the Level I text better (Art. 89 (3)). "The assessment approval of the monetary amount of an ancillary own fund item or the method to determine the amount of an ancillary own funds that can be included in own funds requires supervisory judgement criteria."	Point to discuss
133.	UNESPA	3.33	The freedom to interpret and treat the regulations for approving Ancillary Own Funds at a national level should be clearly limited to that which is established in the Level 2 measures. Approval by supervisors should be based on clear criteria in order to try to achieve convergence of supervisory practices for Ancillary Own Funds throughout Europe. Purely national criteria should be avoided.	Point to discuss

134.	CRO Forum	3.33 (also addressed in 3.6, 3.31)	"The assessment of the amount of an ancillary own fund item that can be included in own funds requires supervisory judgment." We understand from these paragraphs that the amount of ancillary own funds to be recognized will be adjusted quite discretionary by the local supervisor. We believe that it will be more meaningful to recognize 100% of the amounts (while already limited by the tier 2/tier 3 limits on SCR and MCR) and to calculate the associated counterparty risk in the SCR (see our further comments in the sections 3.35 and 3.50). This would enhance homogeneous treatment between called-up and non called-up instruments and convergence of practice across Europe.	Point to discuss
135.	Lloyd's	3.33 - 3.35	Lloyd's supports reliance in the approval processes on supervisory judgements which are flexible and principles-based, and which avoid mechanistic approaches where possible.	Noted
136.	PricewaterhouseCoopers LLP UK	3.33	Whilst we acknowledge the need to avoid where possible a mechanistic approach, it is difficult to see how supervisory authorities with different ranges of skills and competencies will ensure equivalence across the EU spectrum.	Noted
137.	ABI	3.33	Whilst supervisory judgement is an important consideration, we believe that CEIOPS should proceed with an annual review of all acceptances and refusals by supervisors and that appropriate disclosures are made	What has been approved is part of Pillar 3. Not agreed. This is a wider issue

			(and discussed as part of CP34). This will strengthen the harmonisation of practices of approval of ancillary own funds.	than AOF. CP34 transparency and disclosure – Peer Review.
138.	CEA	3.33	The room for supervisory and national interpretation should be as limited as possible under level 2 - Supervisory approval should be based on clear objective criteria. We believe that fixed criteria will lead in legal certainty and convergence of supervisory practice across Europe as regards ancillary own funds. National or case-by-case discretions should be avoided. The wording does not reflect the Level I text (Art. 89 (3)): "The assessment approval of the monetary amount of an ancillary own fund item or the method to determine the amount of an ancillary own funds that can be included in own funds requires supervisory judgement criteria."	Point to discuss
139.	PEARL GROUP LIMITED	3.34	We strongly agree with this point.	Noted
140.	IUA	3.34	IUA strongly agrees with this point.	Noted
141.	GDV	3.34	We suggest differentiating between the assessment process conducted by the company in advance before seeking approval and on a continuous basis on the one hand and the approval process done on the other hand. We find it hard to understand the rationale behind that advice. If undertakings seek for approval for innovative instruments, supervisory authorities have to consider them, even if the "classical" approval process would not fit and would have to be redesigned (flexibility!). It is self-evident that market conditions will have to be considered, where	Not agreed The approval process needs an assessment by the supervisory authority of the amount or the methods to determine AOF

			necessary. "The assessment approval process needs to be flexible enough to allow the supervisory authority to consider market innovations and market conditions."	
142.	CRO Forum	3.34 (also addressed in 3.21)	"The assessment process needs to be flexible enough to allow the supervisory authority to consider market innovations and market conditions." While we understand that certain innovative products have to be assessed carefully depending on the level of complexity of the concerned products, we believe that time is of the essence for issuing these products. A maximum 3-month period from the communication of all relevant information and documentation, which could be shortened to one month for more standard instruments, appears to us as a reasonable timeframe. Furthermore we believe that some detailed guidance on the minimum requirement to obtain the formal validation is advisable.	Point to discuss
143.	ABI	3.34	The ABI strongly agrees with this point.	Noted
144.	CEA	3.34	We suggest differentiating between the assessment process conducted by the undertaking on a continuous basis prior to seeking for approval on the one hand and the approval process on the other hand - "The assessment approval process needs to be flexible enough to allow the supervisory authority to consider market innovations and market	Not agreed The approval process needs an assessment by the supervisory authority of the amount or the

			conditions."	methods to determine AOF
145.	GDV	3.35	The advice might contradict the level I objective that requires that implementing measures at Level 2 "specifying criteria" should be developed. These criteria on Level II should enhance convergence in supervisory practices. Criteria should not be "elaborated" as part of Level 3. We agree that a principle-based approach at Level 2 is necessary to reflect the heterogeneity of ancillary own funds. Categorization as outlined above might be helpful. "The approach to the supervisory approval of ancillary own funds should take a principle-based approach at Level 2., allowing room for the criteria below to be elaborated on as part of Level 3 supervisory guidance, should divergent supervisory practices become an issue in practice."	Point to discuss
146.	Deloitte Touche Tohmatsu	3.35	We fully support a principles-based approach. A rules-based approach may not be sufficiently flexible to allow supervisors to exercise judgement in individual circumstances and may not keep pace with developments in the nature of ancillary own funds available to (re)insurers.	Noted
147.	XL Capital Group	3.35	The approach to the supervisory approval being principle-based at Level 2 combined with the heterogeneity of nature of the ancillary own funds might result in divergent supervisory assessment methodology and in divergent supervisory appreciations. More generally this could result in breaks of the level playing field. In our opinion the disclosure of Level 3 supervisory guidance should not be delayed until the practical issue arises.	Point to discuss

148.	CRO Forum	3.35 (also addressed in 3.15 – 3.19)	"The approach to the supervisory approval of ancillary own funds should take a principles-based approach at Level 2, allowing room for the criteria below to be elaborated on as part of Level 3 supervisory guidance" While we understand the decision to adopt a principles-based approach aligned with the Solvency II global approach, we believe that it is critical to include a minimum set of specific instructions and criteria at Level 2 for each of the 4 categories foreseen in the level 1 text with a view to limiting as much as possible any uncertainties and misunderstandings. This categorization would not result in an over-complex framework, but would facilitate harmonisation of supervisory practices. 1. unpaid share capital or initial fund that has not been called up These instruments are defined via company law and well-known in accounting and furthermore recognized in Solvency 1 as capital. Our proposal would be to recognise these instruments in Tier 2, and	Point to discuss Mechanistic approach not appropriate.

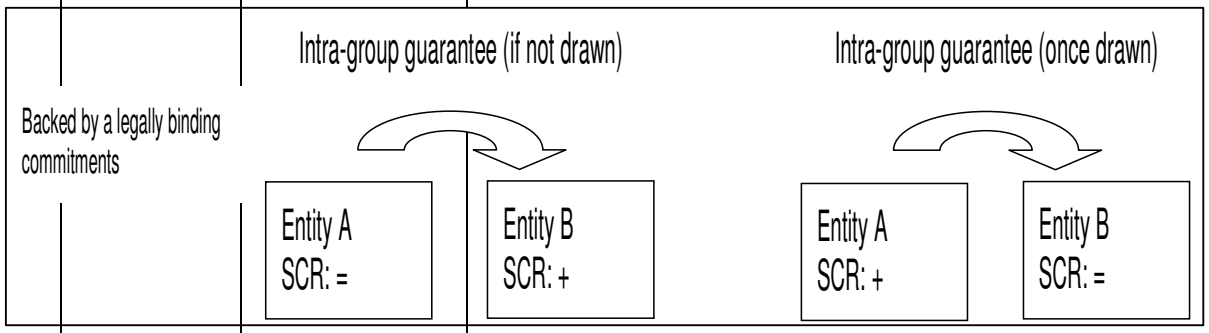
[4] Under French law, this should comprise all the guarantees where the guarantor has an obligation of result to pay the beneficiary in case of default of the guaranteed person and where the guarantee is legally enforceable. Other arrangements where there is an uncertainty as to whether the guarantor is bound to pay such as letters of comfort and the like would be excluded.

			that the associated counterparty risk is equal to 0. Extract from the Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (article 27): "Upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of: […] one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available and required solvency margin." 2. supplementary members' calls We suggest recognising these instruments in Tier 2 (consistency of treatment between unpaid capital for share companies and for mutuals), but for a specific limited best estimate amount and for a restricted period of 12 months. Regarding counterparty risk, we believe it should reflect the un-secured tangibility of these member's calls 3. letters of credit and guarantees "Guarantees" shall be interpreted as any binding commitment from the guarantor to pay a beneficiary in connection with the obligations of the guaranteed person which might take various forms depending on	Substance over form in the assessment cannot approve the categories, need to look at characteristics and features.

			applicable corporate laws, e.g. surety, first demand guarantee, etc. For letters of credit and other forms of guarantees provided by an external counterparty4, our proposal is as follows: - Systematic recognition of those instruments such as the list of incentive and motivation for the counterparty to pay (contract remuneration/ obligation of results and not obligation of means). - For letter of credit, recognition of the full amount that could be called-up until 3 or 6 months before the final deadline where the amount will have to be reimbursed. - An individual assessment of the counterparty is necessary, and the risk associated should be taken into account in the SCR calculation. - According to the quality of the Letter of Credit, it should be treated in Tier2 or Tier3. Normal LoC (i.e. with funds sent in case guarantee is called) should be treated Tier2. Undrawn subordinated credit facilities should be treated Tier3. Other forms of guarantees should be treated in Tier3. 4. any other legally binding commitments received This category would include instruments with a legally binding effect which do not fall in any of the above mentioned categories. In particular, intra-group guarantee (between 2 local entities / holding and entity) should be recognized as Ancillary own fund if it is backed with a legally binding commitment (e.g. letter of credit, or local surplus	

			deemed fungible at Group level including a guarantee with obligation of results versus only an obligation of means for Group Support in the previous draft Directive). We agree that guarantee given internally, if not drawn, should be reflected in the counterparty risk module at solo level for the entity which benefits from it (since this entity runs the risk of a bankruptcy of the guarantor, either a bank or the Group). At solo level, any intra-group guarantee, if not drawn) will be treated the same way as a guarantee provided by a third party financial institution (to the extent that the guarantor is of the same financial standing than such third party financial institution). And the counterparty SCR corresponds to the counterparty risk on the mark-to-market of the guarantee, from the guaranteed entity point of view. Once drawn, i.e. once AOF is transformed into loan (or capital), it deserves SCR, as any other loan, from the guarantor point of view, not from the guaranteed entity. So, from a Group standpoint (at consolidated level), no capital requirement is needed as the internal loan is eliminated. This is the same for reinsurance: at solo level, any reinsurance given by the group must have the same treatment than any reinsurance	

given by an external reinsurer.



As presented for the recognition of letter of credit, our proposal includes 3 ideas:

- Systematic recognition if we can deliver to the supervisor the signed agreement and the evidence that the counterparty is bound to pay pursuant to the terms of the agreement, such as the list of incentive and motivation for the counterparty to pay (contract remuneration/ obligation of results and not obligation of means).
- An individual assessment of the counterparty is necessary, and the risk associated should be taken into account in the SCR calculation.
- Recognition of these instruments in Tier 3

			To conclude, we strongly believe that (a) the recognition of AOF should be dealt with properly at Level 2 and not deferred to Level 3 and (b) examples of what is or not recognized (tied back with principles of recognition) and methods to determine the counterparty risk SCR associated to the Ancillary Own Fund should also be provided.	
149.	CEA	3.35	The advice is not in line with the level 1 text that requires implementing measures "specifying criteria" at Level 2. These Level 2 criteria should enhance convergence in supervisory practices. Criteria should not be "elaborated" as part of Level 3 - We agree that a principles-based approach at Level 2 is necessary to reflect the heterogeneity of ancillary own funds. However, we believe that the approval of certain standardised types of AOF with well known characteristics should be facilitated and harmonised through the use of clearly pre-defined criteria in level 2: "The approach to the supervisory approval of ancillary own funds should take a principles-based approach at Level 2., allowing room for the criteria below to be elaborated on as part of Level 3 supervisory guidance, should divergent supervisory practices become an issue in practice." We support setting criteria for all ancillary own funds consistently and suggest endorsing the three categories of AOF foreseen in level 1: • Unpaid share capital or initial fund that has not been called up - "Unpaid share capital" and "initial fund that has not been called up" are defined via company law and well-known in accounting. The counterparty is considered as owner of the (re)insurance undertaking and is liable up to amount of already paid-in share capital and the not-paid-in share capital. It is involved in the	Point to discuss

			control of that undertaking. A high paid in-quota provides evidence that the commitment to pay in the rest is likely. Such capital items have a fixed nominal value which reflects the loss-absorbency of these items. The amount approved as ancillary funds item should hence be equal to its nominal value (Art. 89 (2)). • Supplementary members' calls - Supplementary members' calls are claims of mutual or mutual-type associations against policyholders based on statuary or a contractual basis. The framework directive restricts the recognition of supplementary members' calls as ancillary own funds to supplementary contributions within the forthcoming twelve months. Because of the high number of individual counterparties (policyholders) we expect that approval is not granted for a fixed amount but for a method to determine the amount. Solvency I required supervisory authorities to develop guidelines for granting approval for supplementary members' calls (Art. 17 of 2002/13/EC: "The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;..."). These could constitute a starting point for the criteria used under Solvency II. • Other legally binding commitments (including letters of credit and guarantees) - This category includes different instruments which do not have to be standardized as the items mentioned before. In general an individual assessment of the instrument and the counterparty would be necessary. The assessment of the counterparty might be relatively easily done if the counterparty is supervised. The assessment should be even easier if the	

			counterparty is part of the same group with a single supervisor or a college of supervisors or in groups with centralised risk management according subsection 6 of Title III of the Solvency II directive. We believe this categorisation will enhance the harmonisation of the approval of AOF and reflects CEIOPS advice in 3.21 ("Approval is highly dependent on the complexity of the commitment and of the assessment of the status of the counterparties involved.")	
150.	Lloyd's	3.36	Lloyd's agrees that it is sensible and appropriate for an insurer to determine the amount of AOF for which it seeks approval and for it to provide supporting documentation to a supervisory authority.	Noted
151.	GDV	3.37	The wording does not seem to reflect the Level I text (Art. 89 (3)). The supervisor authority approves either the amount or the method to determine the amount (and not both). Basis for approval is the application and not the internal documentation of the undertaking. Supervisors should use only other information which is relevant for the approval process. "The supervisory authority assesses approves either the amounts, and, where relevant, or the methods to determine those amounts, on the basis of documentation application and any other information it has which it deems appropriate relevant for the assessment approval process."	Partially agreed It has been clarified that the approval is related to the amount or the methods. Basis for approval is the application supplemented by all the necessary documentation. The approval process needs an assessment by the supervisory authority
152.	Lloyd's	3.37 - 3.38	Lloyd's agrees that it is sensible for a supervisory authority to assess the amounts based on information submitted by insurers (see para 3.36) and on any other information that it deems appropriate.	Noted

Summary of comments on CEIOPS-CP-29/09 Consultation Paper on the Draft L2 Advice on Own Funds - Criteria for supervisory approval of ancillary own funds				CEIOPS-SEC-93/09
153.	CEA	3.37	The wording does not reflect the Level 1 text (Art. 89 (3)). The supervisor authority is asked to approve either the amount or the method to determine the amount of ancillary own funds but not both. Furthermore, the basis for approval is the application and not the internal documentation of the undertaking. Supervisors should use only other information which is relevant for the approval process. "The supervisory authority assesses approves either the amounts, and, where relevant, or the methods to determine those amounts, on the basis of documentation application and any other information it has which it deems appropriate relevant for the assessment approval process."	Partially agreed It has been clarified that the approval is related to the amount or the methods. Basis for approval is the application supplemented by all the necessary documentation. The approval process needs an assessment by the supervisory authority
154.	PEARL GROUP LIMITED	3.38	Where a supervisor refuses an application for ancillary own funds or approves a reduced amount, an explanation or rationale should be provided that includes ways in which these funds can be reconstructed so that they are of higher quality, if they can be improved.	Partially agreed Where a supervisor refuses an application for ancillary own funds or approves a reduced amount, an explanation or rationale should be provided. The text has been amended accordingly. The reconstruction of the fund is part of the undertaking assessment that should take into account its overall solvency position.
155.	IUA	3.38	See our comments to paragraph 3.12.	
156.	GDV	3.38	Please delete as it only repeats just the Level I text (Art. 34 (3) or it should be at least restricted to "further information necessary for	Not agreed The sentence is necessary to

			granting approval" "The supervisory authority can always request further information from the (re)insurance undertaking." rephrase "refusing means ... accepting"	explain that in the approval process different supplies of documentation are needed. The wording is correct
157.	CRO Forum	3.38 (also addressed in 3.11-3.13)	3.38: "On the basis of the information available, the supervisory authority grants approval, refuses approval, or grants approval for part of the amount requested." 3.12: "Given the issues surrounding the recoverability of ancillary own funds, the supervisor has the general power to refuse approval of the amount determined by the (re)insurance undertaking seeking approval". We believe that it is critical to ensure an harmonization of supervisory practices with respect to AOF especially to the extent that a principles-based approach is retained. We therefore recommend that CEIOPS proceed with an annual review of all acceptances and refusals by supervisors and that appropriate disclosures (on a no name basis) be made and discussed as part of the advice regarding the transparency of supervisory approval practices (CP 34).	Noted
158.	PricewaterhouseCoopers LLP UK	3.38	An undertaking is likely only to seek approval for ancillary own funds where it has a need to support its solvency position. The uncertainty in respect of whether full, partial or no approval is forthcoming may make	Noted

			it difficult for capital planning.	
159.	ABI	3.38	Where a supervisor refuses an application for ancillary own funds or approves a reduced amount, an explanation or rationale should be provided that includes ways in which these funds can be reconstructed so that they are of higher quality, if they can be improved.	Partially agreed Where a supervisor refuses an application for ancillary own funds or approves a reduced amount, an explanation or rationale should be provided. The text has been amended accordingly. The reconstruction of the fund is part of the undertaking assessment that should take into account its overall solvency position.
160.	CEA	3.38	delete – repeats just the Level I text(Art. 34 (3) or it should be at least restricted to "further information necessary for granting approval": "The supervisory authority can always request further information from the (re)insurance undertaking."	Not agreed The sentence is necessary to explain that in the approval process different supplies of documentation are needed.
161.	PEARL GROUP LIMITED	3.39	Re-approval will introduce volatility into these funds due to their uncertainty. We believe that if a process of re-approval is necessary, then a light touch approach should be used in cases where there have been no material changes in circumstances since the previous supervisory approval.	Noted
162.	IUA	3.39	See our comments to paragraph 3.13.	
163.	GDV	3.39	The wording should reflect the Level I text better (Art. 89 (3)).	Agreed

			"Supervisory approval of either the amount for inclusion in own funds, or of the method to determine that amount, … . "	
164.	GDV	3.39 new	It seems reasonable that granting approval of ancillary own funds items is accompanied by determining the classification of that item into a tier (if not already covered by the list of own funds). This "combined" approach would ensure legal certainty for undertakings. This issue could be addressed in the implementing measures as regard the tier structure of own funds, but it might be useful to get CEIOPS view on granting a tier classification for ancillary own funds items.	Not agreed According to the Level 1 text the classification of AOF is not subject to supervisory approval unless it is not covered by the list. First therefore, go through whether it could be in the list as per CP46 then approve on amount.
165.	Deloitte Touche Tohmatsu	3.39	Whilst we note that the circumstances leading to approval of Ancillary Own Funds can alter, we suggest that a 12 month period of approval of Ancillary Own Funds is too short to enable a (re)insurer to plan for continuing to meet its capital requirements over an appropriate time horizon, and appears to be in contradiction to the purpose of the Own Risk and Solvency Assessment which requires a multiple-year prospective timeframe for business planning. The draft guidance notes the ongoing responsibility of the (re)insurer to monitor its own funds. We suggest that the maximum period for approval of Ancillary Own Funds by the supervisor be extended to multiple-years and that there should be a requirement for the (re)insurer to provide updated information to the supervisor in support of the continued approval of Ancillary Own Funds between, for instance, 18 months and 2 years after initial approval so that the supervisor can determine whether continued approval is appropriate. We also suggest that, depending on the nature of the Ancillary Own	Point to discuss

			Funds, it may be appropriate for the supervisor to agree a specific methodology for the determination of Ancillary Own Funds that should again last for multiple-years and that there should be a requirement for the (re)insurer to provide updated information to the supervisor in support of the continued application of that methodology for determining Ancillary Own Funds between, for instance, 18 months and 2 years after initial approval so that the supervisor can determine whether continued approval of that methodology is appropriate.	
166.	XL Capital Group	3.39	We disagree that the supervisory approval of the amount or of the method to determine that amount should not exceed a period of 12 months. In practice this might create uncertainty if the undertakings aren't able to rely on counting funds as "own funds" for a date more than 12 months after the approval which is a bit paradoxical as own funds are expecting to be among the most stable items of the balance sheet. As a minimum we would propose that a longer period would be guaranteed for the more stable items according to their own nature or to the high quality of the counterparty. By reference to Para 3.13 the counterparties whose financial position is less exposed to deterioration could be elected for the said longer period. The fact that per para 3.13 "it is the (re)insurance undertaking's responsibility to inform the supervisory authority of any significant changes in the recoverability ancillary of own funds, and to provide the supervisory authority as soon as possible with the relevant documentation to support this" should help adopting amendment to 3.39.	Point to discuss
167.	CRO Forum	3.39 (also addressed in 3.11-3.13)	"Supervisory approval of the amount for inclusion in own funds, or of the method to determine that amount, should not exceed a period of	Point to discuss

			12 months." We suggest that the approval period should be related to the length of the instrument and not restricted to 12 months, unless the ongoing assessment of the undertaking or the regulator (at least once a year) reveals that recoverability of the Ancillary Own Fund is impaired. The counterparty risk associated with the instrument will be recalculated at least each year to take into account the evolution of the recoverability of ancillary own funds.	
168.	Lloyd's	3.39	Lloyd's disagrees with the proposal that supervisory approval be granted for no more than 12 months. It proposes that approval be granted on a one-off basis, with provision for supervisory review when warranted by relevant circumstances, such as a material change in the insurer's or the counterparty's financial position.	Point to discuss
169.	PricewaterhouseCoopers LLP UK	3.39	As approval is only granted for 12 months, the possibility exists that an item of ancillary own funds may not be granted re-approval and a firm may therefore need to find additional own funds at short notice. We believe that there should be flexibility in the term for which approval is granted.	Point to discuss
170.	Groupe Consultatif	3.39	See 3.13	
171.	ABI	3.39	We disagree with this statement. We believe that the company's monitoring of the ancillary own funds and not the supervisor's monitoring should be continuous. If it is continuous for the supervisor, the supervisor will be interfering in the management of the business	Point to discuss

			and will no longer be independent of it. Furthermore continuous re-approval will introduce volatility into these funds due to their uncertainty. We believe that if a process of re-approval is necessary, then the approval period should remain aligned with the length of the instrument unless ongoing evaluation of these funds indicates that the recoverability of these ancillary own funds is impaired.	
172.	CEA	3.39	The approval should be granted for the duration of the AOF - An arbitrarily limited approval period is not appropriate. Continuous re-approval will introduce volatility. We believe that in cases where there have been no material changes in circumstances since the previous supervisory approval, these ancillary own funds should remain approved. Only when the supervisory authority is informed or observes that the ability of the counterparty to pay has been altered, the AOF should be subject to review.	Point to discuss
173.	PEARL GROUP LIMITED	3.40	Whilst we agree that in cases where there has been a material change in circumstances, a reassessment of the eligibility of ancillary own funds may be required. However, if there is a constant impression that supervisory approval may be removed at any time, this will introduce uncertainty and volatility into the funds, resulting in a cyclical effect. Continuous reappraisal should be the role of the firm.	Noted
174.	ROAM	3.40	See comment on 3.21	
175.	IUA	3.40	See our comments to paragraph 3.13.	
176.	GDV	3.40	We believe that the company's monitoring of the ancillary own funds and not the supervisor's monitoring should be continuous. If it is continuous for the supervisor, the supervisor will be interfering in the management of the business and will no longer be independent of it.	Point to discuss

			Supervisory approval is not an ongoing process but starts with the received application and ends with approval or the fully-reasoned rejection. We propose that the approval process is done by supervisors without unnecessary delay and promptly in set time lines. [see suggestions for time lines] "Supervisory approval is not restricted to one point in time." The wording does not reflect the Level I text (Art. 89 (3)). "to revise either"	
177.	CRO Forum	3.40 (also addressed in 3.13)	"Supervisory approval is not restricted to one point in time. The supervisory authority has the power to revise the amount, or the method to determine that amount, for which it has previously granted approval when it is informed" We believe that the fact that the regulator has the power to withdraw its approval at any time is not appropriate because stressed market/ economic conditions are continuously and dynamically reflected in the SCR with the counterparty risk. Lessons learned from the crisis show that it is critical to limit pro-cyclical effects. Once again, the withdrawal of its approval should only occur if the ongoing assessment of the undertaking or the regulator (at least once a year) reveals that recoverability of the Ancillary Own Fund is impaired.	Point to discuss

178.	Lloyd's	3.40	Lloyd's considers that it is sensible for a supervisory authority to have powers to require revisions to approved amounts or methods of determination when the ability and/or willingness of the counterparty to pay alters significantly. This approach would be consistent with the basis of AOF approval proposed above (see para. 3.39).	Noted
179.	PricewaterhouseCoopers LLP UK	3.40	We agree it is sensible to review the approved amount where the circumstances of the counterparty have changed significantly. However this may result in an item of ancillary own funds having approval suddenly withdrawn and a firm may therefore need to find additional own funds at short notice.	Noted
180.	ABI	3.40	We agree that in cases where there has been a material change in circumstances, a reassessment of the eligibility of ancillary own funds may be required. However, if there is a constant impression that supervisory approval may be removed at any time, this will introduce uncertainty and volatility into the funds, resulting in a cyclical effect. Continuous reappraisal should be the role of the firm.	Noted Significant
181.	CEA	3.40	Supervisory approval is not an ongoing process but starts with the application and ends with approval or the fully reasoned rejection - We believe that the company's monitoring of the ancillary own funds and not the supervisor's monitoring should be continuous. If it is continuous for the supervisor, the supervisor will be interfering in the management of the business and will no longer be independent of it. We propose that the approval process is done by supervisors within set time lines. (see comments to 3.21): "Supervisory approval is not restricted to one point in time." Furthermore, we believe that the wording of the current advice does not reflect the Level I text (Art. 89 (3)): "to revise either..."	Point to discuss
182.	ROAM	3.41	The criteria at Level 2 should take into account of the proportionality	Partially agreed

			principle which does not only apply to smaller undertakings but is based on the nature, scale and complexity of the underlying risks.	The principle based approach proposed for the Level 2 implementing measure will implicitly take into account the proportionality principle. We agree that the proportionality principle is not applicable only to smaller undertakings. The text has been amended accordingly.
183.	GDV	3.41	The criteria at Level II should take into account of the proportionality principle as all implementation measures should be proportionate. Deficits in this regard should not lead to the necessity of examples in Level 3 supervisory guidance.	Partially agreed The principle based approach proposed for the Level 2 implementing measure will implicitly take into account the proportionality principle. We agree that the proportionality principle is not applicable only to smaller undertakings. The text has been amended accordingly.
184.	KPMG ELLP	3.41	We agree that it is not appropriate to prescribe a specific method for the determination of the amount of ancillary own funds at this stage,	Noted

			however as noted in our general comments above, consideration of the ability to call ancillary own funds in times of financial crisis is something which needs to be a key element of the supervisory review process and insurers should be required to provide modelling and documentation to the supervisory authority to support this.	
185.	CRO Forum	3.41 (also addressed in the 3.27-3.32)	3.41: "CEIOPS does not have a preference for a specific method to be used by (re)insurance undertakings in determining the amount of ancillary own funds for inclusion in own funds" 3.32: "QIS4 results indicate that (re)insurance undertakings were either not able or willing to produce detailed feedback on recoverability and valuation of ancillary own funds" We do not think that QIS4 are meaningful as regard ancillary own funds and that any final lessons may be drawn from this study which was carried out without a clear understanding on the future treatment of the instruments qualifying as AOF. This is the reason why we recommend that section 3.32 be removed.	Noted, the comment is more relevant for par. 3.31
186.	CEA	3.41	The criteria at Level II should take into account of the proportionality principle which does not only apply to smaller undertakings but is based on the nature, scale and complexity of the underlying risks	Partially agreed The principle based approach proposed for the Level 2 implementing measure will implicitly take into account the

				proportionality principle. We agree that the proportionality principle is not applicable only to smaller undertakings. The text has been amended accordingly.

187.	AVIVA	3.42 - 3.47	There is an element of judgement in these 3 steps and it would be useful to include more specific guidance at Level 2 on what would have an impact on a regulator's decision to allow recognition of such funds to ensure same application of the rules across the industry. This could be particularly an issue in case of regulators in different EU territories. We recommend that harmonisation of practices is strengthened (timeframe for granting approval, criteria to be recognised, recoverability rate/counterparty risk, etc.). In particular, CEIOPS should proceed to an annual review of all refusals by supervisors.	First application more flexible. Noted – addressed by a number of drafting changes.
188.	CRO Forum	3.42 - 3.47	"The approval process in a three-step assessment process" We suggest to consider only a two-step approach, with (i) review of all requirements provided by the insurer to the supervisory authority (signed agreement, the list of incentive and motivation for the counterparty to pay, the counterparty risk associated), (ii) revision by the supervisory authority of the amount assessed/ method used by the insurer for the counterparty risk. We recommend that harmonization of practices is strengthened (timeframe for granting approval, criteria to be recognized, recoverability rate/ counterparty risk, etc.). In particular, CEIOPS should proceed to an annual review of all refusals by supervisors.	Disagreed – text is clear and describes in a systematic manner the process the supervisor will adopt in making its decision. Noted. Art. 89 of the Level 1 Text refers to "amount" a. Disagreed – holistic approach. See 187.
189.	Lloyd's	3.42 - 3.47	Lloyd's considers that the proposed three-step process is sensible,	Noted

			provided it is applied proportionately and flexibly, in accordance with principles.	
190.	RBS Insurance	3.42 - 3.47	We are supportive of a three step process proposed for granting approval of ancillary own funds. We agree that the same steps should be adopted by firms when seeking approval.	Noted
191.	GDV	3.43	CEIOPS should not advice undertakings how to best assess their ancillary own funds items. This recommendation might be included in the explanatory part of the consultation paper. But it seems not appropriate to include it in the advice. delete	Agree. Paragraph deleted
192.	CEA	3.43	Level 2 should not advice undertakings on how to best assess their ancillary own funds items. This recommendation might be included in the explanatory part of the consultation paper. But it seems not appropriate to include it in the advice. Delete	Agree. See 191.
193.	PEARL GROUP LIMITED	3.44	We agree that legal enforceability is a strong basis for determining the eligibility of the ancillary own funds.	Noted
194.	IUA	3.44	See our comments to paragraphs 3.20 and 3.24. CEIOPS should ensure that the requirement for harmonisation is upheld.	See resolution to those comments
195.	IUA	3.44	See our comments to paragraph 3.5.	See resolution to those comments
196.	GDV	3.44 – 3.46	We believe that the three step process is based on an understanding of the Level I text which is different from ours. The Level I text does not speak of realistic and prudent amounts, but of realistic and prudent assumptions. From our point the three steps are interrelated and should be seen in conjunction as an assessment of the underlying assumptions. An integrated approach is deemed more appropriate and could be linked to the criteria set out by CEIOPS (in the next paragraphs). We notice that the three step approach does not include	See 188 Text is clear and describes a system the supervisors will adopt in agreeing its approval. Goal is to have realistic amounts Not agreed – an integrated approach is envisaged.

			guidance how to take into account the criteria set forth and wonder if a second approval process could be construed from that fact. We think a categorization of instruments should be taken into account as outlined above. CEIOPS should elaborate more on the interdependencies with the criteria suggested.	
197.	GDV	3.44	The Level 1 text requires to ascribe to each ancillary own fund an amount which reflects the loss-absorbency of the item. We are missing such a step. Step 1 starts with legal considerations without recognising the potential economic risk-absorbency. Our concern is that the so called "three step approach" is intended to adjust the amounts successively being equivalent to setting "risk margins". This would mean to change valuation and "compensate" loss-absorbency. We are opposed to these ideas. Legal enforceability is governed not only by articles of association or contracts but by the whole legal environment. "Step 1. The supervisory authority ascribes to each ancillary own fund an amount which reflects its loss-absorbency and reviews the amount of funds that the (re)insurance undertaking is legally able to call, and that is legally enforceable, under either its articles of association or in the contracts that govern the commitment to provide funds."	Noted. Loss absorbing is related to the amount that is called up. So the process for approving that amount must take that into account. Agreed – drafting changed Step 2 refers to loss absorbency capacity, although not explicitly mentioned.
198.	UNESPA	3.44 - 3.46	The "3 step" approval method appears to be redundant to the extent that steps 2 and 3 seem to propose something which is very similar.	See comment 188
199.	ABI	3.44	We strongly agree that legal enforceability is a strong basis for determining the eligibility of the ancillary own funds.	Noted
200.	CEA	3.44 – 3.46	The three step process is based on a misunderstanding of the Level 1 text which speaks not of realistic and prudent amounts, but of realistic and prudent assumptions - The three steps are interrelated and should be seen in conjunction. An integrated approach is deemed more	See 197 Partially agreed – drafting changed.

			appropriate and could be linked to the criteria set out in the level 2 text. In particular steps 2 and 3 seem redundant. We also notice that the three step approach does not include guidance how to take into account the criteria set forth. The assessment of the amount of own funds should reflect the loss-absorbency and should be based upon prudent and realistic assumptions as required in Art. 89 (2) of the Framework Directive. This means that undertakings and supervisory authorities should not assume in their assessment unlikely scenarios and/or exceptional circumstances. The reduction of the nominal value permitted to be used as available capital can therefore not overcome the contribution of that nominal value to the SCR – standard formula – via the counterparty risk. (see comments to 3.6). We note that the proposed three steps approach fails to include the Level 1 text requirement to ascribe to each ancillary own fund an amount which reflects the loss-absorbency of the item: "Step 1. The supervisory authority ascribes to each ancillary own fund an amount which reflects its loss-absorbency and reviews the amount of funds that the (re)insurance undertaking is legally able to call, ..."	
201.	CEA	3.44	Legal enforceability is governed not only by articles of association or contracts but also by the broader legal environment - Step 1: "... and that is legally enforceable, under either its articles of association or in the contracts that govern the commitment to provide funds."	Agreed Paragraph changed

202.	PEARL GROUP LIMITED	3.45 & 3.46	Steps 2 and 3 are difficult to differentiate and Step 3 seems only intended to reduce the eligible amount of own funds rather than being a necessary step. More clarity of what is envisaged as the extra requirements included by Step 3 may be helpful if CEIOPS believes this step is necessary.	See 198/200
203.	AVIVA	3.45 & 3.46	Steps 2 and 3 are difficult to differentiate and Step 3 seems only intended to reduce the eligible amount of own funds rather than being a necessary step. More clarity of what is envisaged as the extra requirements included by Step 3 may be helpful if CEIOPS believes this step is necessary.	See 198/200
204.	FFSA	3.45	The supervisory authority should assess whether the amount included is based on realistic assumptions consistent with assumptions underlying the calculation of the Solvency Capital Requirement	Disagreed – this potentially takes into account a broader range of factors relevant to the nature of AOF.
205.	IUA	3.45 - 3.46	IUA believe that steps 2 and 3 are very similar and step 3's purpose seems to be to reduce eligible amount of own funds rather than being truly necessary. IUA think that more clarity is required as to what the extra requirements included by step 3 are.	Agreed. See 198/200
206.	GDV	3.45	The assessment of the amount should reflect the loss-absorbency and should be based upon prudent and realistic assumptions (Art. 89 (2)). This means that undertakings and supervisory authorities should not assume in their assessment unlikely scenarios and/or exceptional circumstances which are overcautious as regard the protection level set out in Art. 101 (2) + (3). Assumptions in the assessment of ancillary own funds have to be consistent with the assumptions underlying the capital requirement (the SCR) which they can cover. "Step 2. The supervisory authority assesses whether the amount included is based on realistic assumptions consistent with assumptions underlying the calculation of the Solvency Capital Requirement. as	Disagreed see 198/200

			compared to the amount that the (re)insurance undertaking is likely to recover as and when the (re)insurance undertaking needs the basic own funds which the counterparty has committed to provide."	See 204
207.	ABI	3.45 & 3.46	Steps 2 and 3 are difficult to differentiate and Step 3 seems only intended to reduce the eligible amount of own funds rather than being a necessary step. More clarity of what is envisaged is necessary as the extra requirements included by Step 3 may be helpful if CEIOPS believes this step is necessary.	See 198/200

208.	FFSA	3.46	We recommend deleting this paragraph as the application concerns the nature and the valuation method of the instrument	Disagreed see 198/200
209.	ROAM	3.46	We recommend deleting this paragraph as the application concerns the nature and the valuation method of the instrument	Disagreed see 198/200
210.	GDV	3.46	The assessment of the amount should reflect the loss-absorbency and should be based upon prudent and realistic assumptions (Art. 89 (2)). This means that undertakings and supervisory authorities should not assume in their assessment unlikely scenarios and/or exceptional circumstances which are overcautious with respect to the protection level set out in Art. 101 (2) + (3). Assumptions in the assessment of ancillary own funds have to be consistent with the assumptions underlying the capital requirement (the SCR) which they can cover. The consideration of all potential losses and arbitrary stress events is not specific. In particular, the scenarios under consideration should be in line with the 99.5% calibration of the overall model. "Step 3. The supervisory authority assesses whether the amount is based on prudent assumptions, considering all potential losses, considering stress events consistent with assumptions underlying the calculation of the Solvency Capital Requirement, on the basis of information available."	See 206
211.	ROAM	3.47	See comment on 3.21	See 3.21
212.	GDV	3.47a new	Supervisory authorities should do everything to reach a decision on the application as quickly as possible but within one month from the date of receipt of the complete application. If other supervisors concerned will be involved we agree in a longer period of two months for granting approval. If CEIOPS is referred to in a consultation and mediation process an additional month is appropriate. [see 3.21] The supervisory authority should decide on the application within one month from the receipt of the complete application. If other	See comments on para 3.21

			supervisory authorities concerned are consulted a longer period of two months for the decision is accepted. In the case of a consultation or mediation role of CEIOPS in the decision making process an additional month is appropriate.	
213.	CEA	3.47a new	Supervisory authorities should do everything in their powers to reach a decision on the application as quickly as possible and within one month from the date of receipt of the complete application (see comments to 3.21) - If other supervisors concerned are involved, a longer period of two months for granting approval is appropriate. If CEIOPS is referred to in a consultation and mediation process an additional month is appropriate (see comments to 3.21): "The supervisory authority should decide on the application within one month from the receipt of the complete application. If other supervisory authorities concerned are consulted a longer period of two months for the decision is accepted. In the case of a consultation or mediation role of CEIOPS in the decision making process an additional month is appropriate."	See 212
214.	GDV	3.47b new	Transparency of supervisory actions is desirable. Any decision by the supervisory authorities to reject the application for the inclusion of an ancillary own funds in own funds should be accompanied by the reasons therefore. Any other views expressed by other supervisors concerned or by CEIOPS, if referred to in a consultation or mediation process, should be included.	Partially agreed – drafting on 3.38 Agree on the merit for the supervisory authorities to give reason for the rejection of the application.
215.	CEA	3.47b new	Transparency of supervisory actions is desirable to help ensure harmonisation across EU member states (see CEA comments to CP34): Any decision by the supervisory authorities to reject the application for the inclusion of an ancillary own funds in own funds should be accompanied by the reasons therefore. Any other views expressed by other supervisors concerned or by CEIOPS, if referred to in a consultation or mediation process, should be included.	Agree on the merit for the supervisory authorities to give reason for the rejection of the application.

216.	FFSA	3.48	Guarantees given between entities of a group that belong to the same Member state should be considered as approved by default. There is no need for an approval.	Not agreed
217.	GDV	3.48 ff.	For legal certainty the list of criteria specified to be considered by supervisors should be regarded as exhaustive. Additional criteria would foil a harmonisation of criteria on Level II. Supervisors should be not allowed to apply different (stricter) criteria – room for Level III has to be kept within the constraints of a catalogue of criteria.	Not agreed: no fixed criteria.
218.	KPMG ELLP	3.48 - 3.47	We agree with the suggested three step approach. In relation to step 3, it may be helpful to give some clarity around the type of stress events envisaged.	Noted
219.	KPMG ELLP	3.48 – 3.61	Whilst the areas of counterparty default risk, liquidity risk, willingness to pay, legal form and past experience are all areas that need to be considered, the level of detail included here could result in a danger that, in practice, implementation becomes more akin to a rules-based, rather principles-based, regime. In addition to these areas, we believe that counterparty concentration risk should be considered. This will help to prevent the potential decrease in own funds when the ancillary own funds are actually received that was highlighted in paragraph 3.6.	Noted Agreed – paper amended accordingly.
220.	PEARL GROUP LIMITED	3.49	The definition of liquidity risk is different from that given in the Level 1 text.	Agreed
221.	AVIVA	3.49 - 3.61	Based on this CP we are under the impression that there are many considerations (recoverability, counterparty, default risk,liquidity risk, stress events, SCR etc) that need to be passed in order to qualify for recognition of ancillary own funds. To ensure consistency between EU	Not agreed – the assessment of the risks in the SCR sub-module.

			regulators we suggest using uniform methodology for assessment of these various risks in relation to the recognition of eligible own funds.	
222.	IUA	3.49	The Level 1 text gives a different definition of liquidity risk.	Agreed
223.	GDV	3.49	Liquidity risk is defined differently in Art. 13 (28) ("Liquidity risk means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;") – the definition here seems uncommon. Therefore, it should be renamed to avoid confusion with other meanings.	Agreed
224.	Lloyd's	3.49 - 3.52	Paragraph 3.50 says that assessment of the possibility of counterparty default could use the SCR counterparty risk module, where the counterparty is subject to a credit rating, or 'other approaches'. Lloyd's would prefer that a flexible approach be applied here. The criteria set out in paragraph 3.52 to assess liquidity risk seem sensible.	Noted – reference to counterparty risk module is an example of an approach that would be used. Noted
225.	ABI	3.49	The definition of liquidity risk is different from that given in the Level 1 text. Liquidity was useful if the position of the counterparty was known, but in some cases (e.g. supplementary members' calls where there are many individual counterparties) this is not known.	Agreed
226.	CEA	3.49	**The definition of liquidity risk is different from that given in Art. 13 (28) of the Framework Directive: "***Liquidity risk means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations* when *they fall due"*. The use of a wider liquidity risk definition is inappropriate in this context, and the paper should be rather explicitly dealing with: "the risk of delays in payment of	Agreed

			counterparties".	
227.	FFSA	3.50	We recommend deleting this paragraph as we recommend calculating the associated counterparty risks in the SCR of the instrument.	Not Agreed
228.	GDV	3.50	*We do not think that using the SCR counterparty risk module in assessing the default risk of ancillary own funds is appropriate. The counterparty risk module was not designed and calibrated to use it in this assessment. Especially, the counterparty risk module would not be appropriate in respect to policyholders in the category of supplementary member's calls.* "The supervisory authority ~~assesses~~ **evaluates** the probability of default of the counterparty and the loss given default. ~~One possible way of performing this assessment could be to use the SCR counterparty risk module in those cases where the counterparty is subject to a credit rating, assuming there is no other factor that could affect the default risk.~~ The supervisory authority could use ~~other~~ **appropriate** approaches **as they are used by the applicant**."	Not Agreed See 224 One possible approach not compulsory.
229.	UNESPA	3.50	**We do not believe that the use of the SCR counterparty risk module in the evaluation of default risk for Ancillary Own Funds is appropriate in this case.** The counterparty risk module was not designed and calibrated for use in this way.	Not Agreed
230.	CRO Forum	3.50 - 3.51	*"Default risk: The supervisory authority assesses the probability of default of the counterparty and the loss given default […] through the SCR counterparty risk module [or] suitable supervisory assessment "* As suggested in the previous sections, we are in favour to recognize	Not consistent with Level 1 text.

			100% of the amounts of Ancillary Own funds (while already limited by the tier 2/tier 3 limits on SCR and MCR) and to calculate the associated counterparty risk in the SCR. When feasible, we recommend to use the SCR counterpart risk module to assess the associated counterparty risk in SCR If not, we would suggest the supervisory authorities to provide relevant methods already in Level 2, and not wait to release Level3 advices.	Point to discuss Noted
231.	Groupe Consultatif	3.50	The characteristics of the counterparty risk are likely to be different to those envisaged in the SCR module.	One possible approach.
232.	AMICE	3.50	We reiterate here our view expressed in our comments on par 3.30 that the "counterparties" of a call for supplementary funds from members should not come under the counterparty default risk model of the SCR.	Agreed See 224
233.	CEA	3.50	**We do not think that using the SCR counterparty risk module in assessing the default risk of ancillary own funds is appropriate in this case -** The counterparty risk module was not designed and calibrated to be used here. Indeed the SCR module is not meant to be used for valuation purposes but rather for capital requirements covering 1/200 year events over 1 year. (see comments to 3.6). In addition, the counterparty risk module is not adapted to policyholders in the case of supplementary member's calls: *"The supervisory authority ~~assesses~~ evaluates the probability of default of the counterparty and the loss given default. ~~One possible way of performing this assessment could be to use the SCR counterparty risk module in those cases where the counterparty is subject to a credit rating, assuming there is no other factor that could affect the default~~*	Not agreed See response to 224

			~~risk.~~ The supervisory authority could use ~~other~~ appropriate approaches as they are used by the requesting undertaking."	
234.	FFSA	3.51	We recommend deleting this paragraph as we recommend calculating the associated counterparty risks in the SCR of the instrument.	Not agreed – not consistent with Level 1 text.
235.	GDV	3.51	*(External) credit ratings have to be considered, if available, but overreliance on them might be not justified.* *We do not agree on the use of the wording "prompt" without any explanation, e. g. which time horizon is meant by this. The level I text does not mention "prompt". We think that "default risk" and the "liquidity risk" as defined in 3.49 are mixed up here. The delay of receiving transfers, if necessary, could be addressed better in 3.52.* *The event and the procedure of calling up ancillary own funds could be described in the commitment. Supervisor should not override these agreements by requiring a faster transfer when a transfer is necessary.* • Whether there are any interests other than those of the (re)insurance undertaking, and what impact those other interests may have on the ability of the counterparty to transfer funds. For example, are there other parties who take precedence?, is the commitment subordinated?. • Whether the ~~prompt~~ transfer of funds to the (re)insurance undertaking might harm the reputation of the counterparty. • Whether any regulatory requirements impact on the ability of the counterparty to transfer funds ~~promptly~~. • Whether the legal structure of the counterparty prejudices the ~~prompt~~ transfer of funds. • Whether the contractual relationship of the counterparty and the	Noted Point to discuss Point to discuss Liquidity risk addresses the timing issue and default recoverability.

			(re)insurance undertaking prejudices the ~~prompt~~ transfer of funds. For example, are there encumbrances, or rights of set-off? • Whether recoverability is reinforced through the availability of collateral or counter-guarantees.	
236.	GDV	3.51a new	*Because of transparency of supervisory actions applied criteria other than those listed should be communicated to the applicant.*	Noted – CEIOPS does not intend to apply other criteria other than the areas listed in the implementing measures.
237.	Deloitte Touche Tohmatsu	3.51 & 3.52	The final bullet under liquidity risk in para. 3.52 states that *the supervisory authority assesses the liquidity position of the counterparty by applying… whether the legal structure of the counterparty prejudices the prompt transfer of funds*. We believe that this would also be relevant in respect of default risk, and hence suggest that it also be included under para. 3.51.	Agreed – drafting amended accordingly.
238.	UNESPA	3.51 & 3.52	The principle of proportionality should be applied for paragraphs 3.51 and 3.52, as not all undertakings are in a position to breakdown information for every counterparty. Grouping should be permitted in certain cases.	Noted –Proportionality principle will also apply to supervisors as per article 34(6).
239.	Groupe Consultatif	3.51	The reputational effects are really part of the "willingness to pay"	Noted already in paragraph 3.54
240.	CEA	3.51	(External) credit ratings have to be considered, if available, but overreliance on them is undesirable. Furthermore, we understand "*prompt transfer*" here in the sense that the transfer is done if needed under the conditions agreed between the	Noted Point to discuss – see above – cross reference

			undertaking and the counterparty.	
241.	CEA	3.51a new	For the purpose of ensuring transparency of supervisory practices, criteria other than the ones listed should be communicated to the requesting undertaking: The supervisory authority should communicate criteria other than the ones listed to the requesting undertaking.	– see 236
242.	FFSA	3.52	We recommend deleting this paragraph as we recommend calculating the associated counterparty risks in the SCR of the instrument.	Not agreed
243.	GDV	3.52	*Liquidity risk is defined differently in Art. 13 (28) ("Liquidity risk means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;") – the definition here seems uncommon. Therefore, it should be renamed to avoid confusion with other meanings.* The term "liquidity position" would be not consistent with the definition in 3.49 and should be replaced. "The supervisory authority **bases its approval on assessment of delays of the payment of counterparties** ~~assesses the liquidity position of the counterparty~~ applying the following criteria:" *Even though in the directive the calling in and the transfer of assets is not required to be immediately it seems reasonable to assessment the time horizon and conditions of the expected flows of funds. We understand "prompt transfer" here in the sense that the transfer is done if needed under the conditions agreed in advance (see also 3.51).* *The reputational risk of the counterparty if it does not pay has to be considered. From the wording it could be construed that CEIOPS thinks only of the reputational risk of the counterparty in the case of a payment.*	partially agreed – redrafted re liquidity risk. Point to discuss Not agreed – other factors also listed See 3.54

244.	Groupe Consultatif	3.52	See 3.51	Noted
245.	CEA	3.52	**See comments to 3.49** *"The supervisory authority bases its approval on assessment of delays of the payment of counterparties ~~assesses the liquidity position of the counterparty~~ applying the following criteria:"* Even though in the directive the calling in and the transfer of assets is not required to be immediate, it seems reasonable to assess the time horizon and conditions of the expected flows of funds. We understand "prompt transfer" here in the sense that the transfer is done if needed under the conditions agreed between the undertaking and the counterparty.	Not agreed Noted – CP46 call can be made callable on demand
246.	GDV	3.53	We would be happy to understand more of the rationale behind these requirements.	Noted
247.	Lloyd's	3.53 - 3.57	Lloyd's agrees that it is appropriate to take into account past propensity to pay and potential delay in recoverability when assessing willingness to pay.	Noted
248.	GDV	3.54	*Specific examples in the advice text might be confusing. We suggest to keep the advice short and to put examples in the explanatory text, if necessary. We are worried that reference is made to national specifics only in particular cases without providing an analysis of situations in other Member States.* "The supervisory authority assesses the existence of incentives and motivations for the counterparty to pay. In some jurisdictions, the non-	Agreed

			payment of a call triggers losses to the counterparty. ~~For example, in Spain, a shareholder loses economic rights (dividend, rights issue) and voting rights in the case of non-payment of a capital call.~~ Incentives and motivations also include reputational and other adverse consequences of non-payment. ~~Another example is the case of Professional and Indemnity Associations, where insurance is mandatory and will be withdrawn if a supplementary call is not honoured, and where the associations have "power of arrest" over members' assets. In contrast, the relationship between other (re)insurance undertakings and their counterparties may be less certain."~~	
249.	ROAM	3.54	In case of non-payment of a supplementary call of a variable mutual insurers loss of cover may be the result.	Noted
250.	CEA	3.54	**The Level 2 text should not contain examples -** We suggest keeping the advice short and putting examples in the explanatory text, if necessary. We are concerned that CEIOPS makes reference to certain national specificities without providing an analysis of situations in other Member States. *"The supervisory authority assesses the existence of incentives and motivations for the counterparty to pay. In some jurisdictions, the non-payment of a call triggers losses to the counterparty. ~~For example, in Spain, a shareholder loses economic rights (dividend, rights issue) and voting rights in the case of non-payment of a capital call.~~ Incentives and motivations also include reputational and other adverse consequences of non-payment. ~~Another example is the case of Professional and Indemnity Associations, where insurance is mandatory and will be withdrawn if a supplementary call is not honoured, and where the associations have "power of arrest" over members' assets.~~	Agreed

			~~*In contrast, the relationship between other (re)insurance undertakings and their counterparties may be less certain."*~~	
251.	FFSA	3.56	We recommend deleting this paragraph as we recommend that the approval should be given on the nature and valuation of the instrument for its useful life.	Not agreed, especially for the useful life
252.	GDV	3.56	The consideration of the distinction between corporate and non-corporate counterparties is unclear to us.	Agreed – drafting clarified
253.	CRO Forum	3.56	*"The supervisory authority assesses the nature of the counterparties and their involvement in the (re)insurance undertaking, in light of the (re)insurance undertaking's business model"* Given our suggested methodology to reflect the counterparty risk in the SCR, we recommend to remove this specific section.	Disagree – not consistent with Level 1.
254.	ABI	3.56	Care must be taken that if the counterparty default risk is taken into account in the eligibility of ancillary own funds, they are not also separately adjusted for under the counterparty default risk module, as this would constitute double-counting of this risk. We would therefore suggest that this paragraph be removed, since the eligibility of an ancillary own fund item should be based on its intrinsic value. See also comments to Para 3.18.	Not agreed – CP28 makes this clear. CEIOPS was not proposing to take account AOF in the SCR counterparty risk module. Point to discuss : counterparty
255.	CEA	3.56	The reason for the distinction between corporate and non-corporate counterparties is unclear to us.	Point to discuss – see 252
256.	GDV	3.57	This paragraph does not deal with the willingness to pay but with "liquidity risk" as defined in 3.49. It should be moved to 3.52.	Agreed - drafted

257.	CEA	3.57	This paragraph does not deal with the "*willingness to pay*" but with "*delays in payment*" as defined in 3.49. It should therefore be moved to 3.52.	Agreed
258.	PEARL GROUP LIMITED	3.58	This paragraph seems to imply that smaller firms would be allowed less ancillary own funds than a larger company based on its legal department. Does this mean that smaller firms have less ability to deal with ancillary own fund items?	Agreed – wording amended to clarify.
259.	IUA	3.58	We are concerned with the implication that smaller firms will be allowed less ancillary own funds than larger firms, based on its legal department.	Point to discuss – see 258
260.	GDV	3.58	We do not support "assessing the legal resources" of an undertaking as indicated here. This could imply that small and medium undertakings without big legal departments are less likely to receive approval for ancillary own funds than big companies. It should be taken into account that for example external lawyers could help to enforce legally binding commitments, if necessary. We object to a "fit & proper" assessment of persons responsible for enforcement of payments of a call. We think that criteria (A) (3.49 – 3.57) and (B) (3.58) are overlapping.	Point to discuss – see 258 Not agreed
261.	UNESPA	3.58	**We do not agree with the "assessment of the legal resources" of a company.** This could imply that companies with a small legal department would receive approval for a lower amount of Ancillary Own Funds in comparison with large companies. It should be remembered that external lawyers, for example, would be able to help with compliance of binding legal commitments, if required.	Point to discuss – see 258

262.	Lloyd's	3.58	Lloyd's concurs that it is appropriate for a supervisory authority to assess an insurer's legal resources to enforce payment of a call when considering recoverability.	Noted – see 258
263.	ABI	3.58	This paragraph seems to imply that smaller firms would be allowed less ancillary own funds than a larger company based on its legal department. Does this mean that smaller firms have less ability to deal with ancillary own fund items and will CEIOPS have to assess the legal structure of each company and member state?	Point to discuss – see 258
264.	CEA	3.58	**We do not agree with "assessing the legal resources" of an undertaking -** This could imply that small and medium undertakings with a limited legal function are penalised. It should be taken into account that external lawyers may be commissioned to support undertakings for the enforcement of legally binding commitments, if necessary. We object a "fit & proper" assessment of persons responsible for the enforcement of a call.	Point to discuss – see 258
265.	GDV	3.59	**Sufficient data for reliable statistical data will regularly not be available or easily obtained. Calling capital is not done often. Even useful external data is limited or not available in public. We think that statistical assessments should therefore not be required.** **The level I text allows only to use information to the extent that this information can be reliably used to assess the expected outcome of future calls. In general, we are concerned that supervisors will demand historical data which might be not available. In Germany, for example, supplementary member**	Noted. This paragraph should be read in connection to the heading, which quotes the principle stated in art. 89.4.a (c) of the Level 1 Text. Partially agreed – text claified. Noted

			calls are so rare that data may be very old or not significant. **We regard taking into account data used in accounting for adjusting claims values in the local GAAP for yearly premium (so called "general provision for doubtful debts", in German: "Pauschalwertberichtigung") as meaningful when assessing the assumed default risk in payments by policyholders in the case of supplementary members called being collect by processes broadly similar to these used for premiums. In accounting such adjustments are based on average past experience and are subject to audit.** **"The supervisory authority assesses whether the (re)insurance undertaking has used information on the outcome of past calls which can be reliably used to assess the expected outcome of future calls of that undertaking sufficient data to allow a statistical assessment. Data could include both market data (by country; for the entire market) and internal data, e. g. used in local GAAP accounting. If the undertaking has not used information on the outcome of post calls because it does not think that this information can be reliably used to assess the expected outcome of future calls of that undertaking, the supervisory authority may include it in its own assessment if it can prove that this information fulfils the requirements as regard reliability."**	Noted.

Summary of comments on CEIOPS-CP-29/09 Consultation Paper on the Draft L2 Advice on Own Funds - Criteria for supervisory approval of ancillary own funds				CEIOPS-SEC-93/09
266.	Lloyd's	3.59 - 3.61	**Lloyd's agrees that it is appropriate to take into account an assessment of an insurer's experience with the same or a similar counterparty when assessing recoverability,.** **Any requirement that an insurer have sufficient data to allow a statistical assessment should be applied in a flexible, proportionate manner.**	Noted
267.	AMICE	3.59 - 3.61	**Mutual and mutual-type insurers do not usually need to call for supplementary calls from their members to absorb losses (see also our comments on par. 3.9). The data available is therefore limited, has not been updated and should not be used to assess the expected outcome of future calls. We refer here expressly to changes made to the level 1 Directive: Historic information about the outcome of past calls shall only be a basis for approval to the extent that (such) information can be reliably used to assess the expected outcome of future calls. In most (probably) all cases, the historic information available is not of the type that it could be reliably used for future assessment. We reject therefore any effort to reintroduce through a level 2 instrument the binding reliance on historic experience with regard to supplementary calls.** **One option could be to use the information on the de-facto income from "regular" premiums, i.e. the default rates among policyholders (general provisions). This could allow for a preliminary assessment of expectations for "extra" premiums.**	Partially agreed – text clarified See 265 Noted. Art. 92 of the Level 1 Text says that the Commission shall adopt implementing measures specifying the criteria for granting supervisory approval in accordance with Article 89. This criterion should be specified accordingly.

			The real challenge, however, lies in the valuation and quantification of the members' willingness to pay the extra premiums/contributions.	
268.	CEA	3.59	**Sufficient data in practice will often be unavailable or difficult to obtain - Calling in capital is rarely done. Data is limited or not publically available. We think that statistical assessments should therefore not be a requirement.** **The level I text foresees the use of information to the extent that this information can be reliably used to assess the expected outcome of future calls. In general, we are concerned that supervisors will demand historical data which might not be available. In some countries, supplementary member calls are so rare that data may be outdated: "The supervisory authority assesses whether the (re)insurance undertaking has used information on the outcome of past calls which can be reliably used to assess the expected outcome of future calls of that undertaking sufficient data to allow a statistical assessment."** **Instead, undertakings may consider using data used in local GAAP accounting for the adjustment of yearly premium amounts, (so called "general provision for doubtful debts"), as a reliable source of information for assessing the default risk in payments by policyholders in the case of supplementary members called in cases where these are to be collected with processes broadly similar to those used for premiums. In accounting such adjustments are based on average past experience and are audited.**	See 265 Noted. This paragraph should be read in connection to the heading, which quotes the principle stated in art. 89.4.a (c) of the Level 1 Text. According to the Level 1 text, the reference should not be the premiums, but the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds

			Furthermore, a starting point for more guidance on the approval of supplementary member calls may be to assess what is currently done at national levels. We agree with not approving unlimited amounts if this does mean that a certain amount is approved.	
269.	FFSA	3.61	**Regarding supplementary member's calls, we insist on the fact that there should be no restrictions compared to what is allowed in the level I text.**	Disagreed The Level 1 text requires supervisory authorities to approve a monetary amount for each ancillary own fund item or a method to determine the amount of each ancillary own fund item. Approval of undetermined amounts for any ancillary OF does not fit with the Level 1 Text.
270.	GDV	3.61	**We would like to ask CEIOPS to give more guidance on how to deal with unlimited amounts. What is current practice as regards unlimited supplementary member calls of mutuals? Not approving unlimited amounts is accepted if this does mean that a certain amount up to a defined limit is approved.**	Noted – the criteria apply regardless of whether the AOF are unlimited.
271.	PEARL GROUP LIMITED	3.62 & 3.63	**Re-approval of ancillary own funds could cause a significant change in how insurers are funded, as they may have to duplicate their funding due to the uncertainty of some areas of their funding if this method is introduced. If re-approval is deemed necessary, then a light touch approach should be used**	Partially agreed – see resolution to paragraphs 3.13 and 3.14 Circumstances that made possible in one moment in time the approval of an ancillary own fund item may change. The

			where there has been no material change in the circumstances of the ancillary own funds.	supervisory authority must be allowed to revise them.
272.	AVIVA	3.62 & 3.63	**We disagree with the idea of re-approval of ancillary own funds as it introduces uncertainty and volatility into these funds. It could cause a significant change in how insurers are funded, as they may have to duplicate their funding due to the uncertainty of some areas of their funding if this method is introduced. If re-approval is deemed necessary, then a light touch approach should be used where there has been no material change in the circumstances of the ancillary own funds.**	Partially agreed – see resolution to paragraphs 3.13 and 3.14 Disagree. Uncertainty and volatility are not originated by the need of a re-approval. Circumstances that made possible in one moment in time the approval of an ancillary own fund item may change. The supervisory authority must be allowed to revise them.
273.	FFSA	3.62	**We recommend deleting this paragraph.**	Disagree Partially agreed – see resolution to paragraphs 3.13 and 3.14
274.	IUA	3.62 - 3.63	**See our comments to paragraph 3.13.**	See feedback on 3.13
275.	GDV	3.62	**It is desirable that uncertainty and volatility by re-approval is reduced. Pro-cyclicality has to be avoided. It would be critical that in stressed situations supervisors would start not re-approving ancillary own funds because of worsening economic situations of single entities (see 3.53). Macro-prudential oversight has to ensure a balanced view and anti-cyclic supervisory flexibility.**	Partially agreed Ditto Not considered as procyclical therefore behaviour of AOF in stressed situations is taken into account in the approval process. But see para 3.46

			The wording should reflect the Level I text better (Art. 89 (3)). **"Supervisory approval of either of the amount of each ancillary own fund item for inclusion in own funds, or of the method to determine the amount, and of the amount determined in accordance with that method for a specified period of time should be subject to supervisory re-approval where the supervisory authority is informed, or observes, that the ability and willingness of the counterparty to pay has, or may have, altered significantly since approval was granted. In other words, the supervisory authority has the power either to revise the amount, or the method, for which it has previously granted approval taking into account macro-prudential implications, e. g. increasing pro-cyclic effects."**	Noted
276.	UNESPA	3.62 & 3.63	**There should be some situations in which certain elements of Ancillary Own Funds would be approved automatically** • **Letter of guarantees. CEIOPS should develop minimum requirements under which the local supervisor can automatically accept these Ancillary Own Funds.** • **Once the letter of guarantee has been accepted it should not be rejected (except in the case of default).**	Disagreed: not consistent with level 1 text for approval of OF (para 2 CEA paper) Noted. The amounts of ancillary own fund items to be taken into account when determining own funds shall be subject to prior supervisory approval. Some ancillary own funs might need a deeper analysis than others when granting the approval, but this should not give place to

				automatic approvals without further analysis.
277.	KPMG ELLP	3.62 - 3.63	**As noted in our response to paragraph 3.40 above, it would be helpful to provide an indication of both the re-approval process and timeframe and also what level of ancillary own funds should be recognised while the re-approval process is in hand.**	See comments on 3.40
278.	CRO Forum	3.62 - 3.63	**"Re-approval: the supervisory authority has the power to revise the amount, or the method, for which it has previously granted approval […] consequently, the supervisory authority should re-approve the amount previously approved at least every 12 months"** **In case of re-approval (i.e. at the end of the previous approval period), we agree with the fact that the regulator can revise the method to assess the counterparty risk (even if, as described above, stressed market/ economic conditions are continuously and dynamically reflected in the SCR with the counterparty risk).** **However, re-approval of ancillary own funds introduces uncertainty and volatility into these funds. It could cause a significant change in how insurers are funded, as they may have to duplicate their funding due to the uncertainty of some areas of their funding if this method is introduced. If re-**	Partially agreed see 271 See 272 The re-approval period should

			approval is deemed necessary, then a light touch approach should be used where there has been no material change in the circumstances of the ancillary own funds. **Moreover, the approval period should be related to the length of the instrument and not restricted to 12 months.**	consider the possibility of changes in the circumstances that were taken into account when granting the approval. These circumstances are not necessarily related to the length of the instrument.
279.	Lloyd's	3.62	**Lloyd's agrees that it is reasonable for supervisory approval to be subject to supervisory re-approval if the counterparty's ability and/or willingness to pay changes significantly.**	Noted
280.	ABI	3.62 & 3.63	**We disagree with the idea of re-approval of ancillary own funds as it introduces uncertainty and volatility into these funds. It could cause a significant change in how insurers are funded, as they may have to duplicate their funding due to the uncertainty of some areas of their funding if this method is introduced. If re-approval is deemed necessary, then the approval period should be aligned with the term of the instrument unless there is an indication that the recoverability of these funds is impaired.**	See 271
281.	CEA	3.62 - 3.63	**Re-approval should be less demanding than the initial approval and should avoid creating undue volatility - We disagree with the idea of re-approval of ancillary on funds as it introduces uncertainty and volatility into these funds as explained in our comment to 3.39. The approval should be granted for the duration of the AOF. Only when the supervisory is informed or**	See 271 GDV comment/resolution

			observes that the ability of the counterparty to pay has been altered, the AOF should be subject to review. **Potential pro-cyclical effects of the review process have to be taken into account as part of the Pillar II review and the supervisory ladder of intervention created for that purpose. "Supervisory approval of either of the amount of each ancillary own fund item for inclusion in own funds, or of the method to determine the amount, and of the amount determined in accordance with that method for a specified period of time should be subject to supervisory re-review where the supervisory authority is informed, or observes, that the ability and willingness of the counterparty to pay has, or may have, altered significantly since approval was granted. In other words, the supervisory authority has the power either to revise the amount, or the method, for which it has previously granted approval taking into account of macro-prudential implications of this review, e. g. pro-cyclic effects."**	
282.	Lloyd's	3.63	**Lloyd's does not agree with the proposal that a supervisory authority must re-approve the amount approved every 12 months. It proposes that the methodology be approved on a one-off basis, with provision for supervisory review where warranted by relevant circumstances, such as a material change to the insurer's or the counterparty's financial position. This would be consistent with the proposal set out in paragraph 3.62.**	Agreed
283.	Groupe	3.63	**See 3.13**	See 3.13

	Consultatif			
284.	PEARL GROUP LIMITED	3.64	We believe that supervisory discretion should be applied when determining what information on ancillary own funds should be disclosed publicly. There needs to be a safety valve in place that enables the details of counterparties to be disclosed privately to supervisors where public disclosure may be counter-productive (e.g. contribute to wider financial instability).	Partially agreed – drafting amended
285.	FFSA	3.64	We recommend to not disclosure to the public the name of the counterparty.	Partially agreed – drafting amended See comment 285
286.	ROAM	3.64	We recommend not disclosing to the public nor to the supervisor the names of the counterparties: in case of members' calls, this may be the list of all member policyholders of a variable premium mutual insurer.	Disclosure is for information on and is covered by CP58. see comment 285
287.	IUA	3.64	See our comments to paragraph 3.23.	Noted
288.	GDV	3.64	The suggestions as regards reporting are far reaching and interfering with the implementing measures in Art. 35 (6) [supervisory reporting] and Art. 55 [public disclosure]. We think it is not very helpful to make isolated recommendations concerning public disclosure in the area of ancillary own funds. In analogy, we do not think that is appropriate to define possible supervisory reporting requirements on ancillary own funds without aligning them with possible supervisory reporting requirements on other own funds. We reject that public disclosure should be ex-ante criteria for approval of ancillary own funds, but we agree that of course high level information on own funds as set out in Art. 50 (1) e) i has to be	Partially agreed – see comment 284

			provided in the annual solvency and financial condition report, i. e. a description of the company's capital management which includes the tier structure and the quality of own funds. The examples mentioned for information to be disclosed are far from being legally deliverable, far from being practical feasible and far from being relevant in such detail for external stakeholders. We strongly remind CEIOPS to not override the principle of confidentiality as set out in Art. 52 (1). Requiring disclosing the names of each policyholder which has to provide eventually supplementary member calls (and the amount!) conflicts with data protection rules. In addition, in the case of millions of policyholders it is not feasible to publish all them being customer of a mutual. We doubt that the entire information load is relevant for external stakeholder. Concerning the name of the supervisor who has approved the own funds item we have no idea if there are cases in which the supervisory authority having authorised the undertaking could differ from the supervisory authority approving ancillary own funds.. If any of these reporting requirements – to supervisors or even to the public – are to be included in the advice, we suggest differentiating the reporting requirements using categorizations of the instruments. Per definition, ancillary own funds are items which can be called to absorb losses. In this context, ancillary own funds may be viewed as contingency measures in case of heavy losses. Public disclosure of contingency measures, however, is likely to be perceived as an indicator for real rather than hypothetical losses. Thus considerable reputational risk may arise from public disclosure, which thwarts reputational risk management. It should therefore be reconsidered, whether a publication in, e.g., the case of SCR breach is sufficient.	Partially agreed – see 284 Only significant counterparty and those in the group must be disclosed.

			To avoid misunderstandings: Transparency of own funds in supervisory reporting is not an issue and public disclosure according Art. 50 is regarded absolutely necessary because it creates market discipline in this regard. **delete**	
289.	XL Capital Group	3.64	Pillar III disclosure requires the undertakings to show the names of each of our counterparties. This seems like sensitive information, possibly from a business (competition) perspective or from a stock market perspective. The disclosure should be mitigated when needed. For instance for those items which are related to technical collaterals there is no reason why the undertaking should produce more detailed information than for its technical reserves.	See 288
290.	UNESPA	3.64	The information required in paragraph 3.64 seems to be too detailed for the little justification given in the CP for requesting this. Furthermore, we consider that there should be a clear distinction between public and private information. **<u>The inclusion of information requirements (public and private) should be considered in its own CP and not as part of CP 29</u>** CEIOPS should not make isolated recommendations about public information requirements relating to Ancillary Own Funds. Furthermore, we do not consider that it is appropriate to define possible information requirements for the supervisor for Ancillary Own Funds without taking into account those requested for other Own Funds.	Partially agreed – see 284 and transfer to CP58

Summary of comments on CEIOPS-CP-29/09 Consultation Paper on the Draft L2 Advice on Own Funds - Criteria for supervisory approval of ancillary own funds				CEIOPS-SEC-93/09
291.	CRO Forum	3.64 (also addressed in 3.23)	*"Insurers should be required to publicly disclose, as part of Pillar III, detailed information on ancillary own funds"* The inclusion of disclosure requirements should help to ensure an harmonization between the companies. We note that some of the elements like valuation methodology disclosures are not specific enough in providing the extent of the disclosures expected. So, it should be part of the advice regarding the transparency of supervisory approval practices (CP 34). In addition, we are very cautious regarding the disclosure of the name of the counterparty.	Partially agreed – see 284
292.	Lloyd's	3.64	Lloyd's considers that the proposals for public disclosure in paragraph 3.64 are sensible, provided that they are applied on a proportionate basis and respect confidential and commercially-sensitive arrangements with counterparties.	Noted
293.	Groupe Consultatif	3.64	Ancillary own funds can become a major source of financing in the future, since up to two thirds of the SCR can be covered by them. The principles and processes for approving ancillary own funds are at this stage not clearly defined and will be partly judgemental. In order to ascertain competitive neutrality, it is necessary to introduce measures which reduce the risk that some insurers will get regulatory advantages. One suggestion is to require that the insurer should publicly disclose a complete and detailed description of the ancillary fund and the method used to calculate ancillary fund items when seeking approval.	Noted
294.	ABI	3.64	We believe that supervisory discretion should be applied when determining what information on ancillary own funds should be	Partially agreed see 284

			disclosed publicly. There needs to be a safety valve in place that enables the details of counterparties to be disclosed privately to supervisors where public disclosure may be counter-productive (e.g. contribute to wider financial instability).	
295.	AMICE	3.64	We agree with the CEA that disclosure requirements with regard to ancillary own funds should not be addressed in this piece of CEIOPS' advice. We are not certain that Art 92(1)(a) of the Framework Directive would cover this. Disclosure in this area should be addressed in the level 2 measures on public and supervisory disclosure. In addition to the general comments made by the CEA with regard to the disclosure proposal, we draw CEIOPS´ attention to the practical problems for a mutual should it be obliged to disclose the names of every single counterparty in a supplementary call to all of its members.	Partially agreed CP58 – see 284
296.	CEA	3.64	**Disclosure requirements should be dealt with as part of the advice on the implementing measure on public and supervisory disclosure -** The proposed reporting are far reaching and interfering with the implementing measures in Art. 35 (6) (supervisory reporting) and Art. 55 (public disclosure). CEIOPS should not make isolated recommendations concerning public disclosure in the area of ancillary own funds. Similarly, we do not think that is appropriate to define possible supervisory reporting requirements on ancillary own funds without aligning them with possible supervisory reporting requirements on other own funds. We do not agree that public disclosure should be an ex-ante criteria for approval of ancillary own funds, but we agree that high level information on own funds as set out in Art. 50 (1) e) i has to be provided in the annual solvency and financial condition report, i. e. a	Partially agreed – see 284 and transfer to CP58 Not agreed with the first comment

			description of the company's capital management which includes the tier structure and the quality of own funds. The examples mentioned for information to be disclosed are far from being legally deliverable, far from being feasible in practice and far from being relevant in such detail for external stakeholders. We invite CEIOPS not to override the principle of confidentiality as set out in Art. 52 (1). Requiring disclosing the names of each policyholder which has to provide eventually supplementary member calls (and the amount) conflicts with data protection rules. For example the requirement to publically disclose detailed information on ancillary own funds and, in particular, "*the methodology applied in arriving at each amount*" is inappropriate. We believe that, the methodology agreed between the undertaking and the supervisor can be quite difficult to understand outside the areas/departments involved. The disclosure to the public should be purely qualitative, without formulas or reference to mathematical and/or statistical analysis.	Point to discuss Point to discuss