

Comments Template on Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items

**Deadline
30 June 2014
23:59 CET**

Name of Company:	Insurance and Reinsurance Stakeholder Group	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-14-004@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering refers to the Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items.</p>		
Reference	Comment	
General Comments	<ul style="list-style-type: none"> • Several requirements of justifications and documentation go beyond the draft DAs and the Directive. These should be removed and the focus should instead be on the counterparty's ability to pay. • The extent to which these ITSs are really useful (although provided for by the Directive) appears to be limited. The draft Delegated Acts are already precise on the requirements and criteria to satisfy, therefore the ITSs are only needed to give precision on the supervisory process, especially since Guidelines are also foreseen on this aspect. • Proportionality should be mentioned in the text. The ITS should be applied in a proportional way. 	

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Recital (1)		
Recital (2)		
Recital (3)		
Recital (4)		
Recital (5)		
Recital (6)		
Recital (7)		
Recital (8)		
Recital (9)		
Article 1		
Article 2	<ul style="list-style-type: none"> Article 2 (definitions): The “material facts” definition seems to be too general; We suggest this paragraph to be reworded so that only facts which can significantly impact the supervisor’s decisions will be included under the scope of material facts. 	
Article 3 (1)		
Article 3 (2)		
Article 3 (3)		
Article 3 (4)	<ul style="list-style-type: none"> The requirement that the application letter should be signed by persons on behalf of the AMSB is not in line with neither the Level 1 nor the Level 2. The application should be forwarded by the undertaking’s administrative, management or supervisory body. If required, the supervisor may check that the decision making process and documentation has been appropriate, and that the application has been appropriately signed. It would be helpful to clarify if management (as one would expect) or board of supervisors should approve the application for approval of an ancillary own fund item in a two-tier board system 	
Article 3 (5)	<ul style="list-style-type: none"> The requirement that the application letter should be signed by persons on behalf of the 	

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	<p>AMSB is not in line with neither the Level 1 nor the Level 2.</p> <ul style="list-style-type: none"> The application should be forwarded by the undertaking's administrative, management or supervisory body. If required, the supervisor may check that the decision making process and documentation has been appropriate, and that the application has been appropriately signed. 	
Article 4 (1)	<ul style="list-style-type: none"> EIOPA writes in paragraph 1 c) that the "<i>economic substance</i>" of a potential ancillary own-fund item, including how the item provides basic own funds once called, should be fully reflected in the application. In paragraph 1b) EIOPA states that the <i>assessment of the ancillary own fund</i> should be prudent and realistic. Further guidance is needed on how these two concepts should be combined; Should "economic substance " be understood as a "realistic consideration" or in line with the economic balance sheet approach ? 	
Article 4 (2)		
Article 5 (1)	<ul style="list-style-type: none"> EIOPA is requiring firms to submit confirmation that <i>national law, in any relevant jurisdiction, does not prevent a call being made including in case of resolution, administration or insolvency proceedings have been initiated against the firm</i>. In our view this sentence should be deleted, because this should be the task of the supervisors. Ancillary own funds are often used during "deteriorating financial conditions" so point (e) seems to be in contradiction with those objectives and overly burdensome for firms. 	
Article 5 (2)	<ul style="list-style-type: none"> In paragraph 2(a) the term "affiliated arrangements" can be replaced by "commitments" as the translation seems to be a problem in several countries. 	
Article 5 (3)	<ul style="list-style-type: none"> The requirements in paragraph 3) (c) have been also included in article 4-1d) and article 5-2b). We suggest this paragraph to be deleted. 	
Article 5 (4)		
Article 5 (5)		
Article 5 (6)	<ul style="list-style-type: none"> The supporting evidence the undertakings have to provide the supervisory authority with seems to be quite comprehensive. Some of the requirements seem to be hard/costly to fulfill, i.e. "provide data relating to the undertaking's experience of past calls from the same or similar counterparties in the same or similar circumstances and relevant market 	

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	data together with an assessment as to the relevance and reliability of such data.	
Article 5 (7)		
Article 5 (8)		
Article 6		
Article 7 (1)		
Article 7 (2)		
Article 7 (3)		
Article 7 (4)	<ul style="list-style-type: none"> • The “stop-the clock” mechanism (the time required to submit further information) is not in line with the Level 1 text and it could delay enormously the whole process. • Supervisory authorities should do everything in their power to reach a decision on the application as quickly as possible and within one month of receipt of the complete application. • The time frames for each phase of the approval process should be reasonable and should not take longer than 3 months in exceptional circumstances (1 month to decide if the application is complete and 2 months to take a decision). In normal circumstances this period should be limited to 2 months (1+1). • EIOPA should bear in mind that the timescales by which the ancillary own-fund items might be required can be very short. In that sense, those funds can be required when an undertaking breaches the SCR, during stress periods and as part of the recovery plan required by the supervisor authority which will be most of time on a 9 months time frame. 	
Article 7 (5)		
Article 7 (6)		
Article 7 (7)		
Article 7 (8)		
Article 7 (9)		
Article 7 (10)		

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Article 8 (1)		
Article 8 (2)		
Article 8 (3)		
Article 9 (1)		
Article 9 (2)		
Article 10 (1)		
Article 10 (2)		
Annex I Section 1		
Annex I Section 2		
Annex I Section 3		
Annex I Section 4		
Annex I Section 5		
Annex I Section 6		
Annex I Overall Conclusion		