Summary of Comments on Consultation Paper 63 - CEIOPS-CP-63/09 CP No. 63 - L2 Advice on Repackaged Loans Investment	CEIOPS-SEC-165-09

CEIOPS would like to thank Association of German Pfandbrief Banks (vdp), CEA

ECO-SLV-09-620, CRO Forum, Deloitte European Union member firms of Deloitte T, DIMA (Dublin International Insurance & Management , European Insurance CFO Forum, FFSA, GDV (German Insurance Association), GROUPAMA, Groupe Consultatif, IUA, Legal & General Group, Lloyd's, Lucida plc, Munich Re, RBS Insurance, RSA Insurance Group, and XL Capital Ltd

The numbering of the paragraphs refers to Consultation Paper No. 63 (CEIOPS-CP-63/09)

No.	Name	Reference	Comment	Resolution
1.	CEA ECO-SLV-09-620	General Comment	The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 63 on Repackaged loans investment. 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. 1. Moreover, it should be noted that this consultation has been carried on an extremely short time frame which has not	Noted. Noted.

			allowed a complete analysis of all the advice. Therefore, the following comments focus only on the main aspects of Ceiops' advice and are likely to be subject to further elaboration in the future. The CEA is generally in favour of the principles based approach of the consultation paper and of cross-sectoral consistency, subject to it achieving appropriate insurance regulations. In this instance the CEA supports cross-sectoral consistency provided proportionality is applied and that appropriate account is taken of the much lower exposure in terms of the amount and the quality of investments in such products taken by the insurance sector compared to the banking sector. 2. We believe that the investment in such repackaged loan investments should be mainly guided by the prudent person principle stated by the Directive. 3. These investments are an important component of the current economy, and the present restrictions/rules could severely limit the asset management of insurance company. Further, CP63 has to be regarded in connection with CPs 69, 70 and 74. We believe that the effect of tougher capital requirements, in connection with additional qualitative requirements for investments in repackaged loans, is harmful for the construction of a diversified portfolio. From our perspective, the entirety of new requirements directed towards investments will most certainly have a significant effect on the possibilities for insurance companies to take on market risk. The asset allocation will undoubtedly be pushed away from a diversified portfolio	The principle of proportionality is an overarching concept under Solvency II and therefore applies throughout CP63, as to all other CEIOPS' publications. A paragraph on the principle of proportionality has been specifically added to the paper in order to highlight this fact at the outset of the paper. Under the prudent person principle (Article 132 in the Level 1 Directive), if undertakings consider that they are unable to properly identify, measure, monitor, manage, control and report the risks applicable to tradable securities and other financial instruments based on repackaged loans then they should be making the decision to not invest in these products in

			structure towards a concentration on certain low yield products, in particular government bonds. For these reason, we firmly disagree with any restriction on investments, which is considered to be a direct intervention of the supervisor in the management of the undertaking.	the first place. This assessment should be made in advance of any investment decision; not just when investing in tradable securities and other financial instruments based on repackaged loans. This paper sets out requirements CEIOPS would expect to see specifically for repackaged loans and it should therefore not be viewed as a restriction but a safeguard that recognises the risk that exists within these products. The requirements do not prevent undertakings from investing in such instruments as long as the requirements are met.
			As they are proposed now, the requirements to be met by undertakings investing in repackaged loans are heavy and difficult to apply in practice. While we recognize the need to check the 5% retention and to perform a proper assessment of the originator and sponsor at purchase, we strongly believe that undertakings cannot be expected to monitor how these requirements are fulfilled on a continuous basis. Instead, the CEA expects that the retention of this minimum economic interest and other requirements listed under the other originator related principles are checked by the competent regulators. Insurance undertakings should be able to	The Level 1 Directive states that cross-sectoral consistency should be maintained to ensure a level playing field between those firms subject to Solvency 2 and those subject to the CRD. CEIOPS has followed this approach as closely as possible within the scope of the Solvency II Directive and intends to continue doing so as and when policy developments in the CRD dictate. In relation to

			take credit for the activity of these regulators and not be expected to duplicate their role.	ensuring originators' compliance with the requirements, originators may not necessarily be CRD-regulated entities and – even to the extent that they may be – undertakings should remain responsible for monitoring as it is their decision to invest in the first place. The paper emphasises that it should not be - and is not - the responsibility of the regulatory authority to carry out this task. A paragraph in the paper acknowledges this point.
			It is also not clear what happens to these investments in repackaged loans when the listed requirements, especially for originators, cease to be fulfilled. A binary yes/no recognition of such investments could lead to distressed sales, even in cases where the breach is minor. The CEA proposes instead that any breaches of the requirements listed in this paper are assessed by undertakings and supervisors on case by case basis, as part of the Pillar II review.	CEIOPS has added a section on this subject to the paper; outlining two situations in which it considers that breaches of the requirements would have occurred (both in relation to the originator and the investor failing to fulfil their obligations) and the consequences should such breaches occur. Information has also been added on the consequences of an originator failing to comply with the requirements after the

				investment has been made.
			The proposed grandfathering arrangements may lead to forced sales of repackaged loan assets. Indeed, the proposal that grandfathering should cease to apply for repackaged loan investments where new underlying exposures are added or substituted is too onerous and unworkable in practice. In particular, substitutions of the underlying exposures with a view to keep or increase the credit quality of the investment is in line with good risk management practices and therefore should not be dis-incentivised.	CEIOPS has re-drafted the grandfathering section in the paper in a bid to ensure clarity of the requirements and has outlined four possible scenarios to consider for this purpose. In order to maintain consistency with the banking sector, CEIOPS proposes to adopt an approach to substitutions of and /or additions to the underlying exposures comparable with that stated in the CRD; substitutions and additions can still be made and may not be subject to Solvency II rules, depending on conditions being met on the materiality of and the intention behind such an addition and/or substitution being made. Information has been added to the paper in this regard.
			The definition of repackaged loans or similar financial arrangements should be specified. The definition should be in accordance to the CRD. Hence, we request Ceiops to specify that CP63 deals with securitisations in the sense of the definition of	CEIOPS has clarified the definition of 'repackaged loans' in the paper (with references in the paper having been changed

			the Basel II Accord.	to "tradable securities and other financial instruments based on repackaged loans"). The definitions included in the CRD have been adopted. Further information has been added on the scope of the paper in terms of the type of financial instrument to which the requirements would apply (with references to specific types of financial instrument being removed from the scope section of the paper). Ensuring cross-sectoral consistency with the banking sector is a main objective of the paper and – to this extent – CEIOPS proposes to use the lists and definitions contained within the CRD as they apply to this advice (in terms of exemptions, for example).
2.	CRO Forum	General Comment	1. 63.A There is need for an appropriate balance between controlling risk, ensuring practicability for issuers of these products and also respecting the principle of "freedom of investment" (priority: medium) 2. The advice in this paper should be balanced between 2 important Principles in the Directive: "Prudent Person" (Art 132) and also "Freedom of Investment" (Art 133). This article states that "Member States shall not subject the investment decisions of an insurance or reinsurance undertaking or its investment	Noted. See previous response (1) on the prudent person principle.

			manager to any kind of prior approval or systematic notification requirements.”	
			3. The CRO Forum expects that all undertakings will maintain adequate risk management systems including the ability to monitor and analyse assets. The general requirements under Solvency II provide a sufficient basis to control investment without special measures.	Noted.
			4. If measures are deemed necessary they should be in the form of principles to guide good practice not restrictions on investment. They will need to find an appropriate balance between controlling risk, being practicable for issuers of products based on repackaged loans while ensuring sufficient but not excessive disclosure and transparency to the investors who need to understand what they are buying.	See previous response (1) on the prudent person principle.
			5. In addition, the CRO Forum would expect insurance linked securities to be covered by the general risk management and investment principles of the Directive and not by these measures. If they are in scope some significant adjustments would be needed, for example to deal flexibly with the full range of possible non indemnity triggers.	See previous response (1) on the definitions contained within the paper and the scope of the requirements.
			6. 63.B CROF supports CEIOPS use of a principles based approach (priority: medium)	Noted.
			7. We consider the principles proposed by CEIOPS as a good frame of reference to keep in mind when investing in such assets.	Noted.
			8. This principle based approach will allow flexibility in an area where further developments are to be expected. However, we note:	Noted.
			☐ that when adapting the measures developed by CEBS, CEIOPS should ensure proper consultation of the industry and the	

			treatment for insurers as investors is the consistent with that for banks ☐ that there will need to be clarity on what constitutes an eligible arrangement both when issued by CRD controlled entities and by others. Unanticipated disallowance is a risk created by the regime and insurers will need it to be minimized. ☐ that the requirement for originator to retain an interest of a least 5% is a sound principle but application needs to allow for practical issues and for managing the exposure. ☐ CROF's interpretation of the paper is that if an existing investment no longer complies with the principles the (re)insurance undertaking will be required to close their position. Such a requirement risks amplifying pro-cyclicality effects. We propose that where monitoring is not considered sufficiently diligent, a transition period should be allowed for enhancement of procedures up to the required standard. This is especially important given the potential for differing views as to what constitutes an acceptable level of due diligence. There should be a window, assessed on a case-by-cased basis with the supervisor, to make disposals to ensure there are no pro-cyclical effects through forced sales. 9. 63.C Recognition of Grandfathering in Level2 is welcome but some clarification is required (priority: high)	See previous response (1) on types of breaches and consequences of such breaches.
			10. We would like to highlight that securitised products, such as collateralised debt obligations ("CDO"s), actively manage the underlying credit exposure to ensure that credit quality is maintained through additions and substitutions to the existing securitisation. Therefore such a requirement imposed on	See previous response (1) on the extension of the grandfathering section in the paper. As previously noted, substitutions are not being banned but rather are being

			originators is unreasonable and could effectively render the grandfathering useless. 11. We strongly recommend CEIOPS to clarify that the changes in the exposure that would revoke the grandfathering applies to the addition/ substitutions of the assets by the holders/investors of the securitised loans and not the originators.	brought under the scope of Solvency II, with specific exceptions.
3.	DIMA (Dublin International Insurance & Management	General Comment	DIMA welcomes the opportunity to comment on this paper. Comments on this paper may not necessarily have been made in conjunction with other consultation papers issued by CEIOPS. DIMA welcomes the principled-based approach being taken and the aim of cross-sectoral consistency. However, the restriction from investing in certain assets where either the asset or the undertaking fails to meet some criteria is unnecessary and unprecedented. The simple expedient of valuing such assets at nil should be sufficient, given that no further downside valuation risk could arise thereafter. There is some concern that the approach as indicated in this paper could results in re/insurers eliminating this asset sector altogether. It is unclear whether pre-trade compliance would be sufficient to ensure the 5% holding is maintained by the originator.	Noted. See previous response (1) on cross-sectoral consistency. See previous response (1) on types of breaches and the consequences of such breaches.
4.	European Insurance CFO Forum	General Comment	It is inconsistent with the principles of Solvency II to prohibit undertakings in terms of the nature of the investments they can hold. The CFO Forum recognises the Level 1 Directive requirements for advice to be drafted but is of the opinion that this proposal is not consistent with the underlying principles of Solvency II that imply	See previous response (1) on the prudent person principle. See previous response (1) on the prudent person principle.

			that insurers are permitted to invest as they wish subject to the normal Solvency II constraints. Solvency II should not prohibit undertakings in terms of the nature of the investments they can hold. Solvency II principles require insurers to understand their risks and hold appropriate capital rather than explicitly restricting investment activities. It is inappropriate for the supervisor to prohibit investments unless specific conditions are met. The conditions should be more principle-based and any "penalty" should involve the required capital measurement for solvency purposes. Also, we emphasise that there must remain degrees of freedom for undertakings and their asset managers to take investment decisions under maintainable effort. The requirement for the originator to meet the investment criteria could be problematic for undertakings investing in non-EU regulated territories. We recognise that this is Level 1 text but highlight that the requirements could be problematic for subsidiaries doing business in non-EU jurisdictions in which there might not be enough market pressure to force third parties to change their business model to conform to EU rules. This would restrict investment opportunity, which is not consistent with the underlying principles of Solvency II. CP63 could create a competitive disadvantage for European insurers needing to make non-European investments. For European investments, CP63 advice may have a reduced impact on new investments as it is assumed that the CRD will	See previous responses (1) on the prudent person principle and the consequences of requirements being breached. Noted. Regardless of whether the originator is a third country entity or not, undertakings should be investing according to the principles outlined in the paper in order to allow the proper identification, measurement, monitoring, management, control and reporting of the risks associated with their investment portfolios. Third country originators

			require originators to apply the stated principle. It will, however, impact European insurers needing to make non-European investments. CP63 restricts undertakings on investments in markets outside of Europe which are not governed by the CRD. This could, for example, create a competitive disadvantage for the non-European operations of European Groups. It would practically be very difficult and potentially very costly to ensure that originators are continuing to retain at least 5% of all repackaged loan investments. There will be issues with the practicalities of managing exposures. It is not clear whether an undertaking could place reliance on a credit agency or the fact that an originator has guaranteed that they will retain 5% of the interest, without further verification. The CFO Forum opposes a forced fire-sale of securities if the originator no longer complies with the principles set out in the consultation paper. It would be preferable to say that undertakings should have a robust policy for monitoring exposures and assessing the overall risk of these investments. The requirement for investors to look through to the underlying exposures will be very onerous.	securitising 'good' risks should not be averse to holding a retained interest or, indeed, from being transparent in their business when selling on such financial instruments. Given the size of the European market and the business available therein, a large incentive therefore exists for third country originators to self-select into the group of countries that are compliant with the requirements outlined under the CRD and Solvency II. See previous response (1) on the prudent person principle. If the necessary level of due diligence makes the decision to invest an uneconomical one, undertakings may choose not to invest. See previous response (1) on types of breaches and consequences of such breaches. See previous response (1) on

			The consultation paper requires investors to look through to the underlying exposures. If the original loan is subsequently repackaged, it will be very onerous for companies to look through to the original exposures. This should be the responsibility of the regulator of the originator rather than the responsibility of the investor. With respect to grandfathering, substitutions within the original terms of the investment should not be regarded as a change to that investment and pre-existing rules should continue to apply. Substitutions can occur when there is a requirement to replace a defaulted exposure with one that has not defaulted. In this scenario, it is counter to good risk management practices to discourage substitutions.	the responsibilities of undertakings in checking originator's compliance with the requirements. See previous response (1) on the grandfathering provision.
5.	FFSA	General Comment	It should be noted that the CP is based on current draft CRD. Final advice and level 2 measures should be adapted to future evolution of the CRD. Covered bonds should be explicitly excluded from the repackaged loans. Indeed, an investor is exposed to the issuer for this kind of investments, and not directly to a pool of assets. A contrario, the pool of assets is a collateral against any insolvency of the issuer, and provides more security to the investor. We understand that the CRD could be amended to exclude these investments. We consider that this exclusion shall be made within level 2 implementation measure of the Directive. The CP requires undertakings to have access to lots of information and documentation provided by originators and sponsors, to be	Noted. See previous response (1) on the clarification of the scope of the paper. CEIOPS does not believe that covered bonds would be subject to the requirements. See previous responses (1) on cross-sectoral consistency and

			able to perform stress tests on underlying assets and challenge assumptions of rating agencies, to be fully skilled in these investments, which should put them off investing in complex repackaged loans. Some of these obligations are not feasible for insurance companies (such as principles 2, 4 and 6).	the prudent person principle. See previous responses (1) on the prudent person principle and breaches of the requirements and consequences of such breaches.
			These investments are an important component of the current economy, and the present restrictions/rules could severely limit the asset management of insurance company. Furthermore, credit institutions do not have any prohibition from investing in such assets if they do not respect the CRD criteria; in this case, their capital charge is simply higher. For that reason, we firmly disagree with any restriction on investments, which is considered to be a direct intervention of the supervisor in the management of the undertaking. In case the company does not comply with the principles, we would suggest that the relating investments are deducted from the own funds of the undertaking.	There are not typically large exposures of these instruments in insurance companies. Therefore, CEIOPS is not convinced that the requirements outlined in the paper could severely limit asset management (see footnote no. 2 in the final advice). With regard to capital charges, the SCR is not set to adequately reflect such an arrangement. CEIOPS must follow Level 1 in relation to this but will seek to explore this further at Level 3.
			Also, if at inception, when the undertaking invests in one loan repackaged, it complies with the principles, and that during the life of the investment, one of the principle is breached, in this case, the undertaking should not have to sell the repackaged loan. Instead, we would propose to deduct the fair value of the	See previous response (1) on breaches of requirements and consequences of such breaches.

			related investment from the own funds.	
			The CP essentially refers to Basel II principles which are level 1 measures (directive level). Solvency II Implementing measures should be more precise and more related to insurance issues, despite the necessary cross-sectoral consistency.	Noted.
			The CP indicates in principle 2 that the undertaking has to monitor the sponsor and credit institutions. We consider that if these financial institutions are regulated, under Basel II, the undertaking has not to ensure that sponsor and originator credit institutions meet the criteria presented in principle 2.	See previous response (1) on cross-sectoral consistency.
			Also, in principle 6, the CP indicates one cannot rely on the rating provided by the external rating agencies. Since this industry will be regulated, we consider this approach is not reasonable, and the ratings should be considered as reliable.	The paper states that undertakings should not place sole reliance on an External Credit Assessment Institution (ECAI) assessment; the purpose of these models may not necessarily be aligned with the needs of the undertaking. However, undertakings may choose to consider such ratings as part of a wider and more comprehensive assessment of the investment decision. This is consistent with the approach taken under the CRD.
			Finally, the CP is mentioning the grandfathering rule, without	See previous response (1) on the grandfathering principle.

			indicating what will happen if the existing securitisations would not meet the requirements after a restructuration. We remind that the undertaking cannot decide on the restructuring or substitution of underlyings within these investments. We recommend that the relating investments are charged with the standard risk module until its life end. .	
6.	GDV (German Insurance Association)	General Comment	GDV recognises CEIOPS' effort regarding the implementing measures and likes to comment on this consultation paper. In general, GDV supports the detailed comment of CEA. Nevertheless, the GDV highlights the most important issues for the German market based on CEIOPS' advice in the blue boxes. It should be noted that our comments might change as our work develops. Based on our experience during the previous two consultation waves we also want to express our concerns with regard to CEIOPS decisions: 1. restricting the consultation period of the 3rd wave to less than 6 six weeks 2. splitting the advice to the EU-commission in two parts ((1) first+second wave and (2) third wave) although both parts are highly interdependent 3. not taking into account many comments from the industry due to the high time pressure (first+second wave)	Noted. Noted.

			These decisions could reduce the quality of the outcome of this consultation process. Therefore we might deliver further comments after we fully reviewed the documents. From our point of view, it could be foreseen that especially the calibration of the QIS5 will not be appropriate nor finalised when beginning in August 2010. The asset allocation will undoubtedly be pushed away form a diversified portfolio CP63 has to be regarded in connection with CPs 69, 70 and 74. We believe that the effects of tougher capital requirements in connection with additional qualitative requirements for investments in securitisations are harmful for the construction of a diversified portfolio. From our perspective, the entirety of new requirements directed towards investments will most certainly have a significant effect on the possibilities for insurance companies to take on market risk. The asset allocation will undoubtedly be pushed away form a diversified portfolio structure towards a concentration on certain low yield products, in particular government bonds. The GDV is generally in favour of the principles based approach of the consultation paper and of cross sectoral consistency, subject	Noted. Noted. This paper is only addressing one specific type of product. In CEIOPS' view, a diversified portfolio is still possible. See previous response (1) on the prudent person principle and an undertaking's assessment of its investment decision. See previous response (1) on the principle of proportionality.

			to it achieving appropriate insurance regulations. In this instance the GDV supports cross sectoral consistency provided proportionality is applied and that appropriate account is taken of the much lower exposure in terms of the amount and the quality of investments in such products taken by the insurance sector compared to the banking sector.	In relation to this paper, the requirements are proportionate (i.e. the more severe the nature, scale and/or complexity of the risks, the more monitoring and governance supervisors would expect to see around the products concerned).
			As they are given now, the requirements to be respected by undertakings investing in repackaged loans are heavy and difficult to apply in practice. While we recognize the need to check the 5% retention and to perform a proper assessment of the originator and sponsor at purchase, we hold the view that undertakings cannot be expected to continuously monitor how these requirements are fulfilled on a continuous basis. Instead, the GDV expects that the retention of this minimum economic interest and other requirements listed under the other originator related principles are checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
			We attract attention that performing additional stress tests with respect to securitisations may be very complicated and burdensome to undertakings. Taking into consideration that securitisations are subject to individual sub-modules of the market risk (i.e. spread risk) and	See previous response (1) on the prudent person principle and the need for an undertaking to be able to properly identify, measure, monitor, manage, control and report the risks to

			therefore individual stress assumptions, we reject the requirement that undertakings would have to perform additional stress tests with respect to securitisation positions. In case that the requirement of a stress test is maintained, we request CEIOPS to delete at least the wording "simultaneous taking into account the dynamic effect of the stress test scenario on the rest of their business." This requirement would impose the undue burden of additional comprehensive solvency calculations not provided for in the Framework Directive.	which it is exposed. Stress testing forms an essential part of an undertaking's risk management process and CEIOPS does not, therefore, consider the content of Principle 6 contained in the paper to be overly-burdensome. The first paragraph of Principle 6 has been re-arranged for clarity.
			It is not clear what happens to these investments in repackaged loans when the listed requirements, especially for originators, cease to be fulfilled. A binary yes/no recognition of such investments could lead to distressed sales, even in cases where the breach is minor. The CEA proposes instead that any breaches of the requirements listed in this paper are assessed by undertakings and supervisors on case by case basis, as part of the Pillar II review.	See previous response (1) on breaches of requirements and the consequences of such breaches.
			Proportionate grandfathering arrangements are required We suggest that grandfathering rules are understood as follows: For undertakings that have invested in securitisations until 31 October 2012 the above requirements shall apply from 31 December 2014. This also holds for existing securitisations that will have been subject to immaterial restructuring or substitution between 31 October 2012 and 31 December 2014. New business after 31.October 2012 applies to the new rules. New rules should	CEIOPS has attempted to clarify its understanding of the grandfathering provision.

			also apply to existing securitisations that have been subject to material restructuring or substitution, which has taken place after 31 October 2012. Material additions of new underlying exposures should be considered as a material change of the securitisation. The scope of this Consultation Paper needs to be more precise Regarding its scope, we note that the Advice applies to tradable securities and other financial instruments that are based on 'repackaged' loans. Although usually referred to as asset backed securities, the term 'repackaged loans' is not clearly defined neither by the Level 1 text nor by the present draft Advice. For the sake of legal certainty, we strongly recommend to explicitly exclude from the scope of the present Advice Covered Bonds which are issued by credit institutions which have their registered offices in a Member State and which are subject by law to special public supervision in order to protect bondholders. Ratings should be recognized as being reliable CEIOPS indicates that the undertaking can rely on External Credit Assessment institution only if they are able to challenge and understand the assumptions and the methodology of ratings. Since ECAI are also subject to regulation, we consider that once the instrument has a rating, the undertaking should be able to rely on this rating without being an expert for all rating and valuation methodologies.	See previous response (1) on the scope and the clarification of the definitions used within the paper. See previous response (5) on the treatment of covered bonds. See previous response (5) on undertakings' reliance on ECAI assessments.
7.	GROUPAMA	General Comment	The CP indicates in principle 2 that the undertaking has to monitor the sponsor and credit institutions. Groupama considers	See previous response (1) on the need to ensure cross-

			that if these financial institutions are regulated, under Basel II, the undertaking does not need to ensure that sponsor and originator credit institutions meet the criteria presented in principle 2. Groupama fully agrees that monitoring and stress tests procedures should be in place to follow up the investment done. However, Groupama considers it is essential to have a proportionate approach depending on the risk taken. A qualitative approach should be allowed if the risk is not material, or information given by the originator or sponsor could be used, if sufficient controls and reporting are in place with the undertaking. (3.46 / 3.47)	sectoral consistency. See previous response (6) on stress testing.
8.	Groupe Consultatif	General Comment	CP 63 is an important an interesting CP. However, from the actuarial point of view it is evident that not much value can be added to this project from actuarial perspective. Anyway, we feel it important that in this area: - to avoid moral hazard it is reasonable to require that the originator retains, as proposed, 5 % of the risk, - actions should be based on the same principles across sectors taking into account the characteristics of different sectors which means that it should not be possible to impose stricter principles to insurance than what is done in CRD, and - the principle of proportionality should be obeyed also here.	See previous responses (1) on the prudent person principle and principle of proportionality.
9.	Lloyd's	General Comment		
10.	Lucida plc	General Comment	Lucida is a specialist UK insurance company focused on annuity and longevity risk business. We currently insure annuitants in the	Noted.

			UK and the Republic of Ireland (the latter through reinsurance). Whilst we agree that we have a duty to properly monitor and control our investments, we feel that much of the content of CP63 is unnecessarily onerous and that the requirements are captured by the "prudent person" principle. We note that Article 133 combined with the implementing measure could significantly affect investment freedom. Whilst we agree that structured securities and similar instruments can pose greater risk, the regulations should ensure that insurance companies have adequate controls and regularly monitor the investments. We disagree with excessive prescriptive requirements, such as principle 5, which may be disproportionate for small holdings or where these activities are outsourced where another party undertakes the research and monitoring. There is a significant risk that insurers will not invest in such securities thereby reducing the amount of finance available in the economy. In making this comment we recognise these securities need to be better controlled and we would expect the supervisors and risk management of firms to be more active in this area rather than relying on a prescriptive set of rules. We would therefore urge a complete reconsideration of the seven principles outlined in this paper.	Noted. See previous responses (1) on the principle of proportionality and the prudent person principle. CEIOPS has retained the seven principles in its final advice to be submitted to the EU Commission.
11.	Munich Re	General Comment	We fully support all of the GDV statements and would like to add the following points: ☐ There is no doubt that risk management for this product class has to be appropriate. However, we do not see the necessity to add another layer of prudence. In the next crisis other fields and products might be affected. Hence, CEIOPS should find a	Noted.

			balance here i.e. not concentrating too much on one single asset class. ☐ We advocate to make the reporting requirements proportionate. This can be facilitated by making the originator responsible for disclosing all necessary data requirements. ☐ The 5% retention has to be seen in conjunction with the commissions earned by the respective issuers.	See previous response (1) on the principle of proportionality. The paper has been changed to include reference to commission payments in paragraph 3.14 (paragraph number in CP63).
12.	RBS Insurance	General Comment	We agree with the proposed principles where they reinforce the application of the "prudent person" principle of Solvency 2 to investments policy. We are concerned that some of the proposals are potentially onerous and insurers will incur considerable costs in order to comply with these principles. We believe that responsibility for ensuring that the Principle 1 and Principle 2 requirements are met should lie with an originator of repackaged loan investments rather than with an insurance company purchasing the security. An insurance company should be allowed to place a reliance on public statements disclosure made by an originator.	Noted. Noted. See previous responses (1) on the responsibilities of undertakings in checking originator's compliance with the requirements and new section on breaches of requirements and consequences of such breaches.
13.	RSA Insurance Group	General Comment	Clarity of understanding of the types of Assets covered is needed in this paper. Namely things like the Danish Mortgage Bonds.	See previous response (1) on the definitions used within the paper.
14.	XL Capital Ltd	General Comment	We agree with the basic aim of this measure, which is to ensure cross-sectoral consistency and remove any potential misalignment	Noted.

			of interests between the originators of repackaged loan investments and investors in such financial instruments. The measure proposes criteria that may require significant documentation, and formal policies, procedures and reporting for such investments. These measures may require some changes to existing systems with associated costs. In addition, some requirements may depend on third party disclosures that may or may not be easily available. Suggested timelines to apply new regulations to existing securitizations appear stringent.	
15.	Legal & General Group	1.	The proposals here require insurers to essentially act as regulators for banks actions. The cost of this will be very high and in some cases also impractical. We believe that insurers do carry out appropriate due diligence on their investments but are not in a position to double check and challenge a bank that breaches banking rules. If this proposal stands insurers will move away from such assets and this is likely to cause market disruption and other spill over effects.	Noted. See previous responses (1) on the principle of proportionality, the responsibilities of undertakings in checking originator's compliance with the requirements and the new section on breaches of requirements and consequences of such breaches.
16.	CEA ECO-SLV-09-620	1.2.	The definition of repackaged loans or similar financial arrangements must be specified. In our view one should make a definition in accordance with the CRD (see 2.4, CP 63). Hence, we request Ceiops to specify that CP63 deals with securitisations in the sense of the definition of the Basel II Accord.	See previous response (1) on the definitions used within the paper.

17.	European Insurance CFO Forum	1.5.	Conditions for investment should be principle-based rather than prescriptive. The CFO Forum recognises that this paragraph relates to Level 1 text. However, it is inappropriate for the supervisor to prohibit investments unless specific conditions are met. The conditions should be more principle-based.	The requirements listed in the paper are principles-based, with the principles reflecting the risk that exists within tradable securities and similar financial instruments.
18.	IUA	1.5.	We agree that it is in the interests of the investor to ensure that the moral hazard of such securities is reduced. The principle of retention helps reduce the presence of such moral hazard.	Noted.
19.	XL Capital Ltd	1.5.	We agree with the moral hazard issue identified here, and that originators should be required to disclose details of the risks they are repackaging. This section does not address situations where originator disclosures may not be available for securities that already exist in the portfolio.	Noted.
20.	Deloitte European Union member firms of Deloitte T	1.6.	We higlight the following area for regulatory convergence between financial sectors: Some information in principles 2 to 5 can be obtained from credit risk rating models that a financial institution has in place. There is scope for additional guidance on the amount of reliance an undertaking can place on an issuer's model. Some models are approved by local regulators via IRB waivers. But there are models in use that have not been granted the waiver. Should CEIOPS distinguish between these two types of the models? The models that have been granted the waiver are already monitored by the local regulator. They would require less monitoring from the undertaking. Additionally, the IRB waiver is	See previous response (5) on undertakings' reliance on ECAI assessments. The same principle should apply to the internal models of originators (whether granted IRB-waivers or not). In addition to the above response, see previous response

			only granted if the modelling framework, processes and internal monitoring/validation meet certain criteria. Hence, there is no need to scrutinise policy and processes. The models not granted the waiver are only monitored internally and they would require higher degree of monitoring, and more loan-specific statistics to assess the risk profile of the investment. There is no external assurance about the risk practices in the firm.	(1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
21.	IUA	1.6.	We agree that it is important to ensure consistency in treatment of such assets between the different financial services sectors.	Noted.
22.	Association of German Pfandbrief Banks (vdp)	1.7.	Regarding its scope, we note that the Advice applies to tradable securities and other financial instruments that are based on 'repackaged' loans. Although usually referred to as asset backed securities, the term 'repackaged loans' is not clearly defined neither by the Level 1 text nor by the present draft Advice. For the sake of legal certainty, we strongly recommend to explicitly exclude from the scope of the present Advice Covered Bonds which are issued by credit institutions which have their registered offices in a Member State and which are subject by law to special public supervision in order to protect bondholders.	See previous response (1) on the clarification of the scope and definitions used within the paper. See previous response (5) on the treatment of covered bonds under the advice.
23.	DIMA (Dublin International Insurance & Management	1.7.	Not all ABS are fixed-income in nature e.g. credit card ABS. If it is intended to include other than fixed (and there is no reason to exclude such), then the reference should be deleted. If it is intended to exclude them from the scope of this CP, then it is appropriate now for CEIOPS to extend its advice to cover not only other than fixed interest ABS but also other types of structured packages such as insurance-issued securitisations.	See previous response (1) on the clarification of the scope and definitions used within the paper.
24.	Legal & General Group	1.7.	In order to make the scope clearer, it would be useful to clarify if synthetic CDOs are covered by these proposals. We believe that they are not, as items such as Principle 1 do not make sense given there is no originator in the typical sense for these assets.	CEIOPS is of the opinion that synthetic CDOs would be covered by the proposals in the paper, ensuring cross-sectoral

				consistency with the CRD.
25.	DIMA (Dublin International Insurance & Management	1.9.	Replace "repackaged loans financial instruments" with "financial instruments based on repackaged loans". The prohibition from investing in certain repackaged loans (or indeed any asset) is unprecedented and completely unnecessary. To the extent that the restrictions are in the Level 1 text and cannot be amended, then the Level 2 implementing measures should endeavour effectively to reverse this. Assets that are not "satisfactory" in some way should still be capable of being held, but either at nil value or not permitted to meet SCR requirements.	See previous response (1) on the definitions used within the paper. There is no prohibition from investing in certain assets; see previous response (1) on the prudent person principle and undertakings' assessments of their investment decisions.
26.	European Insurance CFO Forum	1.9.	Comments in 1.5 are also relevant here.	See response to 1.5.
27.	XL Capital Ltd	1.9.	See comments at 1.10 below	See response to 1.10.
28.	CEA ECO-SLV-09-620	1.10.	The requirements should be applied in line with the principle of proportionality taking into the materiality of the risk. Proportionality should also apply if some of the requirements subsequently cease to be met. As described in the general comments, problems in the banking sector associated with repackaged loans have been the motivating force behind these requirements, not problems in the insurance sector, where exposure to repackaged loans is typically very much smaller. It is essential that proportionality is appropriately applied. Proportionality should also apply to any action that an	See previous response (1) on the principle of proportionality.

			undertaking would be required to take should the requirements subsequently cease to be met. Ceiops' proposals are more onerous than the CRD in this respect where if the CRD requirements in paragraphs 4 (initial due diligence) and 7 (sponsor / originators economic exposure) cease to be met, depending upon the extent of the breach, the company's capital requirements are effectively increased. This contrasts to Ceiops' proposals where the company would be required to immediately sell the asset. ABS investments are relatively illiquid investments and as such an approach could result in insurance companies being forced to sell at very distressed prices. This is disproportionate to the risk such investments might pose. It should also be recognised that after an investment has been made companies are likely to have little or no influence over the sponsor/originator. The CEA recommends that the Level 2 text include details of the process that will be adopted in cases of non-compliance post an investment being made and that this process is required to take into account proportionality with any requirements on the company being commensurate with any increase in risk. Companies should be given sufficient time to address any deficiencies. Holding additional capital should be an alternative to forced sales.	See previous response (1) on breaches of requirements and the consequences of such breaches. See previous response (1) on breaches of requirements and the consequences of such breaches.
29.	CRO Forum	1.10.	The text here and elsewhere is focused on defining requirements to be met BEFORE a (re)insurer is allowed to invest, but lacks clarity on what remedial actions must be taken (and the allowable timings) by an Investor/(re)insurer if an investment falls out of compliance AFTER the investment occurs (i.e, failure of originator	See previous response (1) on breaches of requirements and the consequences of such breaches.

			to retain its 5%, provide data, etc.). A requirement to sell could come when the market in the arrangement is irregular or could increase pro cyclical pressures. CROF recommends that a (re)insurer is permitted to retain its investment in such non-compliant ABS but may be subject to other mitigating measures.	
30.	DIMA (Dublin International Insurance & Management	1.10.	The prohibition from investing in certain repackaged loans (or indeed any asset) is unprecedented and completely unnecessary. To the extent that the restrictions are in the Level 1 text and cannot be amended, then the Level 2 implementing measures should endeavour effectively to reverse this. Assets that are not "satisfactory" in some way should still be capable of being held, but either at nil value or not permitted to meet SCR requirements.	There is no prohibition from investing in certain assets; see previous response (1) on the prudent person principle and undertakings' assessments of their investment decisions.
31.	FFSA	1.10.	The requirements should be applied in line with the principle of proportionality taking into the materiality of the risk. Proportionality should also apply if some of the requirements subsequently cease to be met. As described in the general comments, problems in the banking sector associated with repackaged loans have been the motivating force behind these requirements, not problems in the insurance sector, where exposure to repackaged loans is typically very much smaller. It is essential that proportionality is appropriately applied. Proportionality should also apply to any action that an undertaking would be required to take should the requirements	See previous response (1) on the principle of proportionality. See previous response (1) on

			subsequently cease to be met. CEIOPS' proposals are more onerous than the CRD in this respect where if the CRD requirements in paragraphs 4 (initial due diligence) and 7 (sponsor / originators economic exposure) cease to be met, depending upon the extent of the breach, the company's capital requirements are effectively increased. This contrasts to CEIOPS' proposals where the company would be required to immediately sell the asset. ABS investments are relatively illiquid investments and as such an approach could result in insurance companies being forced to sell at very distressed prices. This is disproportionate to the risk such investments might pose. It should also be recognised that after an investment has been made companies are likely to have little or no influence over the sponsor / originator. The FFSA recommends that the Level 2 text include details of the process that will be adopted in cases of non-compliance post an investment being made and that this process is required to take into account proportionality with any requirements on the company being commensurate with any increase in risk. Companies should be given sufficient time to address any deficiencies. Holding additional capital should be an alternative to forced sales.	breaches of requirements and the consequences of such breaches. See previous response (1) on breaches of requirements and the consequences of such breaches.
32.	XL Capital Ltd	1.10.	This section, along with section 1.9, indicates that undertakings are prohibited from investing in repackages loan financial instruments that do not meet the requirements (vs. limiting the credit or capital charge for such investments). The timelines suggested for existing portfolio securities to conform to these requirements seem stringent considering the potentially long duration of such instruments.	See previous responses (1) on the prudent person principle and further information on the grandfathering provision.

33.	European Insurance CFO Forum	1.11.	The requirement for the originator to meet the investment criteria could be problematic for undertakings investing in non-EU regulated territories. We recognise that this is Level 1 text but highlight that the requirements could be problematic for subsidiaries doing business in non-EU jurisdictions in which there might not be enough market pressure to force third parties to change their business model to conform to EU rules. This would restrict investment opportunity, which is not consistent with the underlying principles of Solvency II.	See previous response (4) on non-EU business.
34.	XL Capital Ltd	2.1.	We agree with the Directive's requirement that originator should retain a net economic interest in the repackaged securities, which helps address the moral hazard issue identified earlier.	Noted.
35.	CEA ECO-SLV-09-620	2.4.	Covered bonds should be explicitly excluded from the repackaged loans, and be considered as a traditional bond. Indeed, an investor is exposed to the issuer for this kind of investments, and not directly to a pool of assets. On the contrary, the pool of assets is collateral against any insolvency of the issuer, and provides more security to the investor. We understand that the CRD could be amended to exclude these investments. We consider that this exclusion shall be made within level 2 implementation measure of the Directive. Other covered bonds, in particular those which are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders should be explicitly excluded (mortgage and public sector bonds).	See previous response (5) on the exclusion of covered bonds from the scope of the advice.
36.	FFSA	2.4.	Covered bonds should be explicitly excluded from the repackaged	See previous response (5) on

			loans, and be considered as a traditional bond. Indeed, an investor is exposed to the issuer for this kind of investments, and not directly to a pool of assets. A contrario, the pool of assets is a collateral against any insolvency of the issuer, and provides more security to the investor. We understand that the CRD could be amended to exclude these investments. We consider that this exclusion shall be made within level 2 implementation measure of the Directive.	the exclusion of covered bonds from the scope of the advice.
37.	European Insurance CFO Forum	2.5.	Comments in 3.10 are also relevant here.	
38.	Deloitte European Union member firms of Deloitte T	3.3.	A number of commentators have argued that the collapse in market values of ABS was due less to issues with the credit quality of the underlying and more to forced sales by SIV's and ABCP conduits in 2007 when the CP market closed. There is no reason why this loss of liquidity could not have happened in the presence of 5% retained interests leading once again to significant markdowns. Consequently the suggestions of CEBS/CEIOPS should be seen as looking to stabilise the 'hold-to-maturity' value of ABS (i.e., the credit quality of underlying assets) rather than the market value which may impact financial statements.	Noted.
39.	RSA Insurance Group	3.3.	1. Principles: In the event of Asset Managers having clear mandates for assets, these expectations should be written in to the 3rd Part y Contract	This is a commercial decision to be taken by individual firms.
40.	Deloitte European Union member firms of	3.5.	The CRD does not apply the same requirements to securitisations with an implicit or explicit government guarantee. This would include US agency securities (e.g. those issued by Freddie Mac, Fannie Mae or Ginnie Mae) and possibly ABS issued under the Fed's TALF programme. This exemption is not (explicitly) included	See previous response (1) on the list of exemptions used by the CRD. CEIOPS considers that such assets are likely to be excluded from the scope of the

	Deloitte T		in the CP. This not only causes significant differences between the securitisation treatment for securities firms and insurers, but it could also prevent insurers from investing in high quality (from a credit perspective) securities.	requirements.
41.	DIMA (Dublin International Insurance & Management	3.5.	We agree that traditionally companies have not invested in these types of assets. They are a largely new structure but some companies have material holdings. We do not agree that differences between the CRD and this CP are clearly highlighted. It would be good to list key differences clearly or delete the comment.	Noted. CEIOPS is of the opinion that the paper does highlight the consistencies and differences in principles between those in the paper and the CRD.
42.	European Insurance CFO Forum	3.5.	The CFO Forum notes that while the consultation paper states that 'consistency with the CRD is important', the requirements of CP63 go over and above that of the CRD. CP 63 and CRD frameworks are broadly aligned with the CP 63 clarifying requirements in the following areas: ☐ Both CP63 and the CRD require that the undertaking and originator disclose to investors the level of their commitment. CP63 clarifies that the undertaking should ensure this is declared by the originator prior to investing. ☐ CP63 clarifies that stress tests should be carried out in according to requirements in CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: System of Governance (former CP 33), Para 3.92. However, the CFO Forum notes that some requirements going over and above those of the CRD, specifically: ☐ CRD only applies to credit institutions whereas CP63 extends this scope to cover (Re)insurers.	CEIOPS has re-drafted certain aspects of the paper in a bid to ensure clarity of the requirements. As stated previously (1), cross-sectoral consistency is one of the main objectives of the Advice and CEIOPS has carefully considered any areas in which stakeholders feel that a divergent approach has been taken. Solvency II covers (Re)insurers and, therefore, so does Article

			☐ CP63 requires that undertakings ensure that an originator operates effective systems to manage their portfolios. There is no equivalent requirement in the CRD. ☐ CP63 requires that undertakings ensure that an originator adequately diversifies each credit portfolio. There is no equivalent requirement in the CRD. The CFO Forum does not think it is appropriate for CP63 requirements to go over and above those of the CRD.	135 (the requirement to adopt implementing measures in relation to tradable securities and other financial instruments based on repackaged loans).
43.	CEA ECO-SLV-09-620	3.6.	Ceiops has the opinion that if CEBS will issue new guidance regarding "ABS" than Ceiops is able to align with this new guidance in level 3. In our opinion this should only be made possible when this is within the boundaries of the level 2 Implementing measures. Whenever more fundamental principles are affected a proper Lamfalussy process should be maintained. It should be noted that the CP is based on the current draft CRD. We definitely agree that Final advice and level 2/3 measures should be adapted to the future evolution of the CRD.	Please see previous response (1) on cross-sectoral consistency. Level 3 has to be within the scope of Level 2 (as Level 2 was within Level 1).
44.	CRO Forum	3.6.	CEIOPS is of the opinion that if CEBS issues new guidance regarding "ABS" that CEIOPS will be able to align with this new guidance using Level 3. CROF believes that this should only be possible when it is within the boundaries of the level 2 Implementing measures. Whenever more fundamental principles are affected a proper Lamfalussy process should be maintained.	Please see previous response (1) on cross-sectoral consistency. Level 3 has to be within the scope of Level 2 (as Level 2 was within Level 1).
45.	FFSA	3.6.	CEIOPS is the opinion that if CEBS issues new guidance regarding	Please see previous response (1)

			"ABS" then CEIOPS is able to align with this new guidance in level 3. In our opinion this should only be made possible when this is within the boundaries of the level 2 Implementing measures. Whenever more fundamental principles are affected a proper Lamfalussy process should be maintained. It should be noted that the CP is based on current draft CRD. We definitely agree that Final advice and level 2/3 measures should be adapted to future evolution of the CRD.	on cross-sectoral consistency. Level 3 has to be within the scope of Level 2 (as Level 2 was within Level 1).
46.	CEA ECO-SLV-09-620	3.7.	We agree fully with the inclusion of high level principles. Reference to Level 3 should however not imply a distortion of the level playing field within Europe, especially when dealing with ABS and investments alike.	Noted.
47.	FFSA	3.7.	We agree fully with the inclusion of high level principles. Reference to Level 3 should however not imply a distortion of the level playing field within Europe, especially when dealing with ABS and investments alike.	Noted.
48.	CRO Forum	3.8.	CROF agrees fully with the adoption of high level principles. Reference to Level 3 should however not imply a distorting of a level playing field within Europe especially when dealing with ABS and like type investments	Noted.
49.	CEA ECO-SLV-09-620	3.9.	Although we support the fundamental view that the originator retains a net economic interest of not less than 5%, we want to draw attention to the fact that it is out of control of the investor to control on an ongoing basis, whether the originator, sponsor or original lender sticks to this requirement. Therefore we hold that	See previous response (1) on breaches of the requirements and the consequences of such breaches.

			it would be sufficient for undertakings to make sure that the issuer has declared in a public prospectus that it intends to hold at least 5% throughout the lifetime of the investment (as outlined by Ceiops in 3.13). At the same time we expect that principle 1 is automatically met, given that the credit institution is governed by the requirements as laid down in the CRD. Hence, the CEA expects the retention of this minimum economic interest and other requirements listed under the other originator related principles to be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	The advice already states that "securitisation transactions should not be structured in such a way as to avoid the application of the retention requirement" and Principle 3 has been amended to include "The originator and sponsor should also disclose any features of the holding that could undermine the concept of its retained interest…" See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
50.	DIMA (Dublin International Insurance & Management	3.9.	For consistency with the CRD and section 2.5 of this CP, it would be better to refer to "material net economic interest". It is essential for the alignment of interests that originators retain a net economic interest. However 5% is too low to achieve that. The ratio should be increased; we suggest a minimum of 15%. Obviously, this would lead to cross-sectoral issues if it differs from the CRD so we strongly encourage early discussions on this front with CEBS.	The CRD does not always refer to 'material net economic interest', sometimes referring to 'net economic interest'. The wording in the paper has not, therefore, been changed. In order to maintain consistency with the CRD, the net economic interest has been maintained at 5% in the advice.

		Summary of Comments on Consultation Paper 63 - CEIOPS-CP-63/09 CP No. 63 - L2 Advice on Repackaged Loans Investment		CEIOPS-SEC-165-09
51.	European Insurance CFO Forum	3.9.	In order to avoid moral hazard, the 5% hurdle should exceed the commission payment received by an investment bank for structuring the transaction. Comments in 3.5 and 3.10 are also relevant here.	See previous response (11) on commission payments.
52.	FFSA	3.9.	Credit institutions do not have any prohibition from investing in such assets if they do not respect the CRD criteria; in this case, their capital charge is simply higher. For that reason, we firmly disagree with any restriction on repackaged loans, which is considered to be a direct intervention of the supervisor in the management of the undertaking. In case the company does not comply with the principles, we would suggest that the relating investments are deducted from the own funds of the undertaking. Also, if at inception, when the undertaking invests in one loan repackaged, it complies with the 7 principles, and that during the life of the investment, one of the principle is breached, in this case, the undertaking should not have to sell the repackaged loan. Instead, we would propose to deduct the fair value of the related investment from the own funds.	Under the CRD, an investor cannot invest if the requirements are not satisfied prior to the investment being made. This paper contains a new section on breaches of the requirements and the consequences of such breaches that is broadly consistent with the CRD: see previous response (1). CEIOPS will look to consider higher capital charges in the SCR at Level 3.
53.	Munich Re	3.9.	The retained net economic interest has to be calculated on a risk adjusted basis, not using nominal values.	The CRD calculates the retained interest using nominal values, and the paper has maintained this approach in order to ensure cross-sectoral consistency. A paragraph has been added to the paper on valuations being carried out on a Solvency II valuation basis.
54.	XL Capital Ltd	3.9.	We agree with the principle that the originator should retain a net economic interest in the repackaged securities, which helps	Noted.

			address the moral hazard issue identified earlier.	
55.	CRO Forum	3.10.	It should also be acceptable to hold outside of the securitisation 5% of each underlying exposure.	The four options presented in the paper are consistent with the CRD and have been retained in the advice. Any developments in the CRD will be tracked by CEIOPS and considered/adopted if and when necessary.
56.	Deloitte European Union member firms of Deloitte T	3.10.	This sets out two options for an originator to keep a 5% interest—either a 'horizontal' 5% first loss tranche (options b and d) or a vertical 5% slice of all tranches (options a and d). A horizontal slice does not align the originator's risk profile with that of all investors in the structure (e.g., once 5% first loss is burned through the originator no longer has an interest in the deal, similarly loan modifications may negatively impact the equity but be beneficial to the mezzanine and senior holders). Consequently requiring the originator to take a vertical slice only may better align interests. Similar feedback has been provided to CEBS regarding the CRD amendments. In (c) the use of 'randomly selected' exposures seems to introduce a basis for anomalies, and inconsistent treatment of similar instruments, to arise. It would be very challenging to verify the outcome of the sampling process if, for instance, the 5% retained exposure happened to all arise from the most secure tranche of risks. Further, if adopted, the sampling process could be more specifically worded, as there are many approaches (both biased and unbiased) by which such sampling could be performed	See previous response (55). Consistent with the CRD.

			We recommend adding that the 5% nominal value contains no additional preferences compared to the position of the undertaking. Based on the proposed text, originator, sponsor or original lender might have negotiated additional warrantees or covenants, which might give them a preferred position compared to the undertaking.	The advice already states that "securitisation transactions should not be structured in such a way as to avoid the application of the retention requirement" and Principle 3 has been amended to include "The originator and sponsor should also disclose any features of the holding that could undermine the concept of its retained interest…"
57.	European Insurance CFO Forum	3.10.	Wording in CP63 is inconsistent with the CRD. Paragraph 3.10(d) deviates from the equivalent paragraph (2.5.(d)) in the CRD by defining net economic interest as 'retention of the first loss tranche and … other tranches having the same or a less severe risk profile…'. The CRD text refers to "… same or more severe risk profile…'. It is unclear whether the difference is deliberate. In any case 'less severe' would seem to be more appropriate and more in line with the preceding definitions in the paragraph.	CEIOPS has amended the wording in the final advice to ensure consistency with the CRD.
58.	IUA	3.10.	The principle of retention is one which (re)insurers are familiar to reduce the problem of moral hazard; we agree that it is desirable to have that principle applied to repackaged loans and investments.	Noted.
59.	Munich Re	3.10.	With respect to the potential moral hazard introduced by the reselling of debt, we propose to cancel b), c) and to combine modifications of a) and d) for a definition of retention: a retention of the first loss tranche and of a vertical section across the other tranches, but the volume is calculated at least as 5% of the risk	See previous response (55).

			adjusted nominal amount of the securitised exposure (for instance based on 5% of the gross return of the portfolio).	
60.	CEA ECO-SLV-09-620	3.11.	Ceiops introduces a concept of "on-going basis": retained positions, interest or exposures should not be hedged or sold. This requirement is very difficult or impossible for investors to observe as positions within other credit institutions could be hedged on a macro basis e.g. the total position is considered by a credit institution. Based on this assessment on a macro level hedging strategies etc are introduced. So a specific allocation is not to be observed by third parties.	CEIOPS accepts that there will be some information that undertakings will be unable to observe when carrying out their due diligence (it is important to acknowledge that this does not in any way diminish their responsibility to do so). Requiring an originator's disclosure or commitment before purchase(see response to comment 56) would assist an undertaking in this regard.
61.	CRO Forum	3.11.	See 3.40	See response to 3.40.
62.	Deloitte European Union member firms of Deloitte T	3.11.	1. In this article it has been mentioned that the net economic interest is measured at origination and should be maintained on an on-going basis. We suggest how this should be monitored by the undertaking and if this is part of the documentation, what sanction is needed in case of breach.	See previous response (60). Also see previous response (1) on breaches of the requirements and the consequences of such breaches.
63.	European Insurance CFO Forum	3.11.	The level of net economic interest to be maintained on an ongoing basis should be 5% of the original exposure. In amortising structures, the nominal value of securitised exposures changes over time. It is not clear whether the concept of net economic interest in meant to take such changes over time into account. 5% of the original exposure should be maintained	CEIOPS is of the opinion that amortising structures do not present a problem provided that investors' interests are not disproportionately affected during the lifetime of such structures. The Solvency II

			on an ongoing basis.	valuation basis is to be used.
64.	FFSA	3.11.	CEIOPS introduces a concept of "on-going basis": retained positions, interest or exposures should not be hedged or sold. This requirement is very difficult or impossible for investors to observe as positions within other credit institutions could be hedged on a macro basis e.g. the total position is considered by a credit institution. Based on this assessment on a macro level hedging strategies etc are introduced. So a specific allocation is not to be observed by third parties. The principle aim of such a requirement is to align the interests of the originator and the investor. This should be the focus.	See previous response (60).
65.	CEA ECO-SLV-09-620	3.12.	Is the second sentence the right interpretation of the first sentence? We have not found such an interpretation in the CRD but the following text: "There should be no multiple applications of the retention requirement. For any given securitisation it suffices that only one of the originator, the sponsor or the original lender is subject to the requirement. Similarly, where securitisation transactions contain other securitisations as an underlying, the retention requirement should be applied only to the securitisation which is subject to the investment."(recital 15, subsection 2). Could Ceiops provide more insight into this interpretation?	CEIOPS considers that the draft advice was clear and does not feel that further explanation in this area is necessary.
66.	Deloitte European Union member firms of	3.12.	2.	

	Deloitte T			
67.	DIMA (Dublin International Insurance & Management	3.12.	DIMA welcomes the clarification that the same minimum retained interest cannot support multiple tranches of securitisation.	Noted.
68.	FFSA	3.12.	Is the second sentence the right interpretation of the first sentence? We have not found such an interpretation in the CRD. Could Ceiops provide more insight into this interpretation?	See previous response (65).
69.	CEA ECO-SLV-09-620	3.13.	We see issues in the description of the wording "intend", certainly with products with a long maturity. The intention of the originator will exist at issue date but based on changes in the market circumstances this might change.	As outlined in the new section in the paper on breaches of requirements and the consequences of such breaches (see previous response (1)), an incentive exists for originators not to renege on a declaration of intent to retain a 5% interest.
70.	CRO Forum	3.13.	CEIOPS refers to a 'public prospectus'. Not all arrangements would be 'public'. CROF suggests that CEIOPS refers to ' .. declared in a public prospectus or if not appropriate other documents such as the originators own financial statements or Trustee reports.'	It is consistent with the CRD to retain 'public prospectus' in the paper.
71.	Deloitte European Union member firms of Deloitte T	3.13.	We suggest adding more detail to the proposal 'CEIOPS would not expect undertakings to invest in the repackaged loans of originators that have sold their interest in a previous offering.' We recommend giving clarification how this should be checked. As such a transaction might be difficult for the undertaking to qualify whether a change in ownership has to do with transaction within a	The advice has been expanded in order to include a section on breaches of the requirements, and this contains further information on undertakings investing with originators that

			banking conglomerate or is an actual sell of the investment.	have previously breached their requirements, including relevant penalties for undertakings in such a situation. Undertakings should check previous breaches by originators as part of their due diligence when considering the decision of whether or not to invest in tradable securities or other financial instruments based on repackaged loans, especially if information is public.
72.	DIMA (Dublin International Insurance & Management	3.13.	"CEIOPS would not expect…" is too vague. Either an undertaking may not invest in ABS from originators which have sold previous interests or the comment should be removed. We would prefer if there were compulsion on the originator to maintain at least the minimum exposure. Although it is acknowledged that issuers might be unregulated (see 1.1.1), if the compulsion is stated in implementing measures this should require appropriate wording in the issuance contract itself. In any event, where they are regulated by EU supervisors, then it should be possible to compel this minimum level of exposure for issuers. The advice is silent on the implications for undertakings if the originator reduces (or sells) its interest to below 5% after the issuance date. DIMA prefers compulsion to prevent this, but in the event of a breach by the originator, which is clearly outside of the control of the undertaking, DIMA recommends that where an ABS holding originally met required criteria, the holding should remain eligible.	See previous response (71). See previous response (1) on breaches of requirements and the consequences of such breaches.
73.	FFSA	3.13.	We notice that undertakings have to monitor third parties: they	See previous response (1) on

			have to ensure that issuers maintain a net economic interest of at least 5% in the repackaged loan. If the issuer does not respect the 5% rule, what should undertakings do? Do they have to sell the securities? What should be the period during which the issuer could be allowed not to respect the 5% criteria? We believe that the investments should be written off in the economic balance sheet.	breaches of requirements and the consequences of such breaches.
74.	CRO Forum	3.15.	Presumably this refers to CRD's Article 122a (as per Par. 2.5 (2)) not Art 112a. It would be useful to have clarity over the status of obligations issued under the US Agency program. The language of Art122a para 2 subpara1 would appear to exclude references to indices such as i-Traxx. This appears inappropriate.	Noted. See previous responses (1) on the scope of the paper and the importance of ensuring cross-sectoral consistency.
75.	DIMA (Dublin International Insurance & Management	3.15.	The reference should be to Article 122a. Although DIMA favours a principled-based approach in general, in this case, for the avoidance of doubt, it would be best if the advice explicitly included exemptions. In particular, a longer list of exemptions should address whether guaranteed by central government includes issuances from e.g. the Federal National Mortgage Association (FNMA) and the Federal Home Loan Banks (FHLB). We also note that section 3(b) in Article 122a restricts to regional governments, etc, of Member States. That restriction would appear to exclude unnecessarily US state government-backed issuances. We believe that the equivalent level of authorities in countries with recognisably similar supervisory systems should also be included.	Noted. See previous response (40) on exemptions from the scope of the advice.

76.	CEA ECO-SLV-09-620	3.16.	The level 2 test should ensure that investments exempted from the 5% economic interest requirement included in this paragraph are consistent with those in the CRD. Cross-sectoral consistency is important and should be enshrined at level 2, with detailed lists of exempted institutions being provided at level 3. Insurance companies should not, as currently proposed, be required to seek exemptions on a case-by-case basis as this is burdensome and inconsistent with the banking sector. The principles for exemptions should be defined at Level 2 and be consistent with those in the CRD with a list of the exempted institutions being maintained at Level 3 which is consistent with the CRD treatment.	As stated previously (1), CEIOPS will align with the CRD's list of exemptions, which would apply on a cross-sectoral basis. If other products fall outside the scope of such exemptions but within the scope of this advice then CEIOPS will address these on a case-by-case basis (to apply to all undertakings subject to the advice). CEIOPS does not propose to include a list of exempt financial instruments at Level 2. This could be provided at Level 3 and be consistent with the existing exemptions included within the CRD.
77.	DIMA (Dublin International Insurance & Management	3.16.	DIMA is not in favour of exemptions for individual companies. In the event of a favourable response to a request by an undertaking, the response should apply market-wide for all similar issuances.	See previous response (76).
78.	FFSA	3.16.	This comment applies to paragraph 3.41 as well. The description of exemptions cases is not clear enough. Could you give examples? The level 2 test should ensure that investments exempted from the 5% economic interest requirement included in this paragraph	See previous response (76).

			are consistent with those in the CRD. Cross-sectoral consistency is important and should be enshrined at level 2, with detailed lists of exempted institutions being provided at level 3. Insurance companies should not, as currently proposed, be required to seek exemptions on a case-by-case basis as this is burdensome and inconsistent with the baking sector. The principles for exemptions should be defined at Level 2 and be consistent with those in the CRD with a list of the exempted institutions being maintained at Level 3 which is consistent with the CRD treatment.	
79.	CEA ECO-SLV-09-620	3.17.	A case-by-case decision by supervisors to suspend the requirements is not in line with the intentions of achieving cross sector consistency. The paper should be more precise about the features of the general market liquidity stress, the process implied by this stress and the consequences for undertakings. In line with the CRD requirements for sponsor and originator institutions, the focus should be on ensuring equivalent treatment of exposures transferred via a securitisation compared to those retained by sponsor and originator institutions.	CEIOPS does not consider that further information at Level 2 would be beneficial. Introducing specific parameters for the suspension of requirements would reduce flexibility in times of stress as there would be no guarantee that market stresses would conform to any such prescribed scenarios. CEIOPS considers that allowing for assessment on a case-by-case basis gives flexibility to firms when it might be needed and should therefore be helpful. If deemed necessary, CEIOPS could further develop its thinking on this issue at Level 3.

			The key requirement in the CRD is for sponsors and originators to apply the same standards, processes and controls to securitised exposures as they do to the exposures held on their book. Ceiops' have only partially reflected this and instead sought to impose risk management requirements on these institutions such as requiring them to have a risk appetite, credit risk policy, effective systems to manage and monitor credit exposures, etc. While such requirements might be sensible, it should be left to CEBS to supervise the banking sector. Insurance companies cannot and should not be expected to do this. The measures needed are those in the CRD, i.e. to ensure equal treatment between exposures securitised and those not. The CEA suggests that the requirements in this paragraph are revised to be consistent with the CRD and focus on ensuring equal treatment.	See previous response (42).
80.	FFSA	3.17.	This comment applies to paragraph 3.42 as well. During periods of general market liquidity stress, requirements referred to in principle 1 may be temporarily suspended. The paper does not precisely define these periods: duration, quantitative factors… We recommend to precise the criteria of suspension: - What is a general market liquidity stress - Who will decide that there is a general market liquidity stress - What is the period of suspension	See previous response (79).

			- How to assess the end of the general market liquidity stress Also, does it mean that the exemption should be suspended during liquidity stress? There must be greater consistency with the CRD requirements for sponsor and originator institutions and on ensuring that sponsor and originator institutions apply the same standards, processes and controls are applied to exposures within a securitisation as they do to those held on their books. The key requirement in the CRD is for sponsors and originators to apply the same standards, processes and controls to securitised exposures and as they do to the exposures held on their book. CEIOPS' have only partially reflected this and instead sought to impose risk management requirements on these institutions such as requiring them to have a risk appetite, credit risk policy, effective systems to manage and monitor credit exposures, etc. While such requirements might be sensible, it should be left to CEBS to supervise the banking sector. Insurance companies cannot and should not be expected to do this. The measures needed are those in the CRD, i.e. to ensure equal treatment between exposures securitised and those not. The FFSA suggests that the requirements in this paragraph are revised to be consistent with the CRD and focus on ensuring equal treatment.	
81.	Munich Re	3.17.	Clarification is necessary why and how supervisory authorities can suspend the requirements, and they have to ensure an ongoing	See previous response (79).

			economic interest of the originator.	
82.	CEA ECO-SLV-09-620	3.18.	In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 2 is automatically met. For credit institutions not under CRD, undertakings can't have full certainty that all criteria under this principle are met by such originators. The CEA expects that the requirements listed under Principle 2 will be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
83.	CRO Forum	3.18.	In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 2 is automatically met.	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
84.	FFSA	3.18.	This comment applies to paragraph 3.43 as well. If the credit institution is part of the UE, and subject to CRD, in this case, we recommend not to add all these requirements, since the credit institution will have to automatically comply with it. It should not be the undertaking to demonstrate that the credit institutions comply with all Basel 2 criteria. How undertakings will be able to make sure that all the criteria are met by credit institutions? In what extent can undertakings be reproached for not making	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements. See also previous response (1) on breaches of requirements and the consequences of such breaches.

			sure that all criteria are met? For example if only a single criteria is not met?	
85.	Deloitte European Union member firms of Deloitte T	3.19.	This section refers to "sound and well-defined criteria" for credit granting. However who should determine if the criteria are sound and well-defined? Would a portfolio covered by IRB waiver automatically be considered as having "sound and well-defined" criteria?	An IRB waiver on its own should not be taken by undertakings to mean that the portfolio is automatically based on 'sound and well-defined' criteria. Undertakings should take a number of factors into consideration in deciding whether a sponsor or originator credit institution bases its credit granting on sound and well-defined criteria.
86.	DIMA (Dublin International Insurance & Management	3.19.	We believe that it will be virtually impossible for undertakings to ensure that issuers meet the stated criteria, even after significant verification work by the undertaking. We believe reciprocity of supervision should be invoked here and at a minimum, issuers who are supervised by CEBS or stated international equivalents can be assumed to be operating effective systems.	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
87.	Deloitte European Union member firms of Deloitte T	3.20.	We recommend giving more thought how the undertakings should ensure that an originator operates effective systems to manage the ongoing administration. I could be quite difficult to determine when it is effective. Also what is to be done to ensure? Is the statement of the external auditor in this respect sufficient?	Each undertaking and originator will have characteristics that are unique to their situation and CEIOPS therefore feels that prescribing processes and/or formats to be used in an undertakings' assessment should be avoided. There may be more than one way of an undertaking being satisfied as to the effectiveness of an originator's

				systems.
88.	DIMA (Dublin International Insurance & Management	3.20.	We believe that it will be virtually impossible for undertakings to ensure that issuers meet the stated criteria, even after significant verification work by the undertaking. We believe reciprocity of supervision should be invoked here and at a minimum, issuers who are supervised by CEBS or stated international equivalents can be assumed to be operating effective systems.	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
89.	CEA ECO-SLV-09-620	3.22.	We invite Ceiops to make more precise who should provide the documentation in case there are several intermediaries between the originator and the insurance undertaking.	The paper states that "the documentation maintained by the originator…" CEIOPS considers this clear that the documentation should, therefore, be provided with the originator as the initial source. The information should be received by the undertaking in the same form as it left the originator (i.e. unaltered by any intermediaries involved in the transmission of the information).
90.	FFSA	3.22.	This comment applies to paragraph 3.43 as well. If the credit institution is part of the UE, and subject to CRD, in this case, we recommend not to add all these requirements, since the credit institution will have to automatically comply with it. It should not be the undertaking to demonstrate that the credit institutions comply with all Basel 2 criteria. Documentation to be provided to insurers should be clearly described: nature, extent and frequency of inspections, risks assessment…	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.

			If there are many intermediaries between the undertaking and the originator, from whom the documentation should be provided?	See previous response (89).
91.	CEA ECO-SLV-09-620	3.23.	In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 3 is automatically met. Hence, the CEA expects that the requirements listed under Principle 3 will be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements.
92.	CRO Forum	3.23.	See 3.43	See response to 3.43.
93.	FFSA	3.23.	This comment applies to paragraph 3.44 as well. The CP does not precise the format of the disclosure made by the initiator and sponsor to define their level of commitment and how undertakings can assess it.	See previous response (87).
94.	CEA ECO-SLV-09-620	3.24.	Ceiops should not extend the regulations governing the credit institutions. The required level of available data for undertakings in order to perform their stress tests seems to be too ambitious. Indeed, this look-through approach is very complex, and would lead to conduct undertakings to disinvest from these investments. Stress test should have regard to the risk-profile of the product itself.	See previous response (6) on stress testing. CEIOPS considers that this response applies equally to Principle 2 as it does to Principle 6 in relation to the importance and appropriateness of stress testing proposed in the paper.

95.	Deloitte European Union member firms of Deloitte T	3.24.	Whilst there are moves underway in Europe and elsewhere to encourage ABS issuers to provide more information on their deals to investors (both at issuance and on an ongoing basis), it is not clear the extent to which these proposals will be adopted and followed in the industry. Historically the majority of private label ABS issues were purchased by non-regulated offshore entities, so the requirement of insurers or other regulated entities to require transparency may be of limited force on the ABS market. If such transparency is not provided by issuers this recommendation would effectively close the ABS market to insurers. Even where transparency is provided by investors obtaining complete information on a CDO2 and its underlying CDO's may be difficult for a small investor in ABS (such as most insurers). Again this could practically close off a market to insurers.	Noted.
96.	DIMA (Dublin International Insurance & Management	3.24.	The certification mentioned here is missing from 3.44 and should be included there.	Noted. An addition has been made to Principle 3 in the Advice.
97.	FFSA	3.24.	The required level of available data for undertakings in order to perform their stress tests seems to be too ambitious. Indeed, this look-through approach is very complex, and would lead to conduct undertakings to disinvest from these investments. Stress test should be more straight forward, regarding the risk-profile of the product itself.	See previous response (6) on stress testing. CEIOPS considers that this response applies equally to Principle 2 as it does to Principle 6 in relation to the importance of stress testing.
98.	Munich Re	3.24.	For small portfolios a detailed view on the underlying loans is reasonable, but for large portfolios of 500 or more loans this may be confusing. In this case we propose to state a supervisory requirement on a standardised, detailed (but aggregated) periodic	In the case of large portfolios, the ability of an undertaking to have a detailed view on the underlying risks is of a high

			reporting. When controlling requirements are based on demand of investors this yields individual solutions and incomparable data.	priority in order to actively and effectively manage its business (principle of proportionality and prudent person principle). If undertakings cannot adequately observe such risks or find the process confusing then they should not invest. CEIOPS does not propose a requirement on standardised reporting.
99.	CEA ECO-SLV-09-620	3.25.	Basically we agree that repackaged loan investments are also subject to Art. 132 of the level 1 text (the prudent person principle). However, it must be considered that undertakings are not in the position to control and to manage risks which are associated with the respective underlying assets in all situations. For example asset swaps may take place, which is not at the discretion of the investor. Therefore it would be rather sensible to require undertakings to have a thorough understanding of the structural features of a securitisation transaction under level 2 as is the case in Article 122a 5 of the CRD. This requires credit institutions to understand the possible impact of features such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers and deal-specific definition of default. Currently these requirements seem to be left to level 3.	CEIOPS considers that undertakings need to understand their investments, in-line with the prudent person principle. As stated in the paper, undertakings are required to have an understanding of the structural features of a transaction (e.g. contractual waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default).

100.	FFSA	3.25.	Will the CEIOPS define the granularity of all the diligences the undertakings should perform? With respect to these paragraphs, it seems that the undertaking should prove it is an expert in these kind of products, which is not the case for the investors in the CRD. This would lead to put additional requirements, documentation and burden on the insurance industry in comparison with other investors	Please see previous responses (87) and (98) on the prudent person principle.
101.	Deloitte European Union member firms of Deloitte T	3.26.	This section notes that there are no regulatory limits on investments. However, it would seem appropriate for undertakings being required to carry out additional due diligence and appropriate benchmarking where they subscribe to a significant majority of the repackaged loan investment's exposure (or they are the only investor).	Noted.
102.	DIMA (Dublin International Insurance & Management	3.26.	Given the detail included in this section, we believe it could also include a reference to prime / alt-A / sub-prime for MBS.	CEIOPS has not included references to specific products in this section. See previous response (1) on the scope of the paper.
103.	FFSA	3.26.	With respect to these paragraphs, it seems that the undertaking should prove it is an expert in these kind of products, which is not the case for the investors in the CRD. This would lead to put additional requirements, documentation and burden on the insurance industry in comparison with other investors	Please see previous response (98) on the prudent person principle.
104.	XL Capital Ltd	3.26.	We agree with this paragraph and would expect this to be ingrained in investment policies and guidelines.	Noted.
105.	FFSA	3.27.	With respect to these paragraphs, it seems that the undertaking should prove it is an expert in these kind of products, which is not the case for the investors in the CRD. This would lead to put additional requirements, documentation and burden on the	Please see previous response (98) on the prudent person principle.

			insurance industry in comparison with other investors	
106.	XL Capital Ltd	3.27.	We agree with this paragraph	Noted.
107.	FFSA	3.28.	With respect to these paragraphs, it seems that the undertaking should prove it is an expert in these kind of products, which is not the case for the investors in the CRD. This would lead to put additional requirements, documentation and burden on the insurance industry in comparison with other investors	Please see previous response (98) on the prudent person principle.
108.	CEA ECO-SLV-09-620	3.29.	It is essential that a proportionate approach is taken. The information requested here is very detailed, likely to be hard for an insurer to obtain and typically disproportionate given the limited extent of ABS investments held by insurers. Indeed, it could discourage diversification, i.e. investing in a few, relatively large, ABS holdings rather than investing in a larger number of smaller ABS holdings, to avoid burdensome requirements. The important thing is that insurers understand the sensitivity of their investment to factors that affect the underlying exposures and the liquidity of their investments. The CEA recommends that further work is performed to understand what monitoring requirements are needed and can realistically be expected.	See previous response (1) on the principle of proportionality. No further work is planned in this area.
109.	Deloitte European Union member firms of	3.29.	The reliability of information relevant to the monitoring of the investment will be variable. In particular, this section refers to “frequency distribution of credit scores or other measures of credit worthiness across underlying exposures”. If a financial institution has a waiver to use IRB for a portfolio of loans in	Noted.

	Deloitte T		question, then it provides distribution of PD and LGD bands. However, for those institutions that operate without the waiver, score-based distributions are less reliable.	
			On another point, although we agree with the fact that the investment should be monitored on a regular basis, no details are provided of the action that the undertaking should perform based on the assessment. The proposed action should be aligned with the risk appetite. We suggest that the decision going forward related to the investment should be an integrated part of the assessment. The review and recommendation should be part of the investment committee meeting (or delegate of).	Noted.
110.	FFSA	3.29.	It is essential that a proportionate approach is taken. The information requested here is very detailed, likely to be hard for an insurer to obtain and typically disproportionate given the limited extent of ABS investments held by insurers. Indeed, it could discourage diversification, i.e. investing in a few, relatively large, ABS holdings rather than investing in a larger number of smaller ABS holdings to avoid burdensome requirements. The important thing is that insurers understand the sensitivity of their investment to factors that affect the underlying exposures and the liquidity of their investments. The FFSA recommends that further work is performed to understand what monitoring requirements are needed and can realistically be expected.	See previous response (108).
111.	XL Capital Ltd	3.29.	While we agree with the concept of having formal monitoring procedures, suggestions in this section could potentially require significant disclosures from the originators. For US investments, most of this data is readily available, we have not found this to be	If an undertaking chooses to outsource functions such as in this example, it must retain control over the outsourced

			the case for Non US securitised positions and we rely on our external managers to provide this to us; is this acceptable as long as we can demonstrate that our managers have the systems and processes to properly monitor the underlying collateral?	function as the responsibility remains with the undertaking itself.
112.	CEA ECO-SLV-09-620	3.30.	It is essential that a proportionate approach is taken. In the case of complex structured products like CDO square, it seems difficult for undertakings to have access to all the required information.	See previous responses (108) on proportionality and (98) on the prudent person principle.
113.	DIMA (Dublin International Insurance & Management	3.30.	The extension of the requirement to risks underlying the securitisation tranches and not just the tranches themselves will be impractical in certain cases.	See previous response (98).
114.	FFSA	3.30.	This comment applies to paragraph 3.46 as well. In the case of complex structured products like CDO square, it seems to be difficult for undertakings to have access to all the required information. The FFSA agrees that monitoring procedures should be commensurate with the risk profile. However, as described in our response to 3.29 the FFSA is concerned that this will not be the case. It is essential that a proportionate approach is taken. It is also important that companies understand and monitor the liquidity of such investments if they are material. The FFSA recommends that further work is performed to	See previous response (98). See previous response (108).

			understand what monitoring requirements are needed and can realistically be expected.	
115.	European Insurance CFO Forum	3.31.	'Waterfall', as set out in footnote 16, could relate to principal as well as interest. We recommend that the footnote be updated to reflect this.	CEIOPS has decided to retain the original text in the paper.
116.	CEA ECO-SLV-09-620	3.32.	We attract attention that performing such stresses with a too large scope may be very complicated and burdensome to undertakings. Taking into consideration that securitisations are subject to individual sub-modules of the market risk (i.e. spread risk) and therefore individual stress assumptions, we reject the requirement that undertakings would have to perform additional stress tests with respect to securitisation positions. In addition, we do not recognise the necessity to undertake specific stress tests given that stricter requirements are placed on the assessment of these securities and that the enforcement of adequate and effective risk management by the insurance undertaking are essential prerequisites for their acquisition. In case that the requirement of a stress test is maintained, Ceiops should delete at least the wording "simultaneous taking into account the dynamic effect of the stress test scenario on the rest of their business." This requirement would impose the undue burden of additional comprehensive solvency calculations not provided for in the Framework Directive.	See previous response (6) on stress testing.
117.	CRO Forum	3.32.	If the underlying bundle of assets loses 20% of its value, an	See previous response (55).

			originator holding the 5% retention as a vertical slice loses 1% of the total value but the equity and mezzanine tranches may be wiped out. CROF proposes that Level 3 guidance highlights that this is a critical issue in the assessment of an arrangement and needs to be fully reflected in stress testing.	
118	FFSA	3.32.	This comment applies to paragraph 3.47 as well. CP states that stress tests should be performed regularly. Does that mean that the frequency should be the same as the ORSA one, once a year? We query Ceiops why additional stress tests are needed especially for repackaged loans investments and what would be the scope of such tests. We attract attention that performing such stresses with a too large scope may be very complicated and burdensome to undertakings.	The appropriate frequency of stress testing should be determined by the undertaking and should be commensurate to the nature, scale and complexity of the financial instruments being held. See previous responses (1) on the principle of proportionality and the prudent person principle.
119.	CEA ECO-SLV-09-620	3.33.	This paragraph indicates that the undertaking can rely on External Credit Assessment institution only if they are able to challenge and understand the assumptions, methodology of ratings. Since ECAI are going to be regulated, we consider that once the instrument has a rating, the undertaking should be able to rely on this rating without having to be an expert in all the detailed rating and valuation methodology. This paragraph would lead undertakings not being able to invest in such financial products.	See previous response (5) on reliance on ECAI assessments.

120.	FFSA	3.33.	This paragraph indicates that the undertaking can rely on External Credit Assessment institution only if they are able to challenge and understand the assumptions, methodology of ratings. Since ECAI are going to be regulated, we consider that once the instrument has a rating, the undertaking should be able to rely on this rating without having to be an expert in all the detailed rating and valuation methodology. This paragraph would lead the undertaking not to be able to invest in such financial products.	See previous response (5) on reliance on ECAI assessments.
121.	CEA ECO-SLV-09-620	3.34.	Please, see comment to 3.33.	See response to 3.33.
122.	FFSA	3.34.	Same as previous paragraph: this section states that the undertaking should challenge the rating from the ECAI. This seems so complex that the insurance industry will not be able to invest in such instruments anymore.	See previous response (5) on reliance on ECAI assessments.
123.	XL Capital Ltd	3.34.	We agree and understand that external rating agencies did not do a very good job in the past reflecting the true risk rating of underlying collateral in securities products, we expect our external managers to conduct thorough fundamental analysis on holdings in addition to evaluating ratings before adding them into our portfolio. In-house we do not have the ability to re-rate securities but would rely on our managers to build this into their processes. We trust this would be an acceptable approach.	See previous response (5) on reliance on ECAI assessments. In addition, internal ratings should also be looked at alongside other considerations when making the decision whether to invest or not (see previous response (20)).
124.	CEA ECO-SLV-	3.35.	We believe that for repackaged loan investments the risks need to be appropriately assessed but any mitigating / hedging instruments, such as CDS, should be assessed also to get an	The advice states that “undertakings should not only rely on any hedging

	09-620		appropriate understanding of the net investment position. This would be in line with the solvency II regime in terms of risk mitigation factors.	instrument…" and not that such instruments cannot be taken into account. What the advice seeks to achieve is a holistic approach to risk management within undertakings that does not rely on a one-dimensional approach.
125.	FFSA	3.35.	We consider that the risk should be assessed net of any mitigating / hedging instruments, such as CDS. This is in line with the solvency II regime in terms of risk mitigation factors.	See previous response (124).
126.	CEA ECO-SLV-09-620	3.36.	It is essential that proportionality is applied appropriately. The requirements described here are very detailed and extensive. Notwithstanding the comment that they should be commensurate with the risk profile, it is stated that the formal procedures "should include", which implies that all of the requirements are required regardless of the significance of the risk, which is likely to be disproportionate. The CEA recommends that: ☐ the last sentence in the first paragraph is amended from "Analysing and recording to them should include:" to: "The analysis and information recorded could, depending upon materiality, include:" ☐ Point b) is expanded to include an understanding of contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers and deal-specific definition of default.	See previous response (1) on the principle of proportionality. CEIOPS has maintained the wording contained in the draft advice and does not propose to change this. The first proposed change is covered by the principle of proportionality and the second under the last paragraph in Principle 5.

127.	CRO Forum	3.36.	See 3.48	See response to 3.48.
128.	DIMA (Dublin International Insurance & Management	3.36.	Delete up to and including "to them should include:" and replace with:- "Before investing in repackaged loans or similar financial arrangements, and as appropriate thereafter, an undertaking should be able to demonstrate to its supervisory authority that it has a comprehensive and thorough understanding of, and has implemented formal policies and procedures in relation to, each individual securitisation position. These formal policies and procedures should be commensurate with the risk profile of the individual securitisation positions and should include:"	CEIOPS has maintained the wording contained in the draft advice and does not propose to change this. The changes suggested to the wording essentially serve the same purpose as the wording contained within the original CP.
129.	FFSA	3.36.	It is essential that proportionality is applied appropriately. The requirements described here are very detailed and extensive. Notwithstanding the comment that they should be commensurate with the risk profile, it is stated that the formal procedures "should include", which implies that all of the requirements are required regardless of the significance of the risk, which is likely to be disproportionate. The FFSA recommends that ☐ the last sentence in the first paragraph is amended from "Analysing and recording to them should include:" to: "The analysis and information recorded could, depending upon materiality, include:" ☐ Point b) is expanded to include an understanding of contractual waterfall and waterfall related triggers, credit	See previous response (126).

			enhancements, liquidity enhancements, market value triggers and deal-specific definition of default.	
130.	RSA Insurance Group	3.36.	Principle 6, 3.32 'material value' is a vague comment	Noted.
131.	CEA ECO-SLV-09-620	3.38.	We recommend that the public information required by this paragraph to be in line with and not exceed current accounting disclosure under IFRS – IFRS 7.	This is covered by Solvency II reporting and not IFRS. Article 51 of the Level 1 text sets out information that should be publicly disclosed by undertakings, and this is developed further – in accordance with Article 56 – in CEIOPS' Level 2 advice on Supervisory Reporting and Public Disclosure Requirements. Article 53(1) in the Level 1 text allows undertakings to not disclose information where: (i) the competitors of the undertaking would gain significant undue advantage; or (ii) there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.
132.	DIMA (Dublin	3.38.	It is not clear what information is appropriate for supervisory reporting and what is appropriate for public disclosures. In	See previous response (131).

	International Insurance & Management		particular, DIMA recommends suitable limitations to the required public disclosures around actual investments for reason of competition and commercial sensitivities.	
133.	FFSA	3.38.	This comment applies to paragraph 3.48 as well. What type of information undertakings have to disclose to supervisory authorities and to the public? We recommend that the public information be in line with, and not exceed current accounting disclosure under IFRS – IFRS 7. The requirement to demonstrate for individual securitisation positions that the company has a comprehensive and thorough understanding is likely to be disproportionate and burdensome. It is also not a requirement for credit institutions under the CRD. CEIOPS should be consistent with the CRD and instead focus on companies overall policies, procedures and reporting 1. The FFSA recommends that the first paragraph is amended to: 2. 3. "Before investing in repackaged loans or similar financial arrangements, and as appropriate thereafter, an undertaking shall be able to demonstrate to its competent supervisory authorities that for each of its individual securitisation positions it has a comprehensive and thorough understanding of and has implemented formal policies and procedures appropriate to its investment portfolio. These formal policies and procedure shall commensurate with the risk profile of their investments in securitised positions."	See previous response (131). See previous responses (1) on the principle of proportionality and the prudent person principle. CEIOPS has maintained the wording contained in the draft advice and does not propose to change this.
134.	CEA ECO-SLV-	3.39.	We suggest that grandfathering rules are understood as follows: For undertakings that have invested in securitisations by 31	See previous response (1) on the addition to the

	09-620		October 2012 the above requirements shall apply from 31 December 2014. This also holds for existing securitisations that will have been subject to restructuring or substitution until 31 October 2014. For all other cases the new rules may apply We attract attention that the grandfathering rules are not clear for the case where existing securitizations are restructured. We remind that the undertaking cannot decide on the restructuring or substitution of underlying within these investments.	grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.
135.	CRO Forum	3.39.	See 3.49	See response to 3.49.
136.	DIMA (Dublin International Insurance & Management	3.39.	While agreeing with cross-sectoral consistency, and recognising that an appropriate grandfathering provision is necessary for pragmatic reasons, the delay in application of the requirements in relation to existing holdings to December 2014 and then only if underlying exposures are altered, seems excessively lenient. At a minimum, all holdings should be subject to the rule, and given publication of the draft advice now, a five year period seems as long as might be necessary.	See previous response (1) on the grandfathering section in the advice. Further clarification has been provided on the scope of the grandfathering arrangements.
137.	European Insurance CFO Forum	3.39.	Substitutions within the original terms of the investment should not be regarded as a change and application of pre-existing rules should continue to apply. It is common for the originator to replace individual underlyings (i.e. substitute a new mortgage for one originally in the securitised pool). This is generally to the investor's advantage. Substitutions of this sort within the original terms of the investment should not be regarded as a change and application of pre-existing rules should continue to apply. Comments in 3.49 are also relevant here.	See previous response (1) on the grandfathering section in the advice. Further clarification has been provided on the scope of the grandfathering arrangements and on substitutions.

138.	FFSA	3.39.	The CP is mentioning the grandfathering rule, without indicating what will happen if the existing securitisations would not meet the requirements after a restructuration. We remind that the undertaking cannot decide on the restructuring or substitution of underlyings within these investments. We recommend that the relating investments are charged with the standard risk module until its life end, whatever the restructuration is.	See previous response (1) on breaches of requirements and the consequences of such breaches and on substitutions.
139.	XL Capital Ltd	3.39.	We would appreciate clarification of the applicable dates. We understand that the requirements apply to securities issued after 1 January 2011 [Directive Article 133 2(a)], and, via the grandfathering provision in CP 63, also apply to existing (invested in as at 31 October 2012) securitisations from 31 December 2014 where new underlying exposures are added or substituted after that date. We would appreciate clarification that the relevant principles therefore will not apply to existing securitisations after Dec 31 2014 if new exposures are not added to the underlying after that date.	See previous response (1) on the grandfathering section in the advice. Further clarification has been provided on the scope of the grandfathering arrangements and on substitutions.
140.	CEA ECO-SLV-09-620	3.40.	Ceiops introduces a concept of "on-going basis": retained positions, interest or exposures should not be hedged or sold. Although we support the fundamental view that the originator retains a net economic interest of not less than 5%, we want to draw attention to the fact that it is out of control of the investor to control on an ongoing basis, whether the originator, sponsor or original lender sticks to this requirement. For example positions within other credit institutions could be	See previous response (60) on undertakings' monitoring of originators' compliance with the requirements and originators' public declaration of intent. Also see previous response (1) on breaches of requirements and the consequences of such breaches.

			hedged on a macro basis e.g. the total position is considered by a credit institution. Based on this assessment on a macro level hedging strategies etc are introduced. So a specific allocation is not to be observed by third parties. Therefore we hold that it would be sufficient for undertakings to make sure that the issuer has declared in a public prospectus that it intends to hold at least 5% throughout the lifetime of the investment (as outlined by Ceiops in 3.13). At the same time we expect that principle 1 is automatically met, given that the credit institution is governed by the requirements as laid down in the CRD. Hence, the CEA expects the retention of this minimum economic interest and other requirements listed under the other originator related principles to be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role. In the 2nd paragraph, is the second sentence the right interpretation of the first sentence? We have not found such an interpretation in the CRD. Could Ceiops provide more insight into this interpretation?	See previous response (1) on the responsibilities of undertakings in checking originator's compliance with the requirements. See previous response (65).
141.	CRO Forum	3.40.	A CROF notes that the 5% retention is drawn from the CRD and recently endorsed by CEBS advice.	Noted.

			B CEIOPS introduces a concept of "on-going basis": retained positions, interest or exposures should not be hedged or sold. 1 This requirement is very difficult, or impossible, for investors to observe. Positions with other credit institutions are often hedged on a macro basis e.g. the total position is considered by a credit institution. Based on this assessment on a macro level hedging strategies etc are introduced. These may use indices or other triggers. Rolling issuance programs could also change the net position. So a specific allocation can not be observed by third parties. The principle aim of such a requirement is to align the interests of the originator and the investor. 2 It is possible that a Net Economic Interest established at the origination of the investment is 'maintained' (i.e., retained) over the life of the underlying , but that the 5% amount is not necessarily 'maintained'. For example, if the retention is via a 1st loss piece it is possible the value of the 1st loss piece drops below the 5% threshold if (1) the portfolio under-performs; or (2) exposures are increased/decreased due to portfolio resets; or (3) the valuation adversely changes due to market factors. Clarity is needed to confirm that an erosion of the retained piece's value doesn't result in 'non-compliance' with the retention requirement. 3 'at origination' is open to confusion. CROF suggests that it is clarified that 'at origination' applies to the time of securitization not the point at which any underlying	See previous response (60) on undertakings' monitoring of originators' compliance with the requirements and originators' public declaration of intent. See previous response (1) on breaches of requirements and the consequences of such breaches. 'At origination' refers to the moment of securitisation, not the establishment of the

			arrangement was established.	underlying arrangement.
			4 Where the 5% retention is applicable, originators will need to understand what will be allowed as a credible valuation of the 5% being retained. Market valuations can vary over a short period. However, any clarification in Level 3 will need to be flexible to allow for the wide variety of arrangements.	Noted.
			5 A strict interpretation of the paper implies that when any of the principles is not complied with the undertaking is no longer allowed to hold the investments in the ABS. In such a case the (re)insurance undertakings will be forced to close their positions and adding to amplifying the pro-cyclicality effect. We believe that a more measured response is appropriate.	See previous response (1) on breaches of requirements and the consequences of such breaches.
			C	
			'Similar financial arrangements' is open to interpretation and creates some uncertainty. It would be useful if CEIOPS could confirm that this is a contingency phrase and that there are at this time no arrangements being considered.	See previous response (1) on the clarification of the scope and definitions used within the paper.
			CROF would expect insurance linked securities to be covered by the general risk management and investment principles of the Directive and not by these measures. If they are in scope some significant adjustments would be needed, for example to deal flexibly with the full range of possible non indemnity triggers.	See previous response (1) on the scope of the requirements.
			CROF does not expect that it should include arrangements such as writing a credit re/assurance contract or derivative instrument	

			(each a form of "financial arrangement") which is collateralised by the Cedent or Reassurer using fixed income securities.	
142.	Deloitte European Union member firms of Deloitte T	3.40.	See comments on 3.10 above.	See response to 3.10.
143.	DIMA (Dublin International Insurance & Management	3.40.	For consistency with the CRD and section 2.5 of this CP, it would be better to refer to "material net economic interest". It is essential for the alignment of interests that originators retain a net economic interest. However 5% is too low to achieve that. The ratio should be increased – we suggest a minimum of 15%. Obviously this leads to cross-sectoral issues if different to the CRD, so we strongly encourage early discussions on this front with CEBS. If the contract between the originator and the (re)insurance undertaking notes that the originator must retain 5% of the ownership, on an ongoing basis per 3.40, does this remove the liability on the (re)insurance undertaking to monitor the 5% stake throughout the duration of the contract? If the contract changes and the originator reduces their 5% ownership, is the (re)insurance undertaking required to sell at a loss (if at a loss) or is there a period that the security may continue to the held and if so for what period?	See previous response (50). See previous responses (1) on undertakings' responsibility to monitor originators' compliance with the requirements and also the information on breaches of requirements and consequences of such breaches.
144.	European Insurance CFO Forum	3.40.	It is inconsistent with the principles of Solvency to prohibit undertakings in terms of the nature of the investments they can hold.	See previous response (1) on the prudent person principle.

			The CFO Forum recognises the Level 1 Directive requirements for advice to be drafted but is of the opinion that this proposal is not consistent with the underlying principles of Solvency II that imply that insurers are permitted to invest as they wish subject to the normal Solvency II constraints. Solvency II should not prohibit undertakings in terms of the nature of the investments they can hold. Solvency II principles require insurers to understand their risks and hold capital rather than explicitly restricting investment activities. It is inappropriate for the supervisor to prohibit investments unless specific conditions are met. The conditions should be more principle-based and any "penalty" should involve the required capital measurement for solvency purposes. Also, we emphasise that there must remain degrees of freedom for undertakings and their asset managers to take investment decisions under maintainable effort. CP63 could create a competitive disadvantage for European insurers needing to make non-European investments. For European investments, CP63 advice may have a reduced impact on new investments as it is assumed that the CRD will require originators to apply the stated principle. It will, however, impact European insurers needing to make non-European investments. CP63 restricts undertakings on investments in markets outside of Europe which are not governed by the CRD. This could, for example, create a competitive disadvantage for the non-European operations of European Groups. The requirement for investors to look through to the underlying	See previous response (4) on non-EU business.

			exposures will be very onerous. The consultation paper requires investors to look through to the underlying exposures. If the original loan is subsequently repackaged, it will be very onerous for companies to look through to the original exposures. This should be the responsibility of the regulator of the originator rather than the responsibility of the investor. Further clarification is also required as to whether the originator is free to decide in which tranche it can keep the 5% net economic interest and whether it has to keep 5% of the total securitisation or just of each tranche. The CFO Forum recommends that these points are clarified within the revised Level 2 implementing measures. While the repackaging is seen as a driver of the credit crisis, it should be noted that repackaging helps to create liquidity in a mortgage market that has historically been illiquid.	See previous response (1) on the responsibilities of undertakings in checking originators' compliance with the requirements. See previous response (55). The originator is not free to decide in which tranche it can keep the retained 5% interest. Noted.
145.	FFSA	3.40.	Credit institutions do not have any prohibition from investing in such assets if they do not respect the CRD criteria; in this case, their capital charge is simply higher. For that reason, we firmly disagree with any restriction on repackaged loans, which is considered to be a direct intervention of the supervisor in the management of the undertaking. In case the company does not comply with the principles, we would suggest that the relating investments are deducted from the own funds of the undertaking. CEIOPS introduces a concept of "on-going basis": retained positions, interest or exposures should not be hedged or sold. This requirement is very difficult or impossible for investors to observe as positions within other credit institutions could be	See previous response (52). See previous response (60) on undertakings' monitoring of originators' compliance with the requirements and originators'

			hedged on a macro basis e.g. the total position is considered by a credit institution. Based on this assessment on a macro level hedging strategies etc are introduced. So a specific allocation is not to be observed by third parties. The principle aim of such a requirement is to align the interests of the originator and the investor. This should be the focus. In the 2nd paragraph, is the second sentence the right interpretation of the first sentence? We have not found such an interpretation in the CRD. Could CEIOPS provide more insight into this interpretation?	public declaration of intent. Noted. See previous response (65).
146.	GDV (German Insurance Association)	3.40.	Although we support the fundamental view that the originator retains a net economic interest of not less than 5%, we want to draw attention to the fact that it is out of control of the investor to control on an ongoing basis, whether the originator, sponsor or original lender sticks to this requirement. Therefore we hold that it would be sufficient for undertakings to make sure that the issuer has declared in a public prospectus that it intends to hold at least 5% throughout the lifetime of the investment (as outlined by CEIOPS in 3.13). At the same time we expect that principle 1 is automatically met, given that the credit institution is governed by the requirements as laid down in the CRD. Hence, the GDV expects the retention of this minimum economic interest and other requirements listed under the other originator related principles to be checked by the competent regulators.	See previous response (1) on breaches of the requirements and the consequences of such breaches. See previous response (1) on the responsibilities of undertakings in checking

			Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	originators' compliance with the requirements.
147.	Lucida plc	3.40.	Whilst ideally originators would retain a proportion of the economic interest, this is something that a purchaser cannot guarantee. In addition, repackaged loans originating outside the EU need not take account of this requirement and such loans could represent an attractive diversified investment opportunity. Hence we believe that this requirement could unnecessarily constrain investment.	See previous responses (1) on breaches of the requirements and the consequences of such breaches and (4) on non-EU business.
148.	Munich Re	3.40.	The fee that is earned by the originator should be taken into account. Example: if an originator earns a fee much bigger than the 5%, the moral hazard problem is not solved.	See previous response (56).
149.	RBS Insurance	3.40.	In our view, it should be an originator's responsibility to ensure that these requirements are met. The investor should be able to place a reliance on public statements by the originator (for example in prospectus) that these requirements have been met.	See previous response (1) on breaches of requirements and the consequences of such breaches.
150.	XL Capital Ltd	3.40.	See comments at 3.9 above	See response to 3.9.
151.	CEA ECO-SLV-09-620	3.41.	The level 2 test should ensure that investments exempted from the 5% economic interest requirement included in this paragraph are consistent with those in the CRD. Cross-sectoral consistency is important and should be enshrined at level 2, with detailed lists of exempted institutions being provided at level 3. Insurance companies should not, as currently proposed, be required to seek exemptions on a case-by-case basis as this is burdensome and inconsistent with the banking sector.	See previous response (76).

			The principles for exemptions should be defined at Level 2 and be consistent with those in the CRD with a list of the exempted institutions being maintained at Level 3 which is consistent with the CRD treatment.	
152.	Deloitte European Union member firms of Deloitte T	3.41.	We have doubt whether there should be an exemption made for widely traded securities as this only adds to the complexity. The recent crisis has shown that the market for widely traded securities can easily disappear.	See previous response (76).
153.	European Insurance CFO Forum	3.41.	It would be useful to add examples of transactions that meet the Level 2 criteria to the text. It would be useful to have real world examples of transactions that are based on 'a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded' added to the text to aid understanding.	If anything further is developed in the CRD, CEIOPS could address this at Level 3.
154.	GDV (German Insurance Association)	3.41.	The level 2 test should ensure that investments exempted from the 5% economic interest requirement included in this paragraph are consistent with those in the CRD. Cross-sectoral consistency is important and should be enshrined at level 2, with detailed lists of exempted institutions being provided at level 3. Insurance companies should not, as currently proposed, be required to seek exemptions on a case-by-case basis as this is burdensome and inconsistent with the baking sector.	See previous response (76).

			The principles for exemptions should be defined at Level 2 and be consistent with those in the CRD with a list of the exempted institutions being maintained at Level 3 which is consistent with the CRD treatment.	
155.	Munich Re	3.41.	In concerns of a case by case approval of exemptions to principle 1, we recommend an application procedure for the sponsor or originator within the supervisory authority. In this way a positive list of exceptions for investment products could be established. For the case that the product refers to an index and its constituents are public enterprises like iTraxx indices, we recommend a general exemption without individual approval. These general exemption should also refer to indices of CDS as far as reference entities are public companies.	See previous response (76).
156.	DIMA (Dublin International Insurance & Management	3.42.	In relation to exemptions, if the ABS is trading on an index, is it exempt? If so, which indices are acceptable? If the supervisory authorities temporarily suspend the requirement, does this only apply to new purchases or are existing holdings allowed to be held indefinitely? This needs to be clarified further.	See previous response (76).
157.	Munich Re	3.42.	We do see a conflict here in terms of sustainability of Principle 1 and general industry risk reduction intention when Principle 1 can be overruled to support less regulated securitization markets. Clarification is necessary why and how supervisory authorities can suspend the requirements, and they have to ensure an ongoing economic interest of the originator.	See previous response (79) on the temporary suspension of requirements.

158.	CEA ECO-SLV-09-620	3.43.	In line with the CRD requirements for sponsor and originator institutions, the focus should be on ensuring equivalent treatment of exposures transferred via a securitisation compared to those retained by sponsor and originator institutions. The key requirement in the CRD is for sponsors and originators to apply the same standards, processes and controls to securitised exposures as they do to the exposures held on their book. It should be left to CEBS to supervise the banking sector. In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 2 is automatically met. For credit institutions not under CRD, undertakings can't have full certainty that all criteria under this principle are met by such originators. The CEA expects that the requirements listed under Principle 2 will be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	See previous response (76). See previous response (1) on the responsibility of undertakings to monitor originators' compliance with the requirements.
159.	CRO Forum	3.43.	In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 2 is automatically met. CEIOPS should not extend the regulations governing the credit institutions.	See previous response (1) on the responsibility of undertakings to monitor originators' compliance with the requirements.
160.	Deloitte European Union member firms of	3.43.	See comments on 3.19 above.	See response to 3.19.

	Deloitte T			
161.	DIMA (Dublin International Insurance & Management	3.43.	We believe that it will be virtually impossible for undertakings to ensure that issuers meet the stated criteria, even after significant verification work by the undertaking. We believe reciprocity of supervision should be invoked here and at a minimum, issuers who are supervised by CEBS or stated international equivalents can be assumed to be operating effective systems.	See previous response (1) on the responsibility of undertakings to monitor originators' compliance with the requirements. Also see previous response (1) on breaches of requirements and the consequences of such breaches.
162.	European Insurance CFO Forum	3.43.	It would practically be very difficult and potentially very costly to ensure that originators are meeting the credit, systems and documentation requirements. The practical implications of Principle 2 should be further considered and possibly clarified. Under the current regime, undertakings have not had the opportunity to perform direct due diligence on the originators of repackaged assets even in primary issuance situations. In secondary market purchases, the requirements would be even more difficult to fulfil and enforce. It is difficult to see how a (re)insurer can "guarantee" the sponsor is meeting these requirements. The (re)insurer can make sure the sponsor has stated in a prospectus that it has or will do them but 'ensuring' the fulfilment of criteria causes unacceptable effort. It would be preferable to say that undertakings should have a robust policy for monitoring exposures and assessing the overall risk of these investments. The approach taken in Principle 7 seems to be more practical.	See previous response (1) on the prudent person principle. See previous response (60). Also see previous response (1) on breaches of requirements and the consequences of such breaches. Principle 2 and Principle 7 are not substitutes for one another. The requirements under Principle 2 are consistent with the prudent

				person principle and are not considered to be unreasonable.
163.	GDV (German Insurance Association)	3.43.	In line with the CRD requirements for sponsor and originator institutions, the focus should be on ensuring equivalent treatment of exposures transferred via a securitisation compared to those retained by sponsor and originator institutions. The key requirement in the CRD is for sponsors and originators to apply the same standards, processes and controls to securitised exposures as they do to the exposures held on their book. It should be left to CEBS to supervise the banking sector. In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 2 is automatically met. For credit institutions not under CRD, undertakings cannot have full certainty that all criteria under this principle are met by such originators. The GDV expects that the requirements listed under Principle 2 will be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	See previous response (76). See previous response (1) on the responsibility of undertakings to monitor originators' compliance with the requirements.
164.	Legal & General Group	3.43.	Meeting principle 2 is pretty well impossible.	If Principle 2 is not met, undertakings cannot invest. See previous response (162).
165.	Lloyd's	3.43.	We are concerned by the use of the word "ensure" in this paragraph – especially in relation to bullet point 2. We believe that requiring investors to "ensure" into the future the operations of another entity's internal processes and controls is excessively onerous and would treat this asset class differently from other asset classes. Similarly we feel that the first bullet point should be clarified – for example is this suggesting that the same criteria	As outlined in the response to comment (1), it is the responsibility of the undertaking to ensure an originator's compliance with the requirements and to make a judgement on whether investing

			and processes should be applied to loans securitized as to loans retained on balance sheet by the originator?	would be acceptable given the information to hand. Also see previous response (1) on additional information added to the advice on breaches of requirements and the consequences arising from such breaches.
166.	Lucida plc	3.43.	We do not believe that a purchaser will be able to "ensure" that the sponsor and originator credit institutions comply with these criteria. These criteria are obviously important but investors will have to rely on undertakings made by the sponsor and originator.	See previous response (165).
167.	Munich Re	3.43.	Here we recommend to establish a sound process within the regulatory authority to certify applying originators or sponsors for each investment product offered in terms of supervisory requirements to be fulfilled like – credit granting processes, - administration and management of credit risks, - documentation. The supervisory requirement of diversification "diversify each credit portfolio given its target market and overall credit strategy" does not give objective guidelines. From our viewpoint a precise set of rules for measurement of diversification should be established.	CEIOPS does not consider that a supervisory approval of each originator or sponsor operating in the market would be desirable or satisfy the principle of proportionality. If undertakings wish to invest in tradable securities and other financial instruments based on repackaged loans, that is the decision of the undertaking and, therefore (as previously explained (1)), the responsibility for carrying out due diligence in relation to the suitability of an originator must rest with the investor in such products.
168.	RBS Insurance	3.43.	The Principle 2 requirements apply to an originator of repackaged loan investment rather than to an undertaking purchasing the	See previous response (165).

			security. In our view, it should be an originator's responsibility to ensure that these requirements are met. The investor should be able to place reliance on statements to that effect in prospectuses and other documentation. We believe that it would not be practical or even possible for each investor to review, for example, an effectiveness of originator's system.	
169.	CEA ECO-SLV-09-620	3.44.	In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 3 is automatically met. Hence, the CEA expects that the requirements listed under Principle 3 will be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	See previous response (1) on the responsibility of undertakings to monitor originators' compliance with the requirements.
170.	Deloitte European Union member firms of Deloitte T	3.44.	See comments on 3.24 above.	See response to 3.24.
171.	DIMA (Dublin International Insurance & Management	3.44.	The certification mentioned in 3.24 is missing from 3.44 and should be included here.	See response to 3.24
172.	GDV (German Insurance Association)	3.44.	In our opinion when a credit institution is governed by the requirements as laid down in the CRD, this principle 3 is automatically met. Hence, the GDV expects that the requirements listed under	See previous response (1) on the responsibility of undertakings to monitor originators' compliance with the requirements.

			Principle 3 will be checked by the competent regulators. Insurance undertakings should be able to take credit for the activity of these regulators and not be expected to duplicate their role.	
173.	Legal & General Group	3.44.	acceptable	Noted.
174.	Munich Re	3.44.	Reporting requirements should be made proportionate, e.g. by forcing the originator to publicly report all required data.	The decision to invest in tradable securities and other financial instruments based on repackaged loans is that of the investor, and it should therefore be the investor on which the reporting requirements rest.
175.	RBS Insurance	3.44.	We agree with the Principle 3.	Noted.
176.	CEA ECO-SLV-09-620	3.45.	Basically we agree that repackaged loan investments are also subject to Art. 132 of the level 1 text (the prudent person principle). However, it must be considered that undertakings are not in the position to control and to manage risks which are associated with the respective underlying assets in all situations. That is because, for example, asset swaps may take place, which is not at the discretion of the investor. Therefore it would be sensible to require undertakings to have a thorough understanding of the structural features of a securitisation transaction under level 2 as is the case in Article 122a 5 of the CRD.	See previous response (99).

			This requires credit institutions to understand the possible impact of features such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers and deal-specific definition of default. Currently these requirements seem to be left to level 3.	
177.	Deloitte European Union member firms of Deloitte T	3.45.	See comments on 3.26 above.	See response to 3.26.
178.	European Insurance CFO Forum	3.45.		
179.	GDV (German Insurance Association)	3.45.	Basically we agree that repackaged loan investments are also subject to Art. 132 of the level 1 text. However, it must be considered that undertakings are not in the position to control and to manage risks which are associated with the respective underlying assets. That is, investors cannot actively control and manage risks because, for example, asset swaps may take place, which is not at the discretion of the investor. Therefore it would be rather sensible to require undertakings to have a thorough understanding of the structural features of a securitisation transaction under level 2 as is the case in Article 122a 5 of the CRD.	See previous response (99).

			This requires credit institutions to understand the possible impact of features such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers and deal-specific definition of default. Currently these requirements seem to be left to level 3.	
180.	Legal & General Group	3.45.	acceptable	Noted.
181.	Lucida plc	3.45.	We believe that this principle needs to recognise that many of these activities could be outsourced to a third party investment manager. Such managers may invest a small proportion of assets in repackaged loans as a sensible diversification strategy without the insurer needing to have the skill to undertake all the activities in this paragraph itself.	Noted, although ultimate responsibility for ensuring that the outsourced activity meets the requirements cannot be delegated.
182.	RBS Insurance	3.45.	We agree with the Principle 4. It reinforces the prudent person principles of the Solvency 2 Directive.	Noted.
183.	XL Capital Ltd	3.45.	See comments at 3.26 & 3.27 above	See responses to 3.26 and 3.27.
184.	CEA ECO-SLV-09-620	3.46.	The CEA agrees that monitoring procedures should be commensurate with the risk profile. However, as described in our response to 3.29 the CEA is concerned that this will not be the case. It is essential that a proportionate approach is taken. It is also important that companies understand and monitor the liquidity of such investments if they are material.	See previous response (108).

			The CEA recommends that further work is performed to understand what monitoring requirements are needed and can realistically be expected.	
185.	CRO Forum	3.46.	CEIOPS comments 'Undertakings shall establish formal monitoring procedures commensurate with the risk profile of their investments in repackaged loans or similar financial arrangements …' CROF supports the objective of aligned economic interest and Principle 5 but notes that 'risk profile' should be set in relation to the investment in repackaged loans or similar financial arrangements in the context of the investment portfolio as a whole. CROF also notes that these requirements will need to be applied with a view to practicality and efficiency. For example, the mechanism to value and make the required adjustment for a large pool of residential mortgages may be different from that for a Collateralized Debt Obligation, backed by 100 public corporate debt obligations, where more transparency and granularity can be achieved.	Noted. Noted.
186.	Deloitte European Union member firms of Deloitte T	3.46.	See comments on 3.29 above.	See previous response (108).
187.	European Insurance	3.46.	It would practically be very difficult and potentially very costly to ensure that originators are continuing to retain at least 5% of all	See previous responses (1) on the prudent person principle and

	CFO Forum		such investments. There will be issues with the practicalities of managing exposures. It is not clear whether an undertaking could place reliance on a credit agency or the fact that an originator has guaranteed that they will retain 5% of the interest. The CFO Forum opposes a forced fire-sale of securities if the originator no longer complies with the principles set out in the consultation paper. It would be preferable to say that undertakings should have a robust policy for monitoring exposures and assessing the overall risk of these investments.	the section on breaches of requirements and the consequences of such breaches.
188.	GDV (German Insurance Association)	3.46.	The GDV agrees that monitoring procedures should be commensurate with the risk profile. However, as described in our response to 3.29 the GDV is concerned that this will not be the case. It is essential that a proportionate approach is taken. It is also important that companies understand and monitor the liquidity of such investments if they are material. The GDV recommends that further work is performed to understand what monitoring requirements are needed and can realistically be expected.	See previous response (108).
189.	GROUPAMA	3.46.	Groupama fully agrees that monitoring and stress tests procedures should be in place to follow up the investment done. However, Groupama considers it is essential to have a proportionate approach depending on the risk taken. A qualitative approach should be allowed if the risk is not material, or information given by the originator or sponsor could be used, if	See previous responses (1) on the principle of proportionality and (6) on stress testing.

			sufficient controls and reporting are in place with the undertaking.	
190.	Legal & General Group	3.46.	Whilst monitoring is done by insurers this proposal is likely to duplicate other efforts, including the banking regulators, be costly and probably incomplete as insurers can only have access to released information.	See previous response (1) on the prudent person principle. The monitoring proposed is considered necessary in order for undertakings to carry out an analysis of the risks applicable to their investment in tradable securities or other financial instruments.
191.	Lucida plc	3.46.	The level of monitoring envisaged in this section far exceeds that which is practicable as the information necessary is unlikely to be available. We are somewhat surprised that there is no requirement for the risk management function in monitoring and challenging the investment decisions.	See previous response (190). In relation to the risk management function, Article 44(1) of the Level 1 text states that: "Insurance and reinsurance undertakings shall have in place an effective risk-management system…to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies." The same Article also states that the "risk-management system shall be effective and well integrated into the organisational structure and in the decision-making

				processes of the insurance or reinsurance undertaking…”
192.	Munich Re	3.46.	Standardised monitoring and reporting procedures should be implemented.	Noted.
193.	RBS Insurance	3.46.	We support the Principle 5 and agree that the undertaking should have monitoring procedures in place in respect of investments. However, we are concerned that the details of performance information required from originator listed in paragraph 3.29 or 3.30 will not be easily available to investors unless they are published by originator on regular basis.	Noted.
194.	XL Capital Ltd	3.46.	See comments at 3.29 above	See response to 3.29.
195.	CEA ECO-SLV-09-620	3.47.	We attract attention that performing such stresses with a too large scope may be very complicated and burdensome to undertakings. Taking into consideration that securitisations are subject to individual sub-modules of the market risk (i.e. spread risk) and therefore individual stress assumptions, we reject the requirement that undertakings would have to perform additional stress tests with respect to securitisation positions. In addition, we do not recognise the necessity to undertake specific stress tests given that stricter requirements are placed on the assessment of these securities and that the enforcement of adequate and effective risk management by the insurance undertaking are essential prerequisites for their acquisition. In case that the requirement of a stress test is maintained, Ceiops should delete at least the wording “simultaneous taking into	See previous response (6) on stress testing.

			account the dynamic effect of the stress test scenario on the rest of their business." This requirement would impose the undue burden of additional comprehensive solvency calculations not provided for in the Framework Directive.	
196.	CRO Forum	3.47.	CROF supports the Principle of stress tests and that they be performed to identify entity wide effects but notes that this should not necessarily require extra tests to those performed in the derivation of SCR and ORSA. Stress tests should be focused on entity level not specifically designed around an individual arrangement but will need to take into account the risks of the underlying loans securitised and the structuring (see 3.32).	See previous responses (1) on the principle of proportionality and (6) on stress testing. The stress tests carried out by undertakings should be commensurate to the nature, scale and complexity of an undertaking's investment portfolio.
197.	GDV (German Insurance Association)	3.47.	We attract attention that performing additional stress tests may be very complicated and burdensome to undertakings. Taking into consideration that securitisations are subject to individual sub-modules of the market risk (i.e. spread risk) and therefore individual stress assumptions, we reject the requirement that undertakings would have to perform additional stress tests with respect to securitisation positions. In addition, we do not recognise the necessity to undertake specific stress tests given that stricter requirements are placed on the assessment of these securities and that the enforcement of adequate and effective risk management by the insurance undertaking are essential prerequisites for their acquisition. In case that the requirement of a stress test is maintained, delete at least the wording "simultaneous taking into account the dynamic effect of the stress test scenario on the rest of their	See previous response (6) on stress testing.

			business." This requirement would impose the undue burden of additional comprehensive solvency calculations not provided for in the Framework Directive.	
198.	GROUPAMA	3.47.	Groupama fully agrees that monitoring and stress tests procedures should be in place to follow up the investment done. However, Groupama considers it is essential to have a proportionate approach depending on the risk taken. A qualitative approach should be allowed if the risk is not material, or information given by the originator or sponsor could be used, if sufficient controls and reporting are in place with the undertaking.	See previous response (1) on the principle of proportionality.
199.	Legal & General Group	3.47.	acceptable	Noted.
200.	Munich Re	3.47.	Additional stress tests are deemed to be not proportionate. A sound risk management is able to detect potential problems, i.e. an additional extra layer of prudence is not necessary here. However, stress tests should be based on aggregated sensitivities and portfolio figures regarding the relevant market data (interest rates, spreads, default probabilities etc.).	See previous responses (1) on the principle of proportionality and (6) on stress tests.
201.	RBS Insurance	3.47.	We agree and support Principle 6. It reinforces the prudent person principles of the Solvency 2 Directive.	Noted.
202.	XL Capital Ltd	3.47.	See comments at 3.34 above	See response to 3.34.
203.	CEA ECO-SLV-09-620	3.48.	The requirement to demonstrate for individual securitisation positions that the company has a comprehensive and thorough understanding is likely to be disproportionate and burdensome. It	CEIOPS considers that it has been consistent (within the Solvency II regime) with the

			is also not a requirement for credit institutions under the CRD. Ceiops should be consistent with the CRD and instead focus on companies overall policies, procedures and reporting. 4. The CEA recommends that the first paragraph is amended to: 5. 6. "Before investing in repackaged loans or similar financial arrangements, and as appropriate thereafter, an undertaking shall be able to demonstrate to its competent supervisory authorities that for each of its individual securitisation positions it has a comprehensive and thorough understanding of and has implemented formal policies and procedures appropriate to its investment portfolio. These formal policies and procedure shall commensurate with the risk profile of their investments in securitised positions." 7.	CRD. If it is felt that this is still not the case, CEIOPS would be pleased to receive more specific details from the CEA.
204.	CRO Forum	3.48.	The prudent person principle governs the investment strategies of the insurer. Based on the SRP the supervisor can question and assess the appropriateness of these strategies regarding repackaged loans or similar financial arrangements. Naturally the (re)insurer should be able to have all this information available on request from the start of its investments. 1 Principle 7 could be removed. 2 Para1 can be read to propose a supervisory endorsement procedure before investment. The (re)insurer is responsible for its strategies and risk appetite. CEIOPS should clarify its intentions.	Noted. Principle 7 has been retained in CEIOPS final advice to be submitted to the EU Commission. The principle itself has not undergone any

			CROF proposes starting 3.36 with 'There is no requirement for pre approval of investments, however, before investing …'.	significant drafting changes.
205.	DIMA (Dublin International Insurance & Management	3.48.	It is not clear what information is appropriate for supervisory reporting and what is appropriate for public disclosures. In particular, DIMA recommends suitable limitations to the required public disclosures around actual investments for reason of competition and commercial sensitivities.	See previous response (131).
206.	European Insurance CFO Forum	3.48.	Comments in 3.43 are also relevant here.	See response to 3.43.
207.	GDV (German Insurance Association)	3.48.	The requirement to demonstrate for individual securitisation positions that the company has a comprehensive and thorough understanding is likely to be disproportionate and burdensome. It is also not a requirement for credit institutions under the CRD. CEIOPS should be consistent with the CRD and instead focus on companies overall policies, procedures and reporting 1. The GDV recommends that the first paragraph is amended to: 2. 3. "Before investing in repackaged loans or similar financial arrangements, and as appropriate thereafter, an undertaking shall be able to demonstrate to its competent supervisory authorities that for each of its individual securitisation positions it has a comprehensive and thorough understanding of and has implemented formal policies and procedures appropriate to its investment portfolio. These formal policies and procedure shall commensurate with the risk profile of their investments in securitised positions."	See previous response (203).

			4.	
208.	Legal & General Group	3.48.	acceptable	Noted.
209.	Lloyd's	3.48.	We note the implied references to proportionality in this section, and note the importance of the approach to this being proportional both from a size of investment relative to the capital of the insurer as well as from a risk perspective i.e. related to any implicit guarantees e.g. Freddie Mac. The advice should state explicitly whether "nil" returns should be covered by the last paragraph: i.e. will firms be expected to explicitly state in their supervisory and public disclosure reports that they have no investments in repackaged loans or similar financial arrangements?	See previous response (1) on the principle of proportionality. CEIOPS does not consider that a "nil" return by an undertaking would be necessary. As the reporting and disclosure requirements currently stand, such a declaration would be implicit were no tradable securities or other financial instruments based on repackaged loans to be included in the supervisory and/or public reports submitted by the undertaking.
210.	Munich Re	3.48.	To reduce illiquidity and to enlarge transparency of securitisation markets, banks and originators should be forced to state bid and offer prices for certain minimum nominal amounts.	This is outside the scope of CEIOPS' advice.
211.	RBS Insurance	3.48.	We agree and support Principle 7. It reinforces the prudent person principles of the Solvency 2 Directive.	Noted.
212.	CEA	3.49.	We suggest that grandfathering rules are understood as follows:	See previous response (1) on the addition to the

	ECO-SLV-09-620		For undertakings that have invested in securitisations until 31 October 2012 the above requirements shall apply from 31 December 2014. This also holds for existing securitisations that will have been subject to restructuring or substitution until 31 October 2014. For all other situations, proportionate grandfathering arrangements are required. The requirement to be no additions or substitutions to the underlying exposures is too onerous and unworkable. Substitutions of the underlying exposure with a view to keep or improve the credit quality of the investment are in line with good risk management practice, especially on collaterised debt obligations ("CDO"s) where one of the ways of reducing risk for an asset manager is to manage the underlying credit exposures to ensure that credit quality is maintained.	grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.
213.	CRO Forum	3.49.	Exemption of existing arrangements is necessary as investors will have no power to retrospectively impose compliance on issuers. Para 3.39 refers to CRD in the context of changes to exposure. Based on 3.49 and 3.39 it is our interpretation that the advice proposes that, post Dec 2014, where new exposures are added or substituted any grandfathered product will then have to comply with the 7 principles proposed in this advice. We would like to highlight that for some securitised products, such as collateralised debt obligations ("CDO"s), the underlying credit exposure is actively managed to ensure that credit quality is maintained through additions and substitutions to the existing	See previous response (1) on the addition to the grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements. Additions and substitutions are not activities that are being prohibited. Rather, they will

			securitisation. Therefore such a requirement imposed on originators or investors is unreasonable and could effectively render the grandfathering useless and unnecessarily increase risk. We strongly recommend CEIOPS to clarify that the changes in the exposure anticipated in the original specification should not revoke the grandfathering applied to the investor	come under the scope of the Solvency II rules, with specific exceptions.
214.	DIMA (Dublin International Insurance & Management	3.49.	While agreeing with cross-sectoral consistency, and recognising that an appropriate grandfathering provision is necessary for pragmatic reasons, the delay in application of the requirements in relation to existing holdings to December 2014 and then only if underlying exposures are altered, seems excessively lenient. At a minimum, all holdings should be subject to the rule, and given publication of the draft advice now, a five year period seems as long as might be necessary.	See previous response (1) on the addition to the grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.
215.	European Insurance CFO Forum	3.49.	Substitutions within the original terms of the investment should not be regarded as a change and application of pre-existing rules should continue to apply. This proposal creates four different scenarios to consider: ☐ New repackaged loans established on or after 31 Oct 2012 would be subject to new Solvency II rules. ☐ Existing repackaged loans at 31 Oct 2012 where underlying exposures are never subsequently changed would be subject to pre-existing rules. ☐ Existing repackaged loans at 31 Oct 2012 where underlying exposures are changed before 31 December 2014 but not after this date would be subject to pre-existing rules. ☐ Existing repackaged loans at 31 Oct 2012 where underlying exposures are changed after 31 December 2014 would	The grandfathering section in the paper has been updated.

			be subject to new Solvency II rules. We agree that new exposures should constitute a change in the repackaged loan but question whether a two year period transition period is of significant length. The objective of the treatment is to ensure that no undertaking is forced to hold a forced fire-sale of securities. Substitutions within the original terms of the investment should not be regarded as a change and application of pre-existing rules should continue to apply. Discouraging substitutions is counter to good risk management practices as substitutions occur to replace an underlying risk that has gone into default with a risk that has not defaulted.	CEIOPS considers that a forced fire-sale of securities would be unlikely given the amount of time for undertakings to prepare for Solvency II implementation and the different consequences were certain breaches of the requirements to occur (see previous response (1)).
216.	FFSA	3.49.	The CP is mentioning the grandfathering rule, without indicating what will happen if the existing securitisations would not meet the requirements after a restructuration. We remind that the undertaking cannot decide on the restructuring or substitution of underlyings within these investments. We recommend that the relating investments are charged with the standard risk module until its life end, whatever the restructuration decided by the originators/sponsors is.	See previous response (1) on breaches of the requirements and the consequences of such breaches.
217.	GDV (German Insurance Association)	3.49.	Proportionate grandfathering arrangements are required We suggest that grandfathering rules are understood as follows: For undertakings that have invested in securitisations until 31 October 2012 the above requirements shall apply from 31 December 2014. This also holds for existing securitisations that will have been subject to immaterial restructuring or substitution between 31 October 2012 and 31 December 2014. New business after 31.October 2012 applies to the new rules set out before. New rules should also apply to existing securitisations that have	See previous response (1) on the addition to the grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.

			been subject to material restructuring or substitution, which has taken place after 31 October 2012. Material additions of new underlying exposures should be considered as a material change of the securitisation.	
218.	Legal & General Group	3.49.	1. We are pleased to see the inclusion of a clause to capture grandfathering of existing investments and keeping them outside of these proposals. 2. We assume that the aim of excluding investments where "new underlying exposures are added or substituted" after 31 October 2012 from grandfathering is to avoid continued reuse of existing structures outside of the new rules. However, we feel it is important to enable ongoing management of such investments in such a way that their economic substance can still be maintained. For example, rebalancing and collateral management would seem like appropriate actions that should be allowed in order to maintain a broadly equivalent economic exposure.	See previous response (1) on the addition to the grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.
219.	Lucida plc	3.49.	We agree that grandfathering is necessary but believe that this should be extended to cover investment after 2012 in loans that were repackaged prior to 31 October 2012. Many such repackaged loans do not comply with all the requirements of CP63 (for example the requirement that the originator retains an interest). Without this extension, the market price of these repackaged loans could be adversely impacted due to reduced demand from insurers. Indeed the market value of such repackaged loans could be adversely impacted even earlier than 2012 if potential purchasers believe that demand will drop in the future. This would adversely impact insurers that already own such repackaged loans from both a solvency and liquidity perspective.	See previous response (1) on the addition to the grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.
220.	RBS	3.49.	We agree with the grandfathering of existing investments in	See previous response (1) on

	Insurance		repackaged loans. However, we are concerned with the proposal of not applying grandfathering if changes are made to the underlying exposures of existing investments after 31 December 2014. In our opinion, this provision would require new rules to be applied to most securities after 31 December 2014.	the addition to the grandfathering section in the advice. Further clarification is provided on the scope of the grandfathering arrangements.
221.	XL Capital Ltd	3.49.	See comments at 3.39 above	See response to 3.39.