Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation		Deadline 3 March 2017 23:59 CET
Name of Company:	VOEB	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ <u>Do **not** change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column <u>empty</u>. ⇨ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, <u>in Word Format</u>, to <u>CP-16-008@eiopa.europa.eu</u>** **Our IT tool does not allow processing of any other formats.** The numbering of the questions refers to the discussion paper on the review of specific items in the Solvency II Delegated Regulation.	
Reference	**Comment**	
General Comment	On 5 December 2016, the European Insurance and Occupational Pensions Authority (EIOPA) published a discussion paper which requests stakeholders to contribute to the review of specific items of Delegated Regulation (EU) 2015/35 (the "Delegated Regulation") concerning Solvency II. We explicitly welcome the opportunity to comment on the discussion paper. The Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands – "VÖB") is a leading association within the German banking sector. In particular, our membership comprises Landesbanken, as well as promotional and development banks owned by the Federal Republic of Germany or the individual German federal states. About us:	

- 63 member banks (7 Landesbanken, 19 promotional and development banks)
- Established in 1916, based in Berlin
- 14 VÖB member banks directly supervised by the ECB
- € 2,700 billion in aggregated total assets of VÖB member banks – equivalent to a 34 percent market share in Germany, as of the end of 2015
- 48 percent market share of VÖB member institutions in public-sector finance (2015)
- 29 percent market share of VÖB member institutions in lending to businesses and self-employed persons (2015)
- € 25 billion in new promotional loans to companies and non-profit organisations (2015)
- € 6.4 billion in new subsidies, including for companies and local authorities (2015)
- € 19.8 billion in new promotional loans for housing construction and town planning (2015)

VÖB's position

We refer explicitly to chapter 3 of the discussion paper on the treatment of guarantees. For German development and promotional banks owned by the Federal Republic of Germany or the Federal States, which sell bearer debt securities, promissory note loans or registered bonds to insurance companies, the comments on the treatment of exposures guaranteed by regional governments or local authorities are of utmost importance. In our opinion, bonds held by insurance companies that are issued by development and promotional banks owned by German Federal states, which operate under a guarantee of their owners under public law (*Träger*), should receive a zero per cent weighting under Solvency II, in line with rules applicable to development and promotional banks owned by the Federal Republic. Accordingly, we advocate that any diverging regulations in insurance supervision law be aligned with the corresponding regulations under banking supervision law.

Nature and mission of German development and promotional banks

The business activities of German development and promotional banks are determined by the socio-political goals of their public-sector owners – the Federal Republic, or the Federal states. Most development and promotional banks were assigned their tasks by virtue of a Federal or State law or regulation. Alternative constellations provide for a legally binding instruction extended by the government institution through an agency agreement under private or public law.

	The division of work between the States and the Federation is grounded upon the subsidiarity principle. This means that the closest public entity to a public task has to take care of it, because it has the deepest knowledge how to manage it. The intrinsic logic is that the Federal Government is responsible for all affairs touching on pan-German interest, while the Federal States deal with regional issues. As part their promotional/public development mission, German development and promotional banks provide banking services in market segments where market solutions are not deemed to be sufficient. They fulfill their duties on a competition law assured basis. According to the second agreement in 2002 - the so-called "Verständigung II" - reached between the EU Commission and the Federal Republic of Germany, the promotional mandate of this Bank group is explicitly recognized by the EU Commission. While cooperating non-discriminatorily with all business banks German promotional banks substantiate their competitive neutrality. Essentially, their duties comprise promoting and supporting small and medium-sized enterprises, agricultural and infrastructure projects, promoting housing and urban development, innovation, as well as environmental and climate protection. In this regard, development and promotional banks are active in the jurisdictions for which their public-sector owners are responsible. To fulfil their duties, German development and promotional banks predominantly raise funding on the capital markets, with low funding costs an essential prerequisite for their activities in the public interest. In order to keep these costs low, public-sector owners provide legally binding guarantees to their development and promotional banks, in the form of a maintenance obligation (*Anstaltslast*), a guarantee obligation (*Gewährträgerhaftung*), as well as explicit funding guarantees. 1. Under a maintenance obligation, public-sector authorities undertake to maintain the liquidity of their development and promotional banks under all circumstances. 2. The guarantee obligation means that public-sector authorities are obliged to cover the obligations entered into by their development and promotional banks. 3. Under a funding guarantee, the authorities assume direct liability for loans taken out or debt securities issued by their development and promotional banks.	
Q1.1		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q1.2		
Q1.3		
Q1.4		
Q1.5		
Q1.6		
Q1.7		
Q1.8		
Q1.9		
Q1.10		
Q1.11		
Q1.12		
Q1.13		
Q1.14		
Q1.15		
Q1.16		
Q1.17		
Q1.18		
Q1.19		
Q1.20		
Q1.21		
Q1.22		
Q1.23		
Q1.24		
Q1.25		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q1.26		
Q2.1		
Q2.2		
Q2.3		
Q2.4		
Q2.5		
Q2.6		
Q2.7		
Q2.8		
Q2.9		
Q2.10		
Q3.1		
Q3.2		
Q3.3		
Q3.4		
Q3.5		
Q3.6		
Q3.7		
Q3.8	**Banking regulations under the EU Capital Requirements Regulation (CRR)** Pursuant to the EU Capital Requirements Regulation (CRR), German development and promotional banks are classified as "public sector entities". Article 4 (1) no. 8 of the CRR defines a "public-sector entity" as a "non-commercial administrative body responsible to central governments, regional governments or local authorities, [...] or a non-commercial undertaking that is owned by or set up and sponsored by central governments, regional governments or local authorities, and that has explicit guarantee arrangements. […]" German development and promotional banks owned by the Federal Republic or the Federal states are subject to supervision by the German Federal Financial Supervisory Authority (BaFin), or by the European Central Bank	

	(ECB). Exercising the option available under Article 116 (4) of the CRR, and recognising the comprehensive nature of guarantees extended by the Federal Republic or the Federal states to their respective development and promotional banks, BaFin (in its capacity as national competent authority for the supervision of banks) determined that exposures to German development and promotional banks be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established. For the purposes of determining equity capital requirements, pursuant to Article 114 (1) and (2) of the CRR, exposures to central governments must be assigned risk weights in line with the credit assessment of an external credit assessment institution (rating agency). Since Germany enjoys the best credit ratings, as affirmed by recognised rating agencies, exposures to the Federal Republic can be assigned a zero per cent risk weight. If Germany's rating were to be downgraded, the provisions of Article 114 (4) of the CRR effect would apply, according to which "exposures to EU Member States' central governments [...] denominated and funded in the domestic currency of that central government [...] shall be assigned a risk weight of 0 %". For the Federal Republic of Germany, this applies to all issues denominated in euro. Pursuant to Article 115 (2) of the CRR, exposures to regional governments or local authorities may be treated as exposures to the central government in whose jurisdiction they are established, provided that the competent supervisory authority deems the risk of exposures to the central government and to regional governments or local authorities as being equivalent. When making its related judgment, the competent authority takes the specific revenue-raising powers of regional governments or local authorities, and/or the existence of specific institutional arrangements (the effect of which is to reduce their risk of default) into consideration. EBA maintains a publicly available database of all regional governments and local authorities which, according to competent authorities, may be treated as exposures to the respective central government. This database includes all German Federal states, in particular. As a result, exposures to all German Federal states, their legally dependent special funds, domestic municipalities or local authority associations – and, in particular, exposures to German development and promotional banks – may be assigned a zero per cent risk weight, comparable to exposures to the central government.	

Issue: German development and promotional banks being placed at a funding disadvantage under insurance supervision law (Solvency II)

Fundamental issues

Current provisions of insurance supervision law under Solvency II place development and promotional banks at a disadvantage in terms of their funding, due to the fact that bonds issued by development and promotional banks are subject to capital backing requirements. The fact that insurance supervision law does not recognise the concept of a "public sector entity" – as defined in the CRR – and the associated classification as an entity with high credit quality, represents a burden to comparability of insurance vs. banking regulations.

Solvency capital requirements differentiated by risk model

Under insurance supervision law, solvency capital requirements for exposures to development and promotional banks (held in the form of bearer debt securities, promissory note loans or registered bonds granted) must be determined, using the standard formula, using the module for determining counterparty default risk or the module for determining market risk. The material impact upon the market risk module is driven by the two sub-modules for spread risk and concentration risk. Whilst under the counterparty default risk module, exposures which are covered by a full, unconditional and irrevocable guarantee by regional governments or local authorities are treated as if they were exposures to the central government, the market risk module does not recognise such guarantees at all.

As a rule, solvency capital requirements for debt securities, promissory note loans and registered bonds issued by German development and promotional banks and held by insurance companies are determined using the module for determining market risk, whereas the module for determining counterparty default risk usually only plays a minor role. This leads to significant solvency capital requirements for insurance companies – which we believe to be unwarranted, since the solvency capital requirements must be determined in line with the requirements set out in Article 176 of the Delegated Regulation as it is the case for companies. The difference may be significant, since not all issues of German development and promotional banks have a credit assessment by a recognised rating agency.

Treatment of exposures under insurance supervision law

- **Exposures to central governments and others**

  Pursuant to Article 180 of the Delegated Regulation, a risk factor of 0% is assigned to risk exposures against the European Central Bank (ECB), central governments and central banks of EU Member States, multilateral development banks referred to in Article 117 (2) of the CRR, or other international organisations referred to in Article 118 of the CRR, in the form of bonds and loans denominated and funded in the domestic currency of the respective central government.

  Accordingly, using the standard formula for calculating solvency capital requirements (SCR), bonds issued and loans raised by the Federal Republic of Germany may be classified as risk-free, both in terms of market risk (spread risk and concentration risk) as well as counterparty default risk.

- **Exposures to regional governments and local authorities**

  Pursuant to Article 109a (2) point a of Solvency II, EIOPA was required to publish lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in the jurisdiction where they are domiciled, both concerning the market risk module pursuant to Article 105 (5) of Solvency II and the counterparty default risk module pursuant to Article 105 (6) of Solvency II. Under Article 85 of the Delegated Regulation, this is subject to the proviso that there is "no difference in risk between exposures to these and exposures to the central government, because of the specific revenue-raising power of the former, and [that] specific institutional arrangements exist, the effect of which is to reduce the risk of default."

  EIOPA fulfilled this requirement with its Implementation Regulation 2015/2011 dated 11 November 2015. Specifically, direct exposures to German Federal states, municipalities and local authority associations may be treated identically to direct exposures to the Federal Republic of Germany within the market risk module, as well as the counterparty default risk module.

- **Guarantees**

  Pursuant to Article 215 of the Delegated Regulation, guarantees may only be recognised if they are explicitly referred to in the Delegated Regulation's chapter on solvency capital

requirements, and provided that several qualitative criteria are met, including that the extent of credit protection is clearly defined and incontrovertible.

- **Treatment in the counterparty default risk module**

  Pursuant to Article 199 (11) of the Delegated Regulation, exposures fully, unconditionally and irrevocably guaranteed by regional governments or local authorities deemed risk-free in accordance with Article 109a (2) point a of Solvency II shall be treated as exposures to the central government.

  As a result, exposures covered by a guarantee extended by German Federal states, municipalities or local authority associations are deemed risk-free for the purposes of the counterparty default risk module.

- **Treatment in the market risk module**

  Pursuant to Article 187 (3) of the Delegated Regulation, exposures subject to market risk and fully, unconditionally and irrevocably guaranteed by (i) the European Central Bank, (ii) a central government or central bank of a EU Member State, (iii) a multilateral development bank referred to in Article 117 (2) of the CRR, or (iv) other international organisations referred to in Article 118 of the CRR, and provided that the guarantee meets the requirements of Article 215 of the Delegated Regulation, are assigned a risk factor of 0% for market risk concentration. Pursuant to Article 180 (2) of the Delegated Regulation, where such exposures are direct exposures in the form of bonds or loans, the 0% risk factor also applies to spread risk.

  In contrast to counterparty default risk, there is no specific provision in respect of these market risks for guarantees extended by regional governments or local authorities: in this context, exposures are only considered risk-free if guaranteed by the Federal Republic of Germany.

Issue description

As a consequence of the deviations in insurance supervision law, relative to the provisions of the CRR, only bonds issued under a guarantee of the Federal Republic of Germany (as is the case for bonds issued by *Kreditanstalt für Wiederaufbau* (KfW) or *Landwirtschaftliche Rentenbank*) may be classified as risk-free for all purposes of insurance supervision law, whereas bonds issued by development and promotional banks under the guarantee of a German Federal state must be treated as ordinary corporate bonds.

| --- | --- | --- |
	This discrimination is not justified. Given that German Federal states are deemed to be risk-free, like the Federal Republic, and that guarantees extended by the Federal Republic are fully recognised, there is no factual reason for not recognising the value of guarantees extended by the Federal states as being comparable to Federal guarantees. **Proposed solution** We propose to extend the applicability of guarantees within insurance supervision law to also include the market risk module, allowing exposures guaranteed by regional governments and local authorities to be classified as risk-free for the purposes of the standard formula for calculating solvency capital requirements. There is no factual substance for the different treatment of guarantees under insurance supervision law (Solvency II) and banking supervision law. We believe that the principle of "same risk – same rule" should be applied here.	
Q3.9	**Assessment of issuer risks of German development and promotional banks by the capital markets** From a legal perspective, given the explicit guarantees provided, exposures to development and promotional banks are to be seen as identical to exposures vis-à-vis the respective Federal state, or the Federal Republic. This assessment is shared by recognised rating agencies: consequently, the guaranteed entities have the same rating as their respective guarantor. This view is mirrored in the valuation of outstanding bonds on the capital markets: Yield shifts of development and promotional banks are compared to those of the respective Federal state parallel in the long run, with marginal – and hence, non-volatile – yield differentials.	
Q3.10		
Q3.11		
Q3.12		
Q4.1		
Q4.2		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q5.1		
Q5.2		
Q5.3		
Q5.4		
Q5.5		
Q5.6		
Q6.1		
Q7.1		
Q7.2		
Q7.3		
Q7.4		
Q7.5		
Q7.6		
Q7.7		
Q7.8		
Q7.9		
Q7.10		
Q7.11		
Q7.12		
Q7.13		
Q8.1		
Q8.2		
Q8.3		
Q8.4		
Q8.5		
Q8.6		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q8.7		
Q8.8		
Q8.9		
Q8.10		
Q8.11		
Q8.12		
Q9.1		
Q9.2		
Q9.3		
Q9.4		
Q9.5		
Q10.1		
Q10.2		
Q10.3		
Q10.4		
Q10.5		
Q10.6		
Q10.7		
Q10.8		
Q10.9		
Q10.10		
Q11.1		
Q11.2		
Q11.3		
Q11.4		
Q11.5		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q11.6		
Q11.7		
Q11.8		
Q11.9		
Q12.1		
Q12.2		
Q12.3		
Q12.4		
Q12.5		
Q12.6		
Q12.7		
Q13.1		
Q13.2		
Q13.3		
Q13.4		
Q13.5		
Q13.6		
Q14.1		
Q14.2		
Q14.3		
Q14.4		
Q14.5		
Q14.6		
Q14.7		
Q14.8		
Q14.9		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q14.10		
Q14.11		
Q14.12		
Q15.1		
Q15.2		
Q15.3		
Q15.4		
Q16.1		
Q16.2		
Q16.3		
Q16.4		
Q16.5		
Q16.6		
Q16.7		
Q16.8		
Q16.9		
Q17.1		
Q17.2		
Q17.3		
Q17.4		
Q17.5		
Q17.6		
Q17.7		
Q17.8		
Q17.9		
Q17.10		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q17.11		
Q17.12		
Q17.13		
Q17.14		
Q17.15		
Q17.16		
Q18.1		
Q18.2		
Q18.3		
Q18.4		
Q18.5		
Q18.6		
Q18.7		
Q18.8		
Q18.9		
Q18.10		
Q18.11		
Q18.12		
Q18.13		
Q18.14		
Q18.15		
Q18.16		
Q19.1		
Q19.2		
Q19.3		
Q19.4		

	Comments Template on Discussion Paper on the review of specific items in the Solvency II Delegated Regulation	Deadline 3 March 2017 23:59 CET
Q20.1		
Q20.2		
Q20.3		
Q20.4		
Q20.5		
Q20.6		
Q20.7		
Q20.8		
Q20.9		
Q21.1		
Q21.2		
Q21.3		
Q21.4		
Q21.5		
Q21.6		
Q21.7		