

IRSG

INSURANCE AND REINSURANCE STAKEHOLDER GROUP

IRSG's input to the Consultation on the
supervision of captive (re)insurance
undertakings

IRSG-2024/04



eiopa

European Insurance and
Occupational Pensions Authority

GENERAL COMMENTS

Q1 GENERAL COMMENTS ON THE OPINION

The IRSG welcome any EIOPA effort to strengthen a convergent interpretation of the EU insurance regulation between the supervisory authorities. These efforts, however, cannot lead to introducing new rules, especially in matters falling into the review of Solvency II, and must be consistent with the EU law principles, including the principle of proportionality. EIOPA acknowledge that those undertakings only cover risks associated with the industrial or commercial group to which they belong. Although it is important not to misappreciate the prudential valuations and monitoring of captives with understated requirements on diversification of investments and their adequate fitting to the nature of the liabilities, appropriate approaches should be provided in line with the principle of proportionality to reflect the captives business's nature, scale, and complexity.

Furthermore, while the draft opinion states that captives as defined in articles 13(2) and 13(5) of the Solvency II directive are in scope, the IRSG notes that in the draft opinion itself there is no explicit distinction between pure captives and captive affiliates, i.e. those that cover the insured against the risks incurred in offering a non-insurance service to the customer, e.g. an extension of warranty. Therefore, EIOPA should rephrase some clauses in the draft to consider the affiliate and pure captives' specificities.

Although the IRSG agree with the EIOPA's statement under which National Competent Authorities (NCAs) may consider national specificities of the captive (re)insurance sector when implementing the principles included in this Opinion, the aim of a convergent interpretation should lead EIOPA to identify the aspects to harmonize if and solely they are common to the Member States.

Cash pooling arrangements and application of the Prudent Person Principle

Q 11- 12: Comments on paragraphs 3.8 - 3.9. of the document

EIOPA refers to cash pooling and intercompany loans with unrated entities. A distinction must be made between the parent's rating and the group. Where the rated entity/parent supports the group entity, this should suffice to take the group's rating. Also, more clarity should be included in the EIOPA's document regarding public and private ratings, specifying that the latter must be considered as the public rating. Indeed, the specificity of pure captives - which do not address the public - should be adequately considered.

Furthermore, clause 3.9. should be amended to ensure that NCAs may require ANY of the three options listed, i.e. a letter of credit, or a guarantee, or an equivalent arrangement provided by the parent. The choice is to be left to the operating entity. It is essential to maintain that the core role of NCAs is safeguarding policyholders. In the case of a pure captive, there are no third-party policyholders, and the captive insures related / group parties. Therefore, any loss to the investments would not affect the public. On the contrary, it is in the best interest of the shareholder and policyholders (which are the same entities) to safeguard the investment or utilize the free cash/group investments in line with group direction.

Q18: Comments on paragraph 3.14. of the document

EIOPA calls NCAs to ensure captive(re)insurance undertakings' compliance with the Prudent Person Principle, considering the portfolio as a whole. However, EIOPA seems to favor a "one size fits all" approach without considering the peculiarities of the captives and, ultimately, the principle of proportionality. In assessing such compliance, NCAs should ensure that are considered, among other:

Conflict of Interest (3.14(e)). Concerning pure captives, the policyholder is the company's owner. Therefore, the element of conflict of interest has less relevance. We understand that captives and intercompany contractual arrangements would still be required to be at arm's length but putting such emphasis on supervising this area and potentially requiring statutory external auditor's support "if needed" goes against the very proportional nature of a captive as a risk management tool.

Diversification (3.14(f)). About pure captives, the element of diversification is less relevant. In addition to excluding third-party policyholders, captives should be able to invest in line with group direction, being a key part of their risk management tool. Furthermore, most captives heavily reinsure their business, mitigating the retained exposure.

Governance: Administrative, Management, Supervisory Board (AMSB) composition and outsourcing of key functions

Q23: Comments on paragraph 3.19. of the document

The IRSG agrees with the statements under which the captive undertaking should designate a person within the undertaking with the overall responsibility for the outsourced key function who

is fit and proper and possesses sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider.

In line with this approach, the IRSG advice that clause 3.19 should include specific reference to the possibility of appointing a member of the AMSB (Board of Directors) as the designated person considered to be the person responsible for the outsourced key function for captive (re)insurance undertakings. The fit and proper requirements of AMSB members and the related assessment procedures are sufficient to ensure the selection of a member with the required skills. Therefore, no reason justifies this member's exclusion from being a designated person.

Moreover, EIOPA's document should make specific reference to Board Meetings besides 'membership in a dedicated committee'. So, a suggested wording could be: "*... a person under NCA supervision regardless of the employee status within the captive undertaking having a link to the undertaking via its membership to the **AMSB** or in a dedicated committee set up specifically by the undertaking ...*".