

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

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

Name of Company:	Insurance Europe	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-14-004@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering refers to the Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items.</p>		
Reference	Comment	
General Comments	<p>Insurance Europe welcomes the Implementing Technical Standards (ITSs) provided to undertakings in seeking supervisory approval of their ancillary own fund (AOF) items and the opportunity to comment on them.</p> <p>While administrative law and supervisory practice vary among Member States, it is important to set a common denominator that reflects administrative best practice and does not become too bureaucratic. The ITSs should be drafted in such a manner that they do not provide an undue burden for industry and for supervisors. Therefore, the principle of proportionality should be applicable to the documentation to provide in</p>	

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the applications.

One of the key concerns of the industry is that the **usefulness of this paper** is questionable despite the legal obligation to issue it following Omnibus II. Indeed, Articles 52 AOF2 to 57 AOF7 in the draft Delegated Acts (DAs) are precise and there is less scope for interpretations. In particular, we believe that several aspects of Article 5 of these ITSs are a mere repetition of the draft Delegated Acts and as such should be deleted. In our point of view these ITSs will not lead to much additional value in terms of "ensuring a consistent application of AOFs". The guidance also foreseen on this aspect would be sufficient.

We understand that it is difficult to define definitive attributes for instruments that can be deemed AOFs by regulators in advance of the products being developed. Hence we appreciate the attempt to **make the process for approval more transparent**. If there are criteria such as duration that need to be met, these should be made transparent.

Furthermore, we expect that AOFs will be used as a measure to manage the expected volatility in both the SCR and own funds calculations of insurers. It therefore seems to be essential that AOFs can be provided on very short notice. Presumably, the provision of AOFs will frequently be required close to year end. In order to ensure a thorough as well as efficient approval process that works despite potentially very tight deadlines, and in order to provide relief for both the supervisory authorities and the insurers, we propose that a **pre-approval process be established, or "fast-track" processes**, should similar items be submitted to supervisory approval. This holds also for the preparatory phase, where we see no reason why the AOFs could not already get (pre-)approved.

We would expect in particular the following AOF instruments to be used (see Article 62 COF5 of the draft DAs):

- Group-internal:
 - unpaid and uncalled ordinary share capital,

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- commitment (guarantee) to subscribe and pay for subordinated liabilities on demand,
- call for supplementary contributions in the case of mutual or mutual-type associations;
- Group-external: letters of credit and guarantees.

For those the definition of a pre-approval process would alleviate the burden of work for both supervisors and undertakings.

Indeed, we believe that of the criteria which have to be assessed by the supervisor, only the "assessment of the counterparties' ability to pay" (Article 53 AOF3), ie their financial soundness, would need to be assessed shortly prior to the approval of the AOFs; anything else could be assessed and thereby pre-approved early in advance.

In addition to this, also to help to alleviate the burden for both supervisors and undertakings, we would strongly recommend to settle pre-approval processes for AOFs **during the preparatory phase**, before the formal approval process starts in 2015. It is precisely the aim of the preparatory phase to help undertakings to prepare for Solvency II. Besides, the pre-approval processes would help to anticipate the large number of undertakings that are likely to ask for the approval of their AOFs and, more importantly, allow them to make use of AOF instruments during the preparatory phase.

Besides, **we deplore the lack of consistency across all the different ITSs on approval processes**. In line with the ITSs on the Internal model approval, we believe that where the supervisory authorities request further information, the decision for a suspension of the six months approval period should be left up to the insurance or reinsurance undertaking.

Last but not least, we disagree with **the lack of approval if no response from the supervisory authority is reached within the deadline**. Supervisors shall not remain silent and further clarity should be provided in this respect. Should this happen and when the timeline for approval has elapsed, the undertaking should be able to

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	consider that its AOF item has been approved and be allowed to use it. Indeed, there is no justification to leave an undertaking in a situation of uncertainty when the application is complete and receipt of submission has been received. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	
Recital (1)		
Recital (2)		
Recital (3)		
Recital (4)		
Recital (5)		
Recital (6)		
Recital (7)		
Recital (8)		
Recital (9)		
Article 1		
Article 2	Since Article 57 AOF7 (4) already defines a “material change”, we believe the wording in the ITSs should be aligned with the draft DAs and therefore this definition might be dropped. Should this definition be kept, we would suggest to include it in Article 4 (1)(f) since the only reference to “material facts” is done there.	
Article 3 (1)		
Article 3 (2)		
Article 3 (3)		
Article 3 (4)		
Article 3 (5)		
Article 4 (1)	Regarding the contents of point (1)(a) of this Article 4, we believe this type of check should rather be done by the supervisor, instead of laying all the burden and responsibility of proof on the undertaking.	

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Article 4 (2)	<p>This requirement is onerous and we do not see the rationale to ask for such details. We do not see how the fact to apply eg for the approval of an SPV is supposed to influence the supervisory decision to approve or not an AOF.</p> <p>We believe instead that supervisors should be keeping track in any case of all the applications done by an undertaking –and are probably already doing it-. Therefore there is no need for this additional requirement made to undertakings.</p> <p>Should this still be applied, we understand this request as providing a simple note appended to the application at hand and destined to let the authorities know -via a reference number for instance- that there are other applications for approval for which a response is still pending.</p> <p>At least, clarification is needed as to the fact that the requested information submitted already earlier for the sake of any one application currently being processed must not be submitted again alongside of the present application.</p>	
Article 5 (1)	<p>We believe several of the listed requirements go beyond what is requested in the Framework Directive or in the draft DAs. They are too extensive and vague and therefore not helpful to provide a consistent application.</p> <p>Moreover, Article 53 AOF3 of the draft DAs is focused on the status of the counterparties (ability to pay). Therefore the link with the undertakings current or future solvency position is not obvious.</p>	
Article 5 (2)	<p>Point (a) seems to be redundant with points (a) and (b) of Article 5 (1). Besides, if this point was however kept, the meaning of “any affiliated arrangement” should be clarified.</p> <p>We do not see the need of the requirements set out in points (b) and (e) to help supervisors to assess whether they should approve AOF items. These points go beyond the requirements set out in the draft DAs and the Directive and as such should be deleted.</p>	
Article 5 (3)	<p>This goes beyond the draft DAs which state that “<i>the supervisory authorities shall base their approval on an assessment of the counterparties’ willingness to pay, taking into account [...] whether incentives or disincentives exist which may affect the counterparties’ willingness to satisfy their commitments [...]</i>”. The wording and spirit of the ITSs should be aligned with the draft DAs.</p>	
Article 5 (4)		

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Article 5 (5)		
Article 5 (6)		
Article 5 (7)		
Article 5 (8)		
Article 6	We think supervisory authorities should also be planning all the approval processes and ensure that they will have the necessary resources to allocate to those, in order to be able to provide their approval in a timely manner and as a maximum within the length of the periods defined in the ITSs.	
Article 7 (1)		
Article 7 (2)		
Article 7 (3)	It has to be also clarified that if the supervisor has overrun the allotted one month period to notify whether the application is complete, the countdown will in any way start after the date of receipt of the application. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	
Article 7 (4)	<p>As stated in our general comments, we expect that AOFs will be used as a measure to manage the expected volatility in both the SCR and own funds calculations of insurers. It therefore seems to be essential that AOFs can be provided on very short notice. Presumably, the provision of AOFs will frequently be required close to year end. In order to ensure a thorough as well as efficient approval process that works despite potentially very tight deadlines and many applications from different undertakings, and in order to provide relief for both the supervisory authorities and the insurers, we propose that a pre-approval process be established, or "fast-track" processes, should similar items be submitted to supervisory approval.</p> <p>We would expect in particular the following AOFs instruments to be used (see Article 62 COF5):</p> <ul style="list-style-type: none"> • Group-internal: <ul style="list-style-type: none"> • unpaid and uncalled ordinary share capital, • commitment (guarantee) to subscribe and pay for subordinated liabilities on demand, • call for supplementary contributions in the case of mutual or mutual- 	

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	<p>type associations;</p> <ul style="list-style-type: none"> • Group-external: letters of credit and guarantees. <p>For those the definition of a pre-approval process would alleviate the burden of work for both supervisors and undertakings.</p> <p>Indeed, we believe that of the criteria which have to be assessed by the supervisor, only the "assessment of the counterparties' ability to pay" (Article 53 AOF3), ie their financial soundness, would need to be assessed shortly prior to the approval of the AOFs; anything else could be assessed and thereby pre-approved early in advance.</p>	
Article 7 (5)	See our comments on Article 7 (4). The exceptional circumstances should in any case be defined if they were to remain, but the length of the period taken by the supervisor to approve should be decreased.	
Article 7 (6)		
Article 7 (7)		
Article 7 (8)		
Article 7 (9)	As stated above, we believe that when an application changes only slightly or when similar applications are submitted, the new or additional ones should be treated more quickly than what is foreseen in Article 7 (4) and (5) of the ITSs.	
Article 7 (10)	It should be made clear that the second sentence only refers to eventual updates after a withdrawal of the application. Otherwise we refer to our comment on Article 7 (9).	
Article 8 (1)	The supervisory authority shall communicate the decision immediately once it is taken. This would be aligned with other ITSs.	
Article 8 (2)		
Article 8 (3)	In line with our comment on Article 7 (3), when the time line for approvals has elapsed, the company should be allowed to consider the AOF item as approved. In such a case, there is no justification to leave an undertaking in a situation of uncertainty when the application is complete and receipt has been received. The approval process should be clearly defined and certainly not be perceived as a possible never ending process.	
Article 9 (1)	We believe that supervisory dialogue should take place with the undertaking before proceeding to any of the changes mentioned in this paragraph.	

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Article 9 (2)		
Article 10 (1)		
Article 10 (2)		
Explanatory Text	<p>Regarding Example 1 we refer to our comment on Article 7 (3). We believe that in any case there should be a regular dialogue between the supervisory authority and the undertaking, which would easily avoid that an application is simply lost.</p> <p>We disagree with Example 2. The length foreseen for the approval period is already too high so we do not agree with the suspensions foreseen in case of a request for further information or the fact that the time period runs from Day 1 only if the supervisory authority considers the application complete from the start.</p> <p>Given all the aspects and criteria covered in an application, we believe that even if some parts were missing the supervisory authority could already start reviewing the application while the undertaking does its best to provide the missing parts in a timely manner. Therefore the period should not be interrupted, except if too many parts were missing. We would however assume that the undertaking's administrative, management or supervisory body would only forward applications they consider to be complete.</p>	
Annex I Section 1		
Annex I Section 2		
Annex I Section 3		
Annex I Section 4		
Annex I Section 5	We still believe that some AOFs will be relatively generic and as such should benefit from an easier and faster approval process.	
Annex I Section 6		
Annex I Overall Conclusion	We believe the degree of details of the requirements listed and all the information to be provided to supervisory authorities will generate a significant cost for undertakings.	