EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

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Final Report on Public Consultation No. 14/007 on the Implementing Technical Standard (ITS) on the approval of the application of a matching adjustment

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1. Executive Summary

Reasons for publication

According to Article 15 of Regulation (EU) No 1094/2010 (EIOPA Regulation) EIOPA may develop implementing technical standards by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2) of the EIOPA Regulation.

Before submitting the draft implementing technical standards to the European Commission, EIOPA shall conduct open public consultations and analyse the potential costs and benefits. In addition, EIOPA shall request the opinion of the Insurance and Reinsurance Stakeholder Group (IRSG) referred to in Article 37 of the EIOPA Regulation.

According to Article 86(3) of Directive 2009/138/EC[1] (Solvency II Directive), EIOPA shall develop implementing technical standards on the procedures to be followed for the approval of the application of a matching adjustment.

As a result of the above, on 2 April 2014 EIOPA launched a public consultation on the draft ITS on the procedures to be followed for the approval of the application of a matching adjustment.
The Consultation Paper is also published on EIOPA's website[2].

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/007) and the full package of the Public Consultation, including:

Annex I: Impact Assessment and cost and benefit analysis.
Annex II: Resolution of comments.
Annex III: Draft Implementing Technical Standard.

[1] OJ L 335, 17.12.2009, p. 1–155
[2] https://eiopa.europa.eu/consultations/consultation-papers/2014-closed-consultations/april-2014/public-consultation-on-the-set-1-of-the-solvency-ii-implementing-technical-standards-its/index.html

Next steps

In accordance with Article 15 of EIOPA Regulation, the draft ITS in Annex III will be submitted to the European Commission for endorsement by October 31, 2014, as requested by Article 86(3) of the Solvency II Directive.

According to Article 15 of the EIOPA Regulation, the European Commission shall forward it to the European Parliament and the Council.

Within 3 months of receipt of the draft ITS, the European Commission shall decide whether to endorse it in part or with amendments, where the Union’s interests so require. The European Commission may extend that period by 1 month.

If the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall send it back to EIOPA explaining why it does not intend to endorse it, or, explaining the reasons for its amendments, as the case may be.

Within a period of 6 weeks, EIOPA may amend the ITS on the basis of the European Commission’s proposed amendments and resubmit it in the form of a formal opinion to the European Commission. In this case EIOPA must send a copy of its formal opinion to the European Parliament and to the Council.

If on the expiry of the 6 weeks period, EIOPA has not submitted an amended draft ITS, or if it has submitted a draft ITS that is not amended in a way consistent with the European Commission’s proposed amendments, the European Commission may adopt the implementing technical standard with the amendments it considers relevant or it may reject it.

Where the European Commission intends not to endorse a draft ITS or intends to endorse it in part or with amendments, it shall follow the process as set out in Article 15 of EIOPA Regulation.

2. Feedback Statement

Introduction

EIOPA would like to thank the Insurance and Reinsurance Stakeholder Group (IRSG) and all the participants to the Public Consultation for their comments on the draft ITS. The responses received have provided important guidance to EIOPA in preparing a final version of the ITS for submission to the European Commission. All of the comments made were given careful consideration by EIOPA. A summary of the main comments received and EIOPA's response to them can be found below and a full list of all the comments provided and EIOPA's responses to them can be found in Annex II.

General comments

Overall, stakeholders supported the consultation paper on the approval process of a matching adjustment. Particular comments made by various stakeholders are highlighted below.

Matching adjustment approval process for new business

Several stakeholders, including the IRSG, commented on the matching adjustment approval process for new business, focusing on the length of the approval period. Stakeholders argue that the six months approval period could constitute an obstacle to offering new long-term guaranteed products due to the short timeframe of available investment opportunities.

Stakeholders made two suggestions in this regard:

1) To consider all products as a single portfolio of insurance obligations.

   EIOPA noted that the current ITS allows this possibility as long as the undertaking can demonstrate the criteria are met.

2) To introduce a fast track approval process for products which have similar characteristics.

   EIOPA pointed out that the Solvency II Directive does not allow for two different application processes. However, where the undertaking can demonstrate that both the insurance product and asset portfolio have the same features, it is likely in practice that the assessment of the application will require less time.

In addition, stakeholders also commented that the ITS should provide more clarity on the treatment applied to new business which is identical in nature to existing business.

EIOPA believes that the increase in volume of a portfolio of insurance obligations is subject to on-going satisfaction of the criteria, not to the prior approval process. This has been clarified in the ITS.

Clarifications

Some stakeholders have asked for more information on the criteria and manner in which the national supervisory authority will make the decision on approval of the application. In particular, further clarification was required for the situation where an undertaking submits, a matching adjustment application in parallel to an internal model application.

Regarding the situation of a parallel application for an internal model, EIOPA has clarified in the ITS that Solvency Capital Requirement (SCR) information based on the standard formula as well as the unapproved internal model should be both submitted.

Some stakeholders commented that the requirement for line-by-line asset information on matching adjustment portfolios might be unduly onerous and burdensome both for supervisors and undertakings. Stakeholders also commented that the documentation of the application should not be required to extend beyond that specified in the matching adjustment ITS.

EIOPA believes the identification of each asset included in the asset portfolio is necessary to ensure the compliance with Article 77b(a) of the Solvency II Directive, and in line with reporting requirements. Regarding the extra documentation for application, EIOPA has further clarified that the undertaking should decide whether it wishes to supplement its application by any other relevant information. This has been clarified in the ITS.

Other comments

In response to the comments on the uncertainty of capital positions due to the pending matching adjustment approval, EIOPA clarified in the recitals that an early dialogue between the supervisory and he undertaking is useful in preparing the formal application process.

EIOPA has clarified that the matching adjustment application process is only applied to solo undertakings. The requirement to notify the NSA of other applications has been made consistent across all ITS on approval processes.

General nature of the participants to the Public Consultation

EIOPA received comments from the Insurance and Reinsurance Stakeholder Group (IRSG) and eight responses from other stakeholders to the public consultation. All the non-confidential comments received have been published on EIOPA's website.

Respondents can be classified into three main categories: European trade, insurance, or actuarial associations (re)insurance groups or undertakings; and other parties such as consultants and lawyers.

IRSG opinion

The IRSG opinion on the draft Implementing Technical Standard (ITS) for approval processes, as well as the particular comments on the draft ITS at hand, can be consulted under the following link:

https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/sgs-opinion-feedback/index.html

Comments on the Impact Assessment

A variety of comments were received regarding the expected costs and benefits of introducing the ITS. Based on the comments received and subsequent amendments to the ITS, a revised Impact Assessment has been published (see Annex I).

Annex I: Impact Assessment and cost benefit analysis

Procedural issues and consultation of interested parties

According to Article 15 of the EIOPA regulation, EIOPA conducts analysis of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

This Impact Assessment report presents the key policy issues and associated policy options that were considered when developing the ITS.

Problem definition

Article 77b of the Solvency II Directive allows insurance and reinsurance undertakings to apply a matching adjustment to the relevant risk-free interest rate term structure when calculating the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts, subject to prior approval by the supervisory authorities where certain specified conditions are met.

The principles for the calculation of the matching adjustment are specified in Article 77c.

The ITS specifies the procedures to be followed by:

- Insurance and reinsurance undertakings when applying for approval of the use of a matching adjustment; and
- Supervisory authorities in considering approval for the use of a matching adjustment.

In the absence of an ITS specifying the procedure for supervisory approval of the matching adjustment, supervisory authorities and insurance and reinsurance undertakings would need to make their own interpretation of the Level 1 and Level 2 requirements for this procedure.

This could result in very different interpretations of the Solvency II regulatory text, not just between undertakings and national supervisory authorities within a Member State, but also between stakeholders in different Member States. This could result in a lack of harmonisation and consistency in supervisory practices across Member States, hindering effective competition.

For the supervisory authority to assess an application against the required criteria, they must have access to a well-documented written application that provides full, clear and accurate information. Documentation also helps to aid transparency and creates an audit trail for supervisory decision-making and judgement.

To maximise efficient use of resources and to ensure a process that is proportionate and focused, there is a need for clear, on-going communication between undertakings and supervisory authorities during the application process. For transparency and clarity, important decisions should be communicated in writing.

Once a complete application has been received, the supervisory authority must make a decision on the application and communicate that decision within a reasonable amount of time. There is a trade-off between allowing the supervisory authority enough time to make a considered decision, and providing a timely response to the undertaking. Because of differences in national administrative law, it is also necessary to set out clearly how an undertaking should interpret the situation where a supervisory authority does not reach a decision on the application before the expiry of the allotted time period.

After an undertaking has received initial approval to use a matching adjustment, there may be changes, for example to the assigned portfolio of assets or obligations, to the undertaking's risk profile, or to the way that the undertaking wishes to identify, organise and manage the matched portfolio. These changes may impact the calculation, size or application of the matching adjustment without necessarily making the undertaking ineligible to apply the matching adjustment to the portfolio. The supervisor will need to be confident that following any changes, the undertaking remains eligible to apply the adjustment.

Baseline

When analysing the impact from proposed policies, the Impact Assessment methodology foresees that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered. The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

The baseline is based on the current situation of the market, taking into account the progress towards the implementation of the Solvency II framework achieved at this stage by insurance and reinsurance undertakings and supervisory authorities.

In particular the baseline for this implementing technical standard includes:

- The content of Directive 2009/138/EC, as amended by Directive 2014/51/EC;
- The relevant Implementing Measures.

Objectives pursued

Policy Objective

Consistent application of the approval process for the Matching Adjustment across Member States, including: the required evidence, the factors for the supervisor to consider, the timeframes, and the communication between undertakings and supervisors.

This policy objective corresponds to the following specific and general objectives for the Solvency II Directive:

Specific objectives

- Advance supervisory convergence and cooperation; and
- Improved risk management of EU insurers.

General objectives

- Enhanced policyholder protection.

Policy Options

Note on options discarded during the policy-making process

EIOPA has received legal feedback that an approval process that does not refer to specific, already existing portfolios is incompatible with the Solvency II Directive. Therefore, other approaches (e.g. approaches involving the granting of approval for prospective portfolios) have not been considered as available policy options.

EIOPA has also received confirmation that the Solvency II Directive requires the verification of the conditions to be met to apply a matching adjustment for each relevant portfolio during the approval process. Therefore other approaches (e.g. approaches involving a general assessment of the ability of insurance and reinsurance undertakings to meet the conditions for using a matching adjustment) have not been considered as available policy options.

Note on areas of the ITS where there are no policy alternatives

For certain aspects of the ITS, EIOPA does not consider that there was a policy alternative. This is particularly the case for aspects of the ITS that directly reflect the requirements of the texts of the Solvency II Directive and the Implementing Measures. For example, the required content of the application set down in Articles 2 to 5 of the ITS reflects the eligibility criteria in Article 77b. The requirement to demonstrate how the calculation of the matching adjustment has been performed is necessary to ensure the undertaking's compliance with Article 77c. The liquidity plan, sensitivity analysis and ORSA assessment of on-going compliance with capital requirements are risk management tools that are required of all undertakings using a matching adjustment, and provide additional evidence as to whether the use of a matching adjustment is appropriate.

Policy issue 1: Structure of the written application (Articles 2 to 5)

> **Option A:** Specify what information must be provided in an application, but allow undertakings freedom over the documentation format.
>
> **Option B:** Specify a standardised template in which the required information should be submitted.

Policy issue 2: Ability to submit a single written application for multiple portfolios of obligations (Article 1.4)

> **Option A:** Allow undertakings to submit a single application in respect of multiple portfolios of insurance or reinsurance obligations (provided the evidence required for each portfolio is set out separately).
>
> **Option B:** Require a separate application for each portfolio of insurance or reinsurance obligations.

Policy issue 3: Time limit to determine whether an application is complete (Article 6.3)

Option A: Specify that a supervisory authority should determine whether an application is complete within 30 days of receiving the application.

Option B: No prescribed time limit for a supervisory authority to determine that an application is complete.

Policy issue 4: Time limit to assess and decide on an application (Article 6.5)

Option A: Specify that the time taken by the supervisory authority to assess and decide on an application should not exceed six months.

Option B: No prescribed time limit for the supervisory authority to assess and decide on a complete application.

Policy issue 5: Copy of documentation and evidence in electronic format (Article 6.8)

Option A: Require a copy of all documentation and evidence to be provided in electronic format.

Option B: Do not require a copy of all documentation and evidence to be provided in electronic format.

Policy issue 6: Time taken by undertakings to provide any further evidence or adjustments requested by the supervisory authority (Article 6.6)

Policy option A: The time taken by the undertaking to provide the supervisory authority with further evidence or to execute the adjustments is not included within the overall time period for a decision on the application (automatic 'stop-the-clock' mechanism)

Policy option B: When the supervisory authority requests further evidence or adjustments the undertaking may request a suspension of the time period for a decision on the application ('stop-the-clock' mechanism only at the request of the undertaking)

Policy issue 7: Request for adjustments to an application (Article 8.3)

Option A: Rather than providing only a "yes/no" decision, allow supervisory authorities to request adjustments to an application, or to notify an undertaking that it would be possible to approve an application subject to certain adjustments.

Option B: Require supervisory authorities to provide only a "yes/no" decision to undertakings that have applied to use a matching adjustment.

Analysis of Impacts

Policy issue 1: Structure of the written application (Articles 2 to 5)

Option A: Specify the required information to be provided in an application, but allow undertakings freedom regarding how the information is documented.

- Benefits:

  - Provides flexibility in preparation of matching adjustment applications by undertakings;
  - Ensures that relevant information is not omitted from an application solely because a request for that information does not appear in the template;
  - Information relating to an application to use a matching adjustment is undertaking-specific. A free-form application containing the required information allows the undertaking-specific nature of the matching adjustment portfolio to be fully reflected in the application.

- Costs:
  - No costs identified for EIOPA or policyholders;
  - Potential small additional cost for supervisory authorities due to inconsistency between applications submitted by different undertakings. This could translate into a small additional cost for undertakings because of a slight delay in receiving a decision on (a) whether the application is complete and (b) whether the complete application is approved.

Option B: Provide a standardised template on which the required information should be submitted.

- Benefits
  - A standardised template provides consistency between applications submitted by different undertakings. It may also allow supervisory authorities to identify missing information in applications more quickly;
  - A standardised template may lead to fewer incomplete applications submitted to supervisory authorities. This could reduce administration costs, requests for additional information, and possibly expedite decisions by supervisory authorities.

- Costs
  - Development and maintenance of templates for the submission of required information would create resourcing costs for EIOPA;
  - A standardised template may not reflect the undertaking-specific nature of information required by supervisory authorities to consider an application to use a matching adjustment. As such, it would not rule out requests for additional information by supervisory authorities;
  - Adherence to standardised templates may obscure or divert attention away from matters of substance, restricting the supervisory authority's ability to reach a timely decision.

Policy issue 2: Ability to submit a single written application for multiple portfolios of obligations (Article 1.4)

Option A: Undertakings may choose to submit a single written application seeking approval to apply a matching adjustment in respect of multiple portfolios of insurance or reinsurance obligations (provided the evidence required for each portfolio is set out separately).

- Benefits
  - This option streamlines the application process, reducing the paperwork and submission costs incurred by undertakings seeking approval to apply a matching adjustment to multiple portfolios of obligations;
  - A single application may make it easier for undertakings to manage the application process. For supervisory authorities, fewer separate applications should reduce administrative burden and facilitate clearer communication with undertakings regarding their applications. This option still allows an undertaking to submit separate applications for separate portfolios if it wishes to do so, and thus does not restrict undertakings' choice in this respect.
- Costs
  - Potential cost to undertakings, in that a request by the supervisory authority for additional evidence in respect of one portfolio (or a subset of portfolios) will "stop the clock" on all other portfolios included in the application, regardless if no additional evidence is required in respect of those portfolios;
  - No costs identified for EIOPA, supervisory authorities, and policyholders.

Option B: A separate written application should be submitted in respect of each portfolio of obligations to which an undertaking wishes to apply a matching adjustment.

- Benefits
  - No additional benefits versus Option A have been identified for this option, as Option A permits undertakings to pursue this approach should they wish to do so.
- Costs
  - Mandating the use of separate written applications would potentially lead to additional costs for both undertakings (in preparation of multiple separate applications) and supervisory authorities (in consideration of multiple separate applications).

Policy issue 3: Upper limit of 30 days to determine whether an application is complete (Article 6.4)

Option A: The supervisory authority should determine whether an application is complete within 30 days of receipt of an application.

- Benefits
  - A 30 day period is consistent with the (solo) Internal Model Approval Process (IMAP). A 30 day period should provide a reasonable amount of time for a supervisory authority to check the evidence submitted with an application and decide on whether or not an application is complete;

- The 30 day period represents an *upper limit*. For simple applications, supervisory authorities are free to communicate this decision to undertakings sooner;
- A 30 day upper limit should lead to broadly consistent timeframes across different Member States for supervisory authorities to decide on whether applications are considered complete.

- Costs
  - A 30 day time limit might lead to additional costs for supervisory authorities, especially in the event of large volumes of applications being received in respect of the matching adjustment alongside other approval processes (e.g. IMAP, Ancillary Own Funds, etc.).

Option B: Do not specify a time limit in which a supervisory authority should determine whether an application is complete, and leave it to supervisory authorities to determine an appropriate time frame.

- Benefits;
  - Potentially lower costs for supervisory authorities than Option A (as the supervisor can use its discretion to manage the resource burden of assessing a large volume of simultaneous applications).

- Costs
  - Under this option, undertakings would have far less clarity on the overall time required to receive a decision on a matching adjustment application;
  - Under this option, there would be no way to ensure a consistent and harmonised timeframe in which supervisory authorities decide whether or not matching adjustment applications are considered complete;
  - There is a risk that supervisory authorities take much longer than 30 days to decide on whether or not an application is considered complete. This could lead to increased cost via uncertainty and extra resource burden for undertakings.

Policy issue 4: Upper limit of 6 months on the consideration period of a written application (Article 6.5)

Option A: Specify within the ITS that the consideration period for applications should not exceed six months.

- Benefits
  - A consideration period capped at 6 months is consistent with the 6 month decision period allowed for the Internal Model Approval Process. As a matching adjustment application is very unlikely to be more complicated than an application to use an Internal Model, a decision period for the matching adjustment that is longer than the decision period for the Internal Model would be inappropriate. A six month decision period should provide a reasonable amount of time for a supervisory authority to come to a considered decision on even the most complex applications to use the matching adjustment;

- For simpler applications where the full six month consideration period is not required to reach a decision, supervisory authorities are free to communicate their decision to undertakings sooner;
- A six month cap should lead to broadly consistent consideration periods for assessment of matching adjustment applications between different Member States.

- Costs
  - A six month time limit might lead to additional costs for supervisory authorities (due to resource costs of meeting the deadline), especially if large volumes of applications are received simultaneously in respect of the matching adjustment and other approval processes (e.g. IMAP, AOF, etc.);

Option B: Do not specify a consideration period within the ITS, and leave it to supervisory authorities to determine an appropriate time frame.

- Benefits
  - This option would allow a supervisory authority the freedom to set the consideration period according to the specifics of each application, thereby allowing the administrative burden of considering the application to be managed and the consideration period being tailored to the complexity of the application.

- Costs
  - Under this option, there would be no way to ensure a consistent and harmonised timeframe between supervisory authorities. This may cause particular difficulties and lead to increased costs for supervisory authorities in respect of group supervision;
  - There is a risk that supervisory authorities take longer than 6 months to reach a decision on applications, especially during busy periods. This could lead to increased cost via uncertainty and extra resource burden for undertakings. It could also interfere with decisions on other applications (e.g. AOF, IMAP, etc.), leading to increased costs for both undertakings and supervisory authorities.

Policy issue 5: Should undertakings be required to provide evidence in electronic format? (Article 6.8)

Option A: Require undertakings to provide evidence in support of an application in electronic format.

- Benefits
  - This will facilitate more efficient assessment of matching applications by supervisory authorities, which is ultimately likely to lead them to reach more robust decisions in a more timely manner.

- Costs
  - No costs identified for undertakings, who are very likely to produce evidence in electronic format when compiling a matching adjustment application;

- No costs identified for EIOPA, supervisory authorities and policyholders.

Option B: Do not specify the format in which undertakings provide evidence in support of an application.

- Benefits
  - This option leads to flexibility, in that it does not restrict the format in which undertakings can submit evidence in respect of a matching adjustment application;
  - Under this option, undertakings may choose to submit evidence in electronic format, and so does not restrict undertakings' choice in this respect.
- Costs
  - This option may lead to significant/material costs for supervisory authorities if undertakings submit quantitative evidence in non-electronic format (i.e. if supervisory authorities need to input hardcopy data into electronic format). This would increase the burden of assessing matching adjustment applications, potentially leading to longer application consideration periods.

Policy issue 6: Time taken by undertakings to provide any further evidence or adjustments requested by the supervisory authority (article 6.6)

Policy option A: The time taken by the undertaking to provide the supervisory authority with further evidence or to execute the adjustments is not included within the overall time period for a decision on the application (automatic 'stop-the-clock' mechanism)

- Benefits
  - This option would establish an automated process which should be clear to all stakeholders involved and would not require additional discussions between undertakings and supervisory authorities;
  - This option would ensure that an undertaking has adequate time to address the request from the supervisory authority without jeopardising the approval of the application.
- Costs
  - The overall time period for a decision on an application would not be fixed and may ultimately be longer than the time allowed for in the regulation, in particular where a supervisory authority needs to request further information or adjustments on multiple occasions. A fixed time period would be expected to assist undertakings in their planning, in particular if they submit a number of different applications to supervisory authorities simultaneously.

Policy option B: When the supervisory authority requests further evidence or adjustments the undertaking may request a suspension of the time period for a decision on the application ('stop-the-clock' mechanism only at the request of the undertaking)

- Benefits
  - The undertaking would have certainty that the maximum amount of time that the supervisory authority will take to decide on their application will be fixed, unless the undertaking itself requests a suspension.
- Costs
  - The likelihood of an undertaking needing to submit subsequent applications is expected to increase under this option. Where an undertaking did not request a suspension of the time period, the supervisory authority may not have sufficient time to review the evidence or adjustments and be satisfied that the necessary conditions for approval are met. The undertaking would then have to decide if it wishes to submit a new application;
  - Significant additional costs both to undertakings and supervisory authorities from having to submit an additional application where a previous application was rejected. This would entail administrative costs, for example, each application will need to be approved by the administrative, management and supervisory body of the undertaking, and similarly the decision to reject an application will require approval at a senior level within the supervisory authority. More importantly, the need for the undertaking to wait for up to a further six months, before potentially being able to apply the matching adjustment (subject to supervisory approval of the resubmitted application), would present significant opportunity costs to the undertaking;
  - As the process would not be automatic, there would need to be additional communication between the supervisory authority and the undertaking, thereby resulting in some minor additional costs to both parties.

Policy issue 7: Should supervisory authorities be able to suggest amendments to an application rather than a simple yes/no answer? (Article 6.4)

Option A: Rather than providing only a yes/no decision, supervisory authorities may notify an undertaking regarding amendments to an application if it determines that it would be possible to approve the application subject to those amendments.

- Benefits
  - This option permits flexible assessment of applications by supervisory authorities. In particular, for applications which supervisory authorities feel it might be possible to approve subject to amendments to the application, this option would expedite approval, which might otherwise only be possible through rejection and re-submission of an amended application by undertakings;
  - Under this option, supervisory authorities may choose to provide a yes/no decision (along with justifications if an application is declined), so it does not restrict the supervisor’s choice in this respect. This is likely to be relevant if an application is poorly compiled, with weak supporting evidence, or if the undertaking is unwilling to engage in

constructive dialogue with the supervisory authority during the assessment process.

- Costs
  - This option might to lead to increased costs for supervisory authorities in respect of communication and management of an application in the case where the decision is not on a yes/no basis. However, the added flexibility is likely to reduce costs overall for supervisory authorities and undertakings, compared with the alternative of declining an application and subsequent re-submission of a new amended application by undertakings.

Option B: Supervisory authorities should provide a yes/no decision to undertakings in respect of an application to use a matching adjustment.

- Benefits
  - Supervisory authorities may be able to reach yes/no decisions more quickly, thereby expediting consideration of applications.
- Costs
  - Potentially significant additional costs for undertakings in preparation of, and for supervisory authorities in consideration of, follow-up applications following an initial rejection.

Comparison of Options

Policy issue 1: Structure of the written application (Articles 2 to 5)

The preferred policy option for this policy issue is **Option A:** specify the required information to be provided in an application, but allow undertakings freedom regarding how the information is documented. This option should not lead to further costs for undertakings, but extra costs are likely to be incurred by supervisory authorities, in respect of considering inconsistent applications submitted by different undertakings. Despite these additional costs, this flexible approach should enable supervisory authorities to reach the desired outcome in a consistent way, as specified in the objective: a flexible application process resulting in applications which are fit-for-purpose, and reflect the undertaking-specific nature of the matching adjustment portfolio.

Option B has been disregarded because the benefits afforded by this option are not guaranteed to materialise, whereas the costs for this option are likely to be material.

Policy issue 2: Ability to submit a single written application for multiple portfolios of obligations (Article 1.4)

The preferred policy option for this policy issue is **Option A:** undertakings may choose to submit a single written application seeking approval to apply a matching adjustment in respect of multiple portfolios of insurance or reinsurance obligations (provided the evidence required for each portfolio is set out separately). This option has the potential to reduce costs and administrative burden for both undertakings and supervisory authorities, and does not prevent undertakings from submitting separate applications for each portfolio should they wish to do so. This flexible approach supports the objective for this ITS.

Option B has been disregarded because it leads to additional costs and administrative burden compared with option A, with no additional benefits. Undertakings will be required to submit the same information for both options A and B, with option A offering the ability for undertakings to use a condensed format that avoids unnecessary duplication.

Policy issue 3: Upper limit of 30 days to determine whether an application is complete (Article 6.4)

The preferred policy option for this issue is **Option A:** specify within the ITS that a supervisory authority should determine whether an application is complete within 30 days of receipt of an application. This option provides a reasonable period of time in which supervisory authorities can initially assess applications for completeness, which is consistent with protocols for other approval processes (e.g. solo Internal Model Approval Process). Furthermore, this option does not restrict supervisory authorities from reaching a decision on the completeness of applications and communicating this decision to undertakings before the 30 day limit has elapsed, if it is in a position to do so. A common 30 day cap across all Member States will help to achieve the objective for this ITS, and should help to ensure decisions are reached and communicated to undertakings within a reasonable period of time. It will also provide clarity for both undertakings and supervisory authorities regarding the operating timeframe around initial consideration of matching adjustment applications.

Option B has been discarded because national supervisory authority discretion does not contribute towards achieving the objective of this ITS, i.e. consistent implementation across Member States, and without a mandated initial application completeness consideration period, there is a risk that supervisory authorities might take an unreasonable amount of time to communicate to undertakings on the completeness of their matching adjustment applications. This option is also inconsistent with other approval processes (e.g. Ancillary Own Funds and IMAP), and could lead to considerable uncertainty for undertakings with respect to their matching adjustment application(s).

Policy issue 4: Upper limit of 6 months on the consideration period of a written application (Article 6.5)

The preferred policy option for this issue is **Option A:** specify within the ITS that the consideration period for applications should not exceed six months. This option gives supervisory authorities the ability to consider applications within a reasonable period of time, which is consistent with the consideration period allowed for in the Internal Model Application Process. In addition, option A does not restrict supervisory authorities from reaching a decision before the full six month consideration period has elapsed, if it is in a position to do so. This option will help towards achieving the objective, i.e. consistent implementation between Member States, and means that undertakings will receive decisions in respect of applications within a reasonable period of time. It will also provide clarity for both undertakings and supervisory authorities regarding the operating timeframe around full consideration of matching adjustment applications.

Option B has been discarded because national supervisory authority discretion does not contribute towards achieving the objective of this ITS, i.e. consistent implementation between Member States, and without a mandated consideration period, there is a danger that supervisory authorities might take an unreasonable amount of time to consider applications. This option is also

inconsistent with other approval processes (e.g. AOF and IMAP), and could lead to considerable uncertainty for undertakings with respect to their matching adjustment application(s).

Policy issue 5: Should undertakings be required to provide evidence in electronic format? (Article 6.8)

The preferred policy option for this issue is **Option A:** require undertakings to provide evidence in support of an application in electronic format. This option will not lead to additional costs for undertakings, who are very likely to produce evidence in this format. As a common requirement across all Member States this option will support the objective. This option will also enhance supervisory consideration of matching adjustment applications, and should help reduce the time required by supervisory authorities to consider applications.

Option B, while providing optionality for undertakings regarding the format in which they submit evidence for matching adjustment applications, could increase the time and cost burden of assessing matching adjustment applications by supervisory authorities.

Policy issue 6: Time taken by undertakings to provide any further evidence or adjustments requested by the supervisory authority (Article 6.6)

EIOPA concluded that **Option A** was the preferred option; the days between a request by a supervisory authority for further evidence or adjustments and receipt of such evidence or the execution of adjustments is not included within the overall time period for the application.

EIOPA considered option A to be a practical and workable approach which balances the need for undertakings to have certainty, with the costs associated with the rejection of an application. It was felt that the potential costs of an undertaking having to submit a new application for approval were greater than the costs associated with the fact that the time period for a supervisory authority to decide on an application may be extended. It was also noted that it should be possible for undertakings to manage the uncertainty arising from the possible revisions to the time period. Upon receiving the request from the supervisory authority, the undertaking would know that it needs to readjust its planning based on the nature of the request from the supervisory authority. Furthermore, this approach would only add marginally to the uncertainty that the undertaking will need to manage owing to the fact that the application may not be approved. EIOPA also believed that an automated process was preferable, since it would not require additional communication between undertaking and supervisory authority as to whether the undertaking intends to suspend the time period.

The safeguard to any unjustified delay to the assessment period would be that a request for further evidence by the supervisory authority has to be necessary for the assessment of the application, the request shall be specific on the additional evidence required and the supervisory authority shall communicate the rationale for this request. It should be clear that the supervisor would not be in a position to approve the application without the evidence.

The suspension of the time period would allow the supervisor to have the appropriate time for analysing the evidence once it has been received; the

time taken by the undertaking to submit the information should not impinge on the time for approval.

EIOPA considered whether there was a sufficient incentive for undertakings to either provide the evidence or execute the adjustments immediately or, where this is not possible, to request a suspension of the time period. EIOPA felt that, whilst in general this incentive would be sufficient, there would be instances where de facto the evidence or adjusted application is not provided on a timely basis. This could mean that the supervisory authority would not have time to assess the evidence or adjusted application and would need to reject the application.

EIOPA will monitor the application by NCAs of the possibility to suspend the time period.

Policy issue 7: Should supervisory authorities be able to suggest amendments to an application rather than a simple yes/no answer? (Article 6.4)

The preferred policy option for this issue is **Option A:** rather than providing only a yes/no decision, supervisory authorities may notify an undertaking regarding amendments to an application if it determines that it may be possible to approve the application subject to those amendments. This option permits flexible assessment of applications by supervisory authorities, supporting the objectives for this ITS. While it may lead to increased cost for supervisory authorities in respect of initial matching adjustment applications by undertakings, it is more than likely to reduce the costs associated with rejection and subsequent consideration of potential new applications following a “no” decision. In so far as it is likely to improve/enhance communication between supervisory authorities and undertakings, this option is likely to lead to positive outcomes for the objective. In addition, this option does not prevent supervisory authorities from providing a yes/no decision (along with justifications if the application is declined) if it wishes to do so.

Option B was discarded because the potential benefits were minimal and the costs associated with this option were expected to be significant for both undertakings and supervisory authorities.

Monitoring Indicators

The following indicators may be relevant in assessing whether the ITS has been effective and efficient in respect of the objective specified above:

Consistent application of the approval process for the Matching Adjustment across Member States.	Possible indicators of progress towards meeting the objective may be: • Averaged length of time taken by supervisory authorities to determine that an application is complete and number of applications considered not complete with respect to the number of applications submitted. • Number of applications approved and rejected with respect to the number of applications submitted. • Number of applications where additional information was requested by the supervisory authority and time for decision was suspended;

Annex II: Resolution of comments

Summary of Comments on Consultation Paper CP-14-007-ITS on the procedures for the approval of the matching adjustment				
EIOPA would like to thank the Insurance and Reinsurance Stakeholder Group, Actuarial Association of Europe, CFO Forum and CRO Forum, Deloitte Touche Tohmatsu, Equity Release Council, Federation of European Accountants, Financial Supervisory Authority of Romania, and Insurance Europe. The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14/007.				
No.	**Name**	**Reference**	**Comment**	**Resolution**
1.	IRSG	General Comment	☐ Existing business: o Article 20.1.B.(a)(ii) of Life Directive 2002/83/EC allows insurance undertakings to fully recognize the effects of long term asset-liability management (ALM) strategies in valuing their insurance liabilities and the corresponding assigned assets backing them o Therefore, there are countries where life insurance undertakings already apply a measure very similar to the matching adjustment. The starting point is not the same in all EU jurisdictions o For these countries the procedures of the Draft ITS would lead to the supervisor receiving and having to assess a very large number of applications in respect of many existing portfolios of insurance obligations, with only nine months in which to do so, from 1 April 2015 to 31 December 2015 o The proportionality principle has to be interpreted taking into account the effects that an ITS such as this may have both on	The principle of proportionality is an overarching principle that applies throughout the Solvency II Directive, Implementing Measures, standards and guidelines. At the same time, the ITS should ensure the convergent approach in the application of Article 77b of the Solvency II Directive.

			the insurance undertakings and on the supervisors in the various EU jurisdictions, and solutions need to be found to ensure that this principle is not breached in any of them as a result of differences among the respective markets. ☐ New Business: o For new business, the 6 month consideration period could constitute a serious obstacle to offering new products with long-term guarantees o An insurance undertaking intending to sell a product to which it wishes to apply the matching adjustment cannot wait for 6 months or even more to be able to do so. Product design and launching and investment decisions take place in much shorter timeframes o The strategic or policy decision underlying the package of LTG measures, and in particular the matching adjustment, is to ensure the maintenance of the supply of insurance products with long-term guarantees, not only as regards the past (existing business) but also for the future (new business) o The formal requirements set forth in the ITS, and especially the 6-month consideration period, should not constitute an obstacle for the insurance sector to still provide long-term guarantees to the benefit of consumers. Otherwise it would be extremely detrimental both for consumers and for the long-term financing of the European economy. ☐ Possible solution o Consider all products to which the matching adjustment is applied as a single portfolio of insurance obligations o Article 77ter(1)(b) of the Directive considers all the products to which the matching adjustment is to be applied as a single portfolio of insurance obligations, and all the assets assigned to it as a single portfolio of assets o This would make it possible to lighten the huge	It is the intention of the Solvency II Directive that the approval process applies to existing business for which the eligibility criteria are expected to be met at the date of submission of the application. The current ITS does not preclude to possibility for the undertakings to apply for a single portfolio of insurance obligations provided that the undertaking can demonstrate that the criteria are met.

			administrative workload which otherwise would burden markets that have been applying a measure very similar to the matching adjustment for many years ☐ In addition to the foregoing comments, to further decrease the burden both on the supervisory authorities and the undertakings "fast-track" processes should be put in place, meaning that when undertakings already received supervisory approval to apply the Matching Adjustment (MA) to a portfolio, they should be able to use again the application or refer to it when requesting approval for eg a new product which has similar characteristics. The period to get the approval should also be much shorter in such cases.	Disagree. Article 77b of the Solvency II Directive does not allow for two different application processes. Nevertheless, where both insurance product and asset portfolio have the same feature to already approved portfolios, it is likely in practice that the assessment of the application will require less time.
2.	Actuarial Association of Europe (AAE)	General Comment	☐ While the ITS provides detail on what evidence is required from undertakings, it does not provide much information on the criteria and manner in which the National Competent Authority (NCA) will make the decision on approval of the application. We would appreciate more transparency on how supervisors will assess the evidence and make the decision. Will this question be answered in Level 3 guidelines? ☐ The ITS does not provide sufficient clarity on the treatment of new business vs in-force business. In the situation where an undertaking is continuing to write new business that is identical in nature to the portfolio of eligible insurance obligations and is managed in the same way, we might expect that it is appropriate for the matching adjustment to be applicable. However, it would be unduly burdensome and inefficient to be required to repeat an application for matching adjustment regularly in respect of that	The criteria are set in Article 77b of the Solvency II Directive and the ITS can only focus on the process. The increase in volume of a portfolio of insurance obligations to which a MA applies is not subject to prior supervisory approval but to the on-going satisfaction of the criteria (vs. portfolios to which a

			new business, if it is identical in nature to the portfolio of eligible obligations that have already been approved. A possible compromise would be to allow matching adjustment on the future new business (without need to submit a further application), subject to an internal assessment by the Actuarial Function that the criteria for applicability are unaffected for the new business. EIOPA may want to consider updating the ITS to deal with the question of new business. ☐ For Article 4 (the evidence that the portfolio of insurance obligations meet the criteria) we would expect that for certain product types in some markets, entities will be duplicating effort in demonstrating that the relevant product meets the criteria. We think that it may be useful for NCAs to set out a list of standard product types from the national market which they consider to be eligible by default, and request that entities only submit evidence for exception cases where either the product has some unique features that deviate from the standard producy type, and/or there is a product that should be eligible but is not on the NCA list of products that are eligible by default. ☐ It might be useful to make it more explicit that undertakings do not need to re-apply for matching adjustment on a regular basis once it is approved (this may be self-explanatory or implied by other articles elsewhere in the regulations, but it is helpful to re-iterate this in the ITS). ☐ The ITS includes requirements for SCR information. It may be helpful to clarify whether this would be on internal model and/or standard formula, in the situation where an undertaking is submitting this application in parallel to an IMAP (and hence, it is not yet confirmed whether the internal model is approved).	MA applies should be in run-off). This is clarified in the ITS. Disagree. It is up to undertakings to demonstrate that their products meet the eligibility criteria. See above. It is now clarified in the ITS that the evidence required shall be submitted on the basis of the Standard Formula

			☐ We note that the decision on approval matching adjustment for an undertaking could affect the capital position materially and hence, any intended capital management actions by the undertaking (e.g. restructuring assets). We note that the 6 month timeframe for decision leaves a very short timeframe (ahead of Solvency II go-live) to implement any necessary remedial capital management actions should the decision be unfavourable. It may be worthwhile EIOPA further considering how NCAs can help to manage this source of uncertainty for undertakings, for example providing an earlier advance decision in principle ahead of the formal application. ☐ The ITS could also be extended to include a template for submitting the application. While the ITS itself is a template for the content, an illustrative document/spreadsheet template for the whole application pack (e.g. template tables to populate, indicative size of commentaries required) may also be useful to give more detail - we note that for certain items(e.g. Article 4 on the insurance obligations) the requirement is described in a relatively open ended manner (which could lead to inconsistency in the depth and form of evidence submitted by different undertakings). ☐ The ITS does not set out what is acceptable in relation to the valuation date for quantitative evidence submitted – is this at the discretion of the NCA? ☐ Regarding the period of 6 months for the NCA to provide a response, we note that for some other approval processes the timeframe is different (e.g. ancillary own funds has a period of 3 months for a response) – why is a period of 6 months chosen for matching adjustment approval?	result as well as the unapproved Internal Model. Recital (4) of the ITS recommends an early dialogue between undertakings and NCAs in order to better prepare the formal application process. Partially agreed but this is restricted by the resources and time. Yes, it is at the discretion of the NCA. The period of assessment of the application takes into account the complexity and the significance of the impact of the element being

				under supervisory approval.
3.	CFO Forum and CRO Forum	General Comment	Thank you for opportunity to comment on CP-14-07. The CFO Forum and CRO Forum welcome the publication of this consultation paper. We have set out our comments on the individual articles of the paper below. However, and as reflected in our comments, in our view the Implementing Technical Standard as currently drafted introduces new requirements that are not included in Articles 77b and 77c the Solvency II Directive (as modified by the Omnibus II Directive), and in effect creates a "Use Test" for the application of the Matching Adjustment. The role of the Implementing Technical Standard is to set out process in relation to the approval of applications to use the Matching Adjustment. We therefore consider the creation of new requirements to be beyond its scope, and have proposed the deletion of the additional requirements to restore consistency with the Level 1 text. We are also also concerned that the ITS as drafted may leave undertakings in a position of uncertainty if a decision has not been reached by the supervisory authority within the prescribed period, and believe that clarity is needed to provide certainty to undertakings. We would also note in general that the references to the draft Delegated Acts in the ITS will need to be updated as the Delegated Acts are finalised and adopted.	See below

4.	Equity Release Council	General Comment	The Equity Release Council is the industry body for the equity release sector in the United Kingdom. Born from an expansion of the remit of SHIP (formerly Safe Home Income Plans), the Equity Release Council represents the providers, qualified financial advisors, lawyers, intermediaries and surveyors who work in the equity release sector. The Council has over 300 members. We also assist members of the public in accessing information on equity release – in 2013 we provided 739 information packs and received over 11,000 visits to our member directory from people looking for advice on equity release. Although the Council recognises that the legislation introduced by European Union was intended to reduce market disruption and help ensure that consumers are properly protected, our view is that some of the changes proposed may impact negatively on the ability of insurers to supply consumers with products which allow them to appropriately plan for their future. As the legislation currently stands, a number of different types of assets, many of which are excellent long term investments, may be unable to qualify for the matching adjustment. Investments and assets which are ineligible for the matching adjustment are less attractive to buyers of these assets. Ultimately, this means that these assets may be less attractive to insurers of assets backing liabilities. For the consumer this means that they are left with fewer products to choose from, including equity release. Consumers use products like equity release as a way of funding their retirement. Equity release allows individuals aged 55 and over to release money from the property they live in without having to make any monthly	The criteria for MA application are set out in the Solvency II Directive and Implementing Measures. The ITS is only for approval process.

			repayments, and can be used for a range of purposes, including social care. Ageing populations across Europe, particularly in the UK, mean that this option of paying for care is becoming increasingly important. We believe that the conditions which allow good investments like equity release should upheld. These products tend to be of low risk, but high benefit for those who seek them.	
5.	Insurance Europe	General Comment	1. Insurance Europe welcomes the Implementing Technical Standards (ITSs) provided to undertakings in seeking supervisory approval of the application of a matching adjustment and the opportunity to comment on them. 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 the applications and EIOPA should make it easier to prove that the requirements set in the Directive are satisfied. ITSs should be restricted to process. They should not introduce new requirements that are not included in the Directive. Some evidence to be provided in the application introduces new requirements that are not necessary to assess the fulfilment of the requirements included in Article 77b and 77c of the Directive. Furthermore, we believe that generally speaking the length foreseen for the approval period is too high and should be shortened to eg three months, as is the case for Ancillary Own	The principle of proportionality is an overarching principle that applies throughout the Solvency II Directive, Implementing Measures, standards and guidelines. Disagree, the ITS does not create new eligibility criteria. It only focuses on the process to be followed for the demonstration of the compliance with the criteria set out in the Solvency II Directive.

			Funds (AOFs) and Special Purpose Vehicles (SPVs) approval processes. In addition to this, to further decrease the burden both on the supervisory authorities and the undertakings, we strongly advise that "fast-track" processes are put in place, meaning that when undertakings already have received the supervisory approval to apply the Matching Adjustment (MA) to a portfolio, it should be able to use again the application or refer to it when requesting approval for eg a new product which has similar characteristics. The period to get the approval should also be much shorter in such cases.	 See response to comment 1 and 2.
			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.	Partially agreed. The suspension of the time frame for decision has been kept in the ITS. EIOPA considers that a suspension would be more cost-efficient for undertakings and supervisors than having to resubmit or reassess an application respectively following a rejection due to any necessary additional information not being provided in a timely manner. EIOPA has, nevertheless, considered undertakings' concerns that this would create the potential for an undue prolongation of the

			Last but not least, we disagree with the lack of approval if no response from supervisor 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 consider that the application of the MA has been approved. 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.	process without legal certainty on timely decisions. Therefore, the draft article has been reviewed in this regard: supervisors will have to apply this option under the objective constraints of showing the necessity and justification for the additional information and being specific as to the additional information required. EIOPA will also monitor the application by NCAs of the possibility to suspend the time period. The article 77b in the Directive is clear in its requirement of a prior approval. This means that the application shall not be considered as approved or reject without a prior decision by the supervisor.
6.			This comment was submitted as confidential by the stakeholder.	

7.	Financial Supervisory Authority of Romania (ASF)	Article 2 (1)	(2) language authorised by the supervisors to be changed to language agreed with the supervisors, as it is stated in the other ITS	This will be aligned across ITSs
8.	Insurance Europe	Article 2 (1)	We do not clearly see the added value of this paragraph. Maybe it is better to specify that when insurance undertakings apply for a MA, a written application should be submitted and is subject to prior supervisory approval as mentioned in Article 77b (1) of the Directive.	Noted.
9.	CFO Forum and CRO Forum	Article 2 (3)	We consider that the documentation of the application should not be required to extend beyond that specified in this Implementing Technical Standard. See also our comment on Article 8(2).	It is up to the undertaking to determine whether it wishes to supplement its application by any other information deemed relevant by this undertaking.
10.	Insurance Europe	Article 2 (3)	"..Any other relevant information" Further clarification is needed on this wording, while avoiding to have documentation too burdensome for insurance undertakings.	It is up to the undertaking to determine whether it wishes to supplement its application by any other information deemed relevant by this undertaking.
11.			This comment was submitted as confidential by the stakeholder.	

12.	CFO Forum and CRO Forum	Article 2 (4)	Once the authorisation is approved, we consider that it should be possible to apply the same authorisation to future products with similar features without entering into another approval process, which would be unduly burdensome for both supervisors and undertakings. The supervisory review process could be used to supervise fulfilment of the relevant requirements.	Disagree, see response to comment 1.
13.	Deloitte Touche Tohmatsu	Article 2 (4)	The possibility to send a single application covering several portfolios is welcome. This would allow entities to provide documentation which is identical for several if not for all of the matching adjustment portfolios under application (eg. replication or portfolio management techniques, fundamental spread and matching adjustment calculation process, etc), as long as the portfolios to which each document relates are clearly identified. It should also be possible to include application for transitional measures and volatility adjustment (where required by national supervisor) within the same application process, whenever applications are compatible. This would enable the supervisor to have a holistic view of the entity through a single submission.	See response to comment 1. The terms and conditions of approval processes relating to transitional measures and volatility adjustment are to be defined by Member States.
14.	Insurance Europe	Article 2 (4)	We strongly believe that flexibility should be given to (re)insurers when applying for MA. Anytime the structure and characteristics of MA portfolios allow it, the option of submitting only one application for approval of the use of MA covering all MA portfolios should be given to (re)insurers at entity level. On the other hand, we agree that an application per portfolio/product should be possible when MA portfolios are clearly separated and/or significantly different from one another.	The possibility to submit a single application in respect of more than one portfolio of obligations is already granted in Article 2(4). See response to comment 1.

15.	IRSG	Article 2 (5)	☐ As stated here the written application to use the MA has to be approved by the administrative, management or supervisory body (AMSB); perhaps it should be clarified who is meant here in a two-tier board system, management or the board of supervisors	It is beyond the empowerment of this ITS to define what is the AMSB.
16.	Federation of European Accountants (FEE)	Article 2 (5)	The ITS states that the application to use the Matching Adjustments should be approved by the administrative management or the supervisory body. FEE suggests that the ITS should clarify who should approve the application in the case of a two-tier board system.	It is beyond the empowerment of this ITS to define what is the AMSB.
17.	IRSG	Article 3 (1) b	☐ As regards the requirement to provide information on details of assets consisting of line-by-line asset information within the assigned portfolio it may be helpful to clarify if "line-by-line"-basis refers to the SII balance sheet or if this may also mean the financial statements balance sheet can be taken	ITS being part of Solvency II regulation, this provision refers to the Solvency II balance sheet.
18.	CFO Forum and CRO Forum	Article 3 (1) b	We believe that the requirement for line-by-line asset information on Matching Adjustment portfolios is inappropriate and unduly onerous. Instead, providing details of the asset portfolio grouped by asset class, credit quality and duration, along with the criteria used to select such assets for inclusion in the Matching Adjustment should be sufficient to enable the supervisory authority to form a judgment on the approach used by firms to construct and manage Matching Adjustment portfolios.	Disagree, the identification of each asset included in the asset portfolio is necessary to ensure the compliance with Article 77b(a) of the Solvency II Directive. This is also a reporting requirement.
19.	Equity Release Council	Article 3 (1) b	Article 3 (1) b should be amended to note that individual assets whose value represents less than 0.05% of the best estimate valuation of the portfolio of insurance, or reinsurance obligations	Disagree, the identification of each asset included in the

			to which the matching adjustment is intended to apply, do not need to be listed line-by-line, but can be shown in aggregate. For this purpose the best estimate valuation of the portfolio of insurance or reinsurance obligations is to be assessed in accordance with Article 76 of Directive 2009/138/EC without use of a Matching Adjustment or Volatility Adjustment.	asset portfolio is necessary to ensure the compliance with Article 77b(a) of the Solvency II Directive. This is also a reporting requirement.
20.	Federation of European Accountants (FEE)	Article 3 (1) b	The ITS requires that information on details of assets should be provided on a line-by-line basis. FEE suggests that the ITS should clarify that the line-by-line basis refers to the Solvency II Balance sheet whether the Statutory Financial Statements can be used as a basis to provide such information.	ITS being part of Solvency II regulation, this provision refers to Solvency II balance sheet.
21.	Insurance Europe	Article 3 (1) b	We believe that the requirement for line-by-line asset information on MA portfolios might be unduly onerous and burdensome both for supervisors and undertakings. It also has to be clarified that, since the approval process is foreseen to last six months, the assets eventually reported will have evolved during that period. For this reason, we think that more flexibility should be given as long as undertakings are able to demonstrate that they comply with the requirements and therefore we suggest the following rewording: "details of the assets within the assigned portfolio, which shall, at the firm's discretion, consist of line by line asset information or assets by asset class, credit quality and duration together with the procedure used to group such assets for the purposes of determining the fundamental spread referred to in paragraph 1(b) of Article 77c of Directive 2009/138/EC;"	Disagree, the identification of each asset included in the asset portfolio is necessary to ensure the compliance with Article 77b(a) of the Directive. This is also a reporting requirement.

22.	IRSG	Article 4 (1) a	Simplify the content of the application / Allow supervisors to require evidence, as the case may be, only of those requirements of the matching adjustment that have not been previously assessed - A simplification of the requirements for quantitative and qualitative evidence accompanying the application is needed in terms of proportionality and operational practicality - The draft ITS should allow the supervisors to require evidence, as the case may be, only of the requirements of the matching adjustment that differ from those in the current local legislation, and not of the requirements that have been previously assessed by the supervisor	Disagree. Article 77b of the Solvency II Directive does not allow for a simplified application process. Besides, it would not be consistent with the empowerment of this ITS ("ensuring consistent conditions of application of Article 77b" Article 86(3) of the Solvency II Directive) to base the application process on the current local legislation.
23.	Deloitte Touche Tohmatsu	Article 4 (1) a	There is no paragraph (j) under Art.77b(1). It should refer to par. (i)	This will be corrected.
24.	Insurance Europe	Article 4 (1) a	There is no sub-paragraph (j). It shall be replaced by (i).	This will be corrected.
25.	Deloitte Touche Tohmatsu	Article 4 (1) b	For consistency with the previous paragraph, this paragraph should be: "evidence that the insurance or reinsurance obligations meet the criteria specified in Article 77b(1)(f).". If unchanged, it should clarify that ir refers to Article 42 of the Delegated Acts.	It is actually specified that this indent refers to Art.42 of the draft Implementing Measures.
26.	Insurance	Article 4 (1) b	The reference to mortality risk can be replaced by the reference	The reference is intended

	Europe		to Omnibus II, Article 77b(1)(f).	to point to the relevant section of the Implementing Measures. This can be updated when a stable version of the Implementing Measures is available.
27.	IRSG	Article 5 (1) a	Simplify the content of the application / Allow supervisors to require evidence, as the case may be, only of those requirements of the matching adjustment that have not been previously assessed - A simplification of the requirements for quantitative and qualitative evidence accompanying the application is needed in terms of proportionality and operational practicality - The draft ITS should allow the supervisors to require evidence, as the case may be, only of the requirements of the matching adjustment that differ from those in the current local legislation, and not of the requirements that have been previously assessed by the supervisor	See response to comment 22.
28.	CFO Forum and CRO Forum	Article 5 (1) c	The application of restrictions to own funds arising from matching adjustment portfolios does not reflect how portfolios are managed and technical provisions calculated in practice, and restrictions should therefore only be required once the use of the matching adjustment is approved. Requiring a recalculation of restricted own funds in the absence of approval would be beyond the requirements of the Directive and Delegated Acts. We therefore consider that this paragraph should be deleted.	The restrictions on own funds do not apply until the point that the MA approval is granted. Nevertheless it is important for the NCA to understand the financial position of the undertaking if approval is granted. An illustration

				of the effect of imposing the restrictions should be provided; however, the restrictions do not yet actually apply. The ITS has been updated to make this distinction clearer.
29.	Insurance Europe	Article 5 (1) c	This requirement should be amended. The draft DAs require that own funds should only be adjusted once the use of the MA is approved. Therefore, it does not make sense requiring adjustments on own funds where the MA has not been approved yet but only a simulation of the new solvency position once the MA gets approved. ITSs should not set out new requirements that are not included in the Directive or the DAs.	Agree, see response to comment 28.
30.			This comment was submitted as confidential by the stakeholder.	
31.	CFO Forum and CRO Forum	Article 5 (1) d	The adjustment of the SCR as a result of matching adjustment portfolios does not reflect how portfolios are managed and technical provisions and capital needs calculated in practice, and adjustments should therefore only be required once the use of the matching adjustment is approved. Requiring a recalculation of the SCR based on resticted assumptions in the absence of approval would be beyond the requirements of the Directive and Delegated Acts. We therefore consider that this paragraph should be deleted.	It is necessary for the NCA to understand the financial impact of granting approval and to have assurance that the necessary adjustments to the SCR will be applied correctly. The adjustments to the SCR thus have to be calculated/modelled for illustrative purposes,

				even if the actual restrictions do not yet apply. The ITS has been updated to make this distinction clearer.
32.	Insurance Europe	Article 5 (1) d	This requirement should be amended. The draft delegated acts require that an adjustment is made to the calculation of the SCR once the use of the MA is approved. Therefore, it does not make sense requiring the adjustment to the SCR where the MA has not been approved yet but only a simulation of the new solvency position once the MA gets approved. ITSs should not set out new requirements that are not included in the Directive or the DAs.	See response to comment 31.
33.	IRSG	Article 6 (1) a	Simplify the content of the application / Allow supervisors to require evidence, as the case may be, only of those requirements of the matching adjustment that have not been previously assessed - A simplification of the requirements for quantitative and qualitative evidence accompanying the application is needed in terms of proportionality and operational practicality - The draft ITS should allow the supervisors to require evidence, as the case may be, only of the requirements of the matching adjustment that differ from those in the current local legislation, and not of the requirements that have been previously assessed by the supervisor	See response to comment 22.
34.	CFO Forum and CRO Forum	Article 6 (1) a	We would welcome clarity on whether the contents of the written application set out in Article 6 will be required for both Solo and Group levels separately.	The content would be required for solo only.

			Specifically on subparagraph 1(a), the use of the Volatility adjustment where the use of the matching adjustment is not approved is permitted by the Omnibus II Directive, and this Implementing Techincal Standard should not be more restrictive. We therefore consider that this paragraph should be deleted.	The ITS has been changed to say 'will not be applied' rather than 'is not applied'.
35.	CFO Forum and CRO Forum	Article 6 (1) b	The approval for the use of the Matching Adjustment is restricted to the satisfaction of the requirements included in articles 77b and 77c of the Omnibus II Directive. The requirement in Article 44(2) referred to applies only once the use of the Matching Adjustment is approved. Omnibus II does not require a "Use Test" for the Matching Adjustment, and the Implementing Technical Standard should not introduce this requirement. We therefore consider that this paragraph should be deleted.	The NCA needs to be satisfied that, from the moment approval is granted, the undertaking meets all of the Solvency II Directive requirements including the requirement to have a liquidity plan, up-to-date ORSA and sensitivity analysis. This requires the NCA to see evidence of these documents before granting approval. This is not equivalent to a 'use test'.
36.	Insurance Europe	Article 6 (1) b	This requirement should be deleted. The approval of the use of the MA is restricted to the satisfaction of the requirements included in articles 77b and 77c of Omnibus II. The requirement in article 44(2) applies only once the use of the MA is approved. Omnibus II does not require the "use test" for the MA. ITSs should not extend this requirement.	See response to comment 35.

37.	CFO Forum and CRO Forum	Article 6 (1) c	The approval of the use of the Matching Adjustment is restricted to the satisfaction of the requirements included in articles 77b and 77c of the Omnibus II Directive. The requirement in article 44(2a)(b) referred to applies only once the use of the Matching Adjustment is approved, and it does not make sense to require analysis of the sensitivity of technical provisions and own funds to assumptions underlying the calculation of the Matching Adjustment where the Matching Adjustment is not used to calculate technical provisions or own funds. Omnibus II does not require the "Use Test" for the Matching Adjustment, and the Implementing Technical Standard should not introduce this requirement. We therefore consider that this paragraph should be deleted.	See response to comment 35.
38.	Insurance Europe	Article 6 (1) c	This requirement should be deleted. The approval of the use of the MA is restricted to the satisfaction of the requirements included in articles 77b and 77c of Omnibus II. The requirement in article 44(2a)(b) applies only once the use of the MA is approved. Omnibus II does not require the "use test" for the MA. ITSs should not extend this requirement.	See response to comment 35.
39.			This comment was submitted as confidential by the stakeholder.	
40.	CFO Forum and CRO Forum	Article 6 (1) d	The approval of the use of the Matching Adjustment is restricted to the satisfaction of the requirements included in articles 77b and 77c of the Omnibus II Directive. The requirement in article 45(2a) referred to applies only once the use of the Matching Adjustment is approved, and prior to approval the ORSA based on regulatory requirements should be performed without including the Matching Adjustment. Our understanding is that ORSA carried out to comply with Article 45(1)(b) of the Solvency II Directive should be based	See response to comment 35.

			on measures approved by the supervisory authority, without assuming that applications for alternative treatment were already granted. Omnibus II does not require a “Use Test” for the Matching Adjustment, and the Implementing Technical Standard should not introduce this requirement. We therefore consider that this paragraph should be deleted.	
41.	Deloitte Touche Tohmatsu	Article 6 (1) d	There should be more clarity on the basis of the ORSA assessment and scenario (with and without adjustments and transitionals) required here. For example : - Is it sufficient to do conduct ORSA for the Company as a whole, or is the portfolio using matching adjustment needs to be explicitly covered in the ORSA process ? Is it sufficient to provide only the future projections of the portfolio, or all the components of the FLA/ORSA need to be explicitly carried out for the portfolio using matching adjustment? - Is the ORSA/FLA process only required for the existing book of business, or does it need to take future new business (with prospective matching adjustment) into account? If the intention is to include future new business, could you clarify what would be the overall impact on this application process (what other information would have to be submitted in relation to the future new business)?	ORSA is the firm’s own assessment of its risks, on a forward-looking basis. It is thus not helpful for EIOPA or NCAs to prescribe the method of reflection in the ORSA.
42.	Insurance Europe	Article 6 (1) d	This requirement should be deleted. The approval of the use of the MA is restricted to the satisfaction of the requirements included in articles 77b and 77c of Omnibus II. Omnibus II does not require the “use test” for the MA. The requirement in Article 45(2a) applies only once the use of the MA is approved. ITSs should not extend this requirement. Until the approval of the use of the MA, ORSA based on regulatory requirements should be performed without including the MA. Our understanding is that ORSA related	See response to comment 41.

			to 45(1)(b) should only be based on measures approved by the supervisory authority without assuming the use is already granted.	
43.			This comment was submitted as confidential by the stakeholder.	
44.	Deloitte Touche Tohmatsu	Article 6 (1) e	We believe that the use of word "demonstrating "in this article is very open to individual interpretation. Therefore, in order to ensure that the regulations are interpreted consistently by the undertakings and their supervisors, we recommend that further guidance should be provided on how companies can demonstrate their calculation process.	Companies are free to demonstrate the calculation process in whatever way they choose. As the calculation process may differ between firms (depending on IT platform, level of granularity, order of operations etc.) a standardised method is unlikely to be possible.
45.	Deloitte Touche Tohmatsu	Article 6 (1) f	The reference must be Article 308a(1) instead of 308a(2). In that case, it may add unnecesary burden to companies if they need to compile information on any application underway or foreseen, even on items which are not connected in any way with the application of a matching adjustment. It would seem more reasonable to request companies to state if they have applied, or plan to do so, for transitional measures on interest rate (308c) or technical provisions (308d), which are related with the application of the matching adjustment to some extent.	It was decided that the requirement to notify the NCA of other applications would be made consistent across all of the ITS.

46.	Financial Supervisory Authority of Romania (ASF)	Article 6 (1) f	art. 308a (2) does not list any items, it refers to the powers of the supervisors; maybe 308a (1)?	This is a typo that will be corrected.
47.	Insurance Europe	Article 6 (1) f	The requirement about other relevant applications 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 the application of a MA. 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. 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. 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.	Undertakings are not required to resubmit other applications alongside an MA application. A short note is likely to be sufficient to cover this requirement.
48.			This comment was submitted as confidential by the stakeholder.	
49.	Insurance Europe	Article 7 (1)	We believe that all the information listed in Articles 2 to 6 already provides the appropriate level of detail needed for the supervisory assessment and is already and costly for undertakings. Therefore we would re-insist on the need to apply the principle of	In the case of any request for further information, the rationale would be

			proportionality and to limit additional requests by supervisory authorities, especially since leaving this freedom could lead to uneven playing field among Member States and undertakings. In case further evidence are requested by supervisors the rationale behind this request needs to be communicated to undertakings.	clearly communicated, along with exactly what additional information is required.
50.			This comment was submitted as confidential by the stakeholder.	
51.	Insurance Europe	Article 7 (2)	Within 30 days of the receipt of an application, the supervisory authority shall determine whether the application is complete and communicate this in writing. Where an application is determined to be incomplete, the supervisory authority shall specify in the same written communication what additional information and evidence is required to complete the application.	Agreed.
52.	CFO Forum and CRO Forum	Article 7 (3)	It should be clarified that adjustments only refer to bringing the application in line with requirements.	The ITS has been clarified in this respect.
53.	Insurance Europe	Article 7 (3)	The request for adjustments should be limited to bringing the application to compliance with the regulations.	See response to comment 52.
54.	IRSG	Article 7 (4)	☐ The consideration/approval period should be shortened to a maximum of 3 months (instead of 6 months). The consideration/approval period should be capped at a maximum of 3 months, as in the case of the draft ITS on the assessment of the application of ancillary own-fund items ☐ As regards the assessment of the application, the period of time in which the supervisory authority has to react on an application which is complete is the same for the application of a	See response to comment 2.

			MA as it is for the application on an ancillary own fund item; however the wording in the papers is different. For ancillary own fund items the supervisory authority has to communicate its decision "on a timely basis" to the applying undertaking; as regards the MA the "timely basis" is lacking. In order to avoid an "over-interpretation" of differences perhaps the wording in the two papers should be aligned to each other	
55.	CFO Forum and CRO Forum	Article 7 (4)	We would consider a time period shorter than six months to be sufficient for approval of the use of the Matching Adjustment. For comparison, six months is specified in the Solvency II Directive as the maximum time period that a supervisor could use to consider an application for approval of an internal model, which is a more complex approval process.	See response to comment 2. 6 months is the upper limit and is not a target.
56.	Deloitte Touche Tohmatsu	Article 7 (4)	We consider a time period of 6 months to be relatively long. In the Impact Assessment, the time period is motivated by its consistency with the Internal model application process. We consider the matching adjustment application to be much simpler compared to a complete internal-model application and are therefore of the opinion that the time period for the supervisory authority to consider the application and communicate its decisions should be less that 6 months.	See response to comment 55.
57.	Federation of European Accountants (FEE)	Article 7 (4)	The timeframe for the assessment of the application is the same as other SET 1 ITS ; however FEE identified an inconsistency in the wording of this requirement. For example the ITS on the application on an ancillary own fund item includes the phrase «on a timely basis», while this ITS does not refer to «timely basis». In order to avoid the need for over-interpretation, FEE suggests that	The time periods for AOF and MA are not the same, which is the reason for the different wording.

			EIOPA should try to use the same wording on this matter.	
58.	Insurance Europe	Article 7 (4)	Six months appear to be an excessive period for the approval of an application to use the MA when compared to the approval period for an entire internal model which is of the same length. This suggests the assumption that both workloads are similar which is hard to defend when contrasted against the scope of both applications. MA approval should take a significantly shorter period, such as three months, as is done for AOFs and SPVs. Furthermore, if an undertaking has already received approval for a MA portfolio and a new similar product is created then it should get the new approval needed within a very short time frame and with less evidence to provide (eg by being able to refer to the previous application). Additionally, any adjustments requested from the supervisory authority should be in line with the Directive and should not lead to a longer approval period. Indeed, 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 additional information in a timely manner. Therefore the period should not be interrupted, except if too much information were missing. We would however assume that the undertaking's administrative, management or supervisory body would only forward applications they consider to be complete.	See response to comments 2 and 55. There is nothing to prevent an undertaking from resubmitting previous evidence if it is still valid for a new application. Partially agreed. The suspension of the time frame for decision has been kept in the ITS. EIOPA considers that a suspension would be more cost-efficient for undertakings and supervisors than having to resubmit or reassess an application respectively following a rejection due to any necessary additional information not being provided in a timely manner. EIOPA has, nevertheless, considered undertakings' concerns that this would create the

				potential for a undue prolongation of the process without legal certainty on timely decisions. Therefore, the draft article has been reviewed in this regard: supervisors will have to apply this option under the objective constraints of showing the necessity and justification for the additional information and being specific as to the additional information required. EIOPA will also monitor the application by NCAs of the possibility to suspend the time period.
59.			This comment was submitted as confidential by the stakeholder.	
60.	IRSG	Article 7 (5)	Leave to usual local practice the interpretation of silence of Supervisory Authority - Administrative law is not harmonised at EU level. In some EU jurisdictions the usual local practice is taking silence after the consideration period as acceptance. Therefore usual local practice should prevail	The article 77b in the Directive is clear in its requirement of a prior approval. This means that the application shall not be considered as approved or reject without a prior decision by the supervisor.

61.	CFO Forum and CRO Forum	Article 7 (5)	We are concerned that the provisions of this paragraph may substantially slow down the approval process.	The supervisor must be reasonable in requesting additional information and clearly explain why the additional information is needed to reach a view on the application.
62.	Insurance Europe	Article 7 (5)	In consistency with other ITS approval processes, any further evidence for the assessment of the application seems to give too much leeway in requesting documentation and creates a risk to ensure convergence and effectiveness of application of the regulation. The timeline around the approval and any deadline should be communicated to the undertaking for sake of clarity. Should additional information be requested by the supervisor, the deadline should be discussed and agreed by the undertaking to account for the amount of work depending on the nature of the additional information being requested.	Yes, dialogue between the firm and the NCA where additional information is requested is essential to ensure the undertaking understands what it has been asked to produce and the timeframes for this.
63.	IRSG	Article 7 (6)	☐ Art. 7 par. 6 and Art. 8 Par. 6 both seem to lead to the same consequences, i.e. both want to avoid an undertaking using a MA before approval by supervisory authorities; perhaps Art. 7 par 6 may be omitted	See response to comment 60.
64.	Deloitte Touche Tohmatsu	Article 7 (6)	A six month period is seems to be sufficient to assess the applications for matching adjustment and reach a decision. We feel that an insurance undertaking should be able to receive a decision on the application the matching adjustment within a	EIOPA believes the ITS as currently drafted does specify the necessary procedures

			reasonable period of time following the application, and we encourage EIOPA to specify the necessary procedures for this to happen.	for a robust and timely decision.
65.	Federation of European Accountants (FEE)	Article 7 (6)	FEE believes that this paragraph provides guidance on the same matter as Article 8 paragraph 6 ; therefore, we suggest that this paragraph may be deleted.	See response to comment 60.
66.	Insurance Europe	Article 7 (6)	In case of failure of the supervisory authority to reach a conclusion within the six months, the supervisor should communicate as soon as possible an update to the undertaking regarding the evolution of the process. The periods defined for the supervisory approval processes are already long. Therefore, when the timeline for approvals has elapsed, the company should be allowed to consider the application of the MA as approved. Indeed, 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.	See response to comment 60.
67.	CFO Forum and CRO Forum	Article 7 (9)	A simplified procedure should be included where adjustments to the application are made in order to take account of the views of supervisory authorities. We welcome the provision for supervisory authorities to decide not to treat changes made as creating a new application.	We are unclear what is meant by a 'simplified procedure' when adjustments to an application are made. As the stakeholder notes, adjustments do not automatically trigger a new application, and

				would not trigger a 're-review' of any existing material that had already been reviewed.
68.	Financial Supervisory Authority of Romania (ASF)	Article 7 (9)	[…] unless the supervisory authority considers that the change does not significantly affect the assessment and decision on the approval of the application within the time period set out in paragraph 3 4. Paragraph 3 does not refer to a period of time, but paragraph 4.	Typo has been fixed
69.	Insurance Europe	Article 7 (9)	There should be a simplified procedure when an undertaking informs the supervisor for a change in its application process and this should not be considered as a completely new application. The reference to where the time period is set should be corrected to paragraph 4 instead of 3.	Typo has been fixed
70.	CFO Forum and CRO Forum	Article 7 (10)	It should be clarified that a withdrawal is without further consequences.	The process for withdrawal is consistent across the ITS. It is unclear what 'further consequences' the stakeholder envisages, but the Solvency II Directive does not provide the legal scope for any action to be taken as a direct result of an application being withdrawn.
71.			This comment was submitted as confidential by the stakeholder.	

72.	IRSG	Article 8 (2)	☐ It is stated here that the supervisory authority “may consider other factors” (than those required to be fulfilled according to the OII-Directive) when reaching a decision on the approval of the application. One gains the impression here that the supervisory authority can deny the application of a MA even in cases in which all criteria required in the directive are fulfilled. Normally, ITS should only specify/concretize the requirements of the directive; here the supervisory authority seems to be provided with administrative discretion going beyond the provisions in the directive. It seems questionable if this is meant by the directive. Apart from that it would be helpful to list some examples for possible factors in order to be able to understand the idea behind this paragraph.	The specific criteria for approval in Article 77b and 77c are ‘narrow’ in that they relate solely to the conditions that the matching portfolio must fulfil. However, there are wider overarching requirements in the Solvency II Directive that apply to matching adjustment business in the same way as to all business. An NCA may need to reject an application if the use of the MA would result in the contravention of one of these overarching requirements of the Solvency II Directive, even if the ‘narrow’ criteria are met. For example, an NCA may need to reject an application where the use of the matching adjustment would breach

				the Prudent Person Principle (i.e. because the assets in the matching portfolio are not suitable to back the liabilities, or are not invested in the best interests of the policyholders of those liabilities); or if the undertaking would be incapable of risk-managing the use of the MA (as evidenced by an inadequate ORSA or liquidity plan).
73.	CFO Forum and CRO Forum	Article 8 (2)	This paragraph potentially allows for an unlimited list of extra requirements beyond those required in the Solvency II regulations. We consider information to be required should be restricted to verifying the fulfilment of the requirements included in articles 77b and 77c of the Solvency II Directive. The requirement for supervisory authorities to specify the reasons for rejection of an application as set out in Article 8(5) is not sufficient to address this concern.	See response to comment 72.
74.	Deloitte Touche Tohmatsu	Article 8 (2)	Can EIOPA clarify which other factors could be considerd by the supervising authorities? One would expect that requirements are limited to those listed in the ITS, in order to maintain a level playing field.	See response to comment 72.
75.	Federation of European Accountants	Article 8 (2)	This article states that the supervisory authority may consider other factors when assessing the application of matching adjustments. This means that the supervisory authorities have the authority to go beyond the requirements of the Directive when	See response to comment 72.

	(FEE)		assessing the applications. FEE raises its concerns on this matter, as it is not clear whether the Directive intends to grant the supervisory authorities with this option. FEE identifies that EIOPA might be seen as acting beyond the Directive. In addition FEE encourages EIOPA to provide some examples of possible factors that a supervisory authority may consider.	
76.	Insurance Europe	Article 8 (2)	This paragraph should be deleted. The proposed wording appears to go beyond Omnibus II and the criteria set out there. Approval of the use of the MA is restricted to the requirements included in Articles 77b and 77c of the Directive. It is against maximum harmonization that each supervisory authority could include additional requirements. This is not foreseen in the Directive. Furthermore it risks giving rise to uneven playing field among Member States and would result in undue uncertainty for undertakings.	See response to comment 72.
77.	CFO Forum and CRO Forum	Article 8 (4)	We welcome provision for supervisory authorities to approve subsets of the portfolios included in an application, rather than being required to approve or reject the entire application.	See response to comment 72.
78.	Deloitte Touche Tohmatsu	Article 8 (5)	It is currently not clear whether there is any possibility for the insurance undertaking to appeal against the decision of rejection.	The scope of empowerment of this ITS (Article 86(3)) does not encompass the treatment of this question
79.	IRSG	Article 8 (6)	☐ Art. 7 par. 6 and Art. 8 Par. 6 both seem to lead to the same consequences, i.e. both want to avoid an undertaking using a MA	See response to

			before approval by supervisory authorities; perhaps Art. 7 par 6 may be omitted.	comment 60.
80.	CFO Forum and CRO Forum	Article 8 (6)	The consequences of regulator's silence after the approval period needs to be laid out to avoid uncertainty. Art. 7 (5) (regarding the assessment of the application) in conjunction with Art. 8(6) (regarding the decision on the application) regulate that if the authority has not decided on the application within the required period (6 months) the undertakings must not consider the application as approved and are not allowed to use the matching adjustment. The ITS leaves open any further process steps after the authority has failed to meet the deadline. The resulting uncertainty would require companies to maintain two calculations at the same time over an undefined period of time. No incentive to the authority is given to accelerate the internal decision finding, resulting in prolonged legal uncertainty for the undertakings. This could result in increased operational cost and capital cost eventually increasing cost of insurance products. A potential solution could be to consider the approval as granted once an additional period of time (e.g. 30 days) has elapsed.	See response to comment 60.
81.	Federation of European Accountants (FEE)	Article 8 (6)	Please refer to the comment on Article 7 paragraph 6.	See response to comment 60.
82.	CFO Forum and CRO Forum	Article 9 (1) a	We would suggest a longer period be provided within which to restore compliance, and would suggest a period of four months, so that at least one quarter close is included in the period which facilitates the demonstration of compliance by the quarter close	This is a Solvency II Directive requirement and cannot be altered by the ITS.

			information.	
83.	Deloitte Touche Tohmatsu	Article 9 (1) a	We recommend that the two month time period can be extended upon agreement with local regulator. This is because under exceptional market circumstances, it may be difficult or not viable for insurer to target compliance within two months.	See response to comment 82.
84.	Insurance Europe	Article 9 (1) a	This paragraph is not in line with the Framework Directive, which makes it up to the undertaking to inform immediately the supervisory authority when it realises that it is no longer able to comply with the requirements set in Articles 77b and 77c of the Directive. Therefore, this should be amended in order to align with the Directive, and to avoid the risk that undertakings are penalised, should supervisors discover the issue in first place. Should this not be done, the basis for supervisors to consider that the undertaking does not comply anymore with the requirements should be made transparent.	It is clearly not the intention of this Article to overrule Article 77b(2) of the Solvency II Directive. The intention is to provide for the situation where it is the supervisor that detects that the undertaking has ceased to comply with the criteria set out in Article 77b(1) of the Solvency II Directive. The ITS has been clarified to make explicit that, in the case where the supervisor judges that the undertaking is non-compliant, the supervisor must explain the reason for this to the undertaking.

85.	Insurance Europe	Article 9 (1) b	As stated above, we disagree with this paragraph which is not in line with the Directive. Therefore, it should be amended. Otherwise, we believe that at least reference should be made to supervisory dialogue with the undertaking, in order to agree on the necessary measures to restore compliance, thus making easier point c). This would help to avoid that undertakings end up having huge losses in case the MA approval is revoked.	It is clearly not the intention of this Article to overrule Article 77b(2) of the Solvency II Directive. The intention is to provide for the situation where it is the supervisor that detects that the undertaking has ceased to comply with the criteria set out in Article 77b(1) of the Solvency II Directive. The ITS already clearly envisages on-going supervisory dialogue with the undertaking.
86.	CFO Forum and CRO Forum	Article 9 (2)	We understand from this paragraph that breach of the specified conditions with respect to a Matching Adjustment portfolio does not affect an entity or group's ability to the use the Matching Adjustment as approved for other portfolios. We would welcome clarification of this point.	This interpretation is in line with the drafting of the ITS.
87.	Federation of European Accountants (FEE)	Article 9 (2)	There is no clear rationale as to why there should be a 24 month period before the matching adjustment can be applied again. Therefore, FEE suggests deleting reference to this period as the requirement to obtain supervisory approval is sufficient to ensure that the matching adjustment is not reapplied until it is	This is a Solvency II Directive requirement.

			appropriate to do so.	
88.	CFO Forum and CRO Forum	Annex I: Problem definition	We agree that the presence of different interpretations between member states would be a negative outcome and hinder competition. Notwithstanding the planned Implementing Technical Standard, differences in interpretation are still possible. It will remain important that such differences are considered to prevent the chosen interpretations having unduly positive or negative outcomes for insurers in specific Member States.	This is envisaged by the monitoring and evaluation of the performance of the ITS after Solvency II implementation.
89.	CFO Forum and CRO Forum	Annex I: Section 4	We understand the challenges to granting approval for prospective portfolios. However, it is important that certainty can be provided with respect to approval before adjustments are actually made to a portfolio in order to comply with the requirements specified in this Implementing Technical Standard, including any additional requirements as referred to in Article 8(2) (notwithstanding our comment on that article).	It is not possible to give official approval for a portfolio without an application being submitted in line with the process set out by this ITS. However the ITS clearly envisages on-going supervisory dialogue, including before the formal application is submitted. There is nothing to prevent an NCA from giving feedback at this stage.

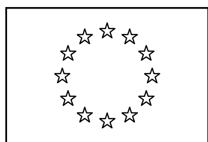
90.	Deloitte Touche Tohmatsu	Annex I: Section 4	Policy Issue 1 : A third possibility could be considered : request a standard form with basic information on the application (eg. which portfolio(s) and for each : description of the obligations covered, BEL, duration, market value of assets per category, value of the MA, value of the FS, etc and identification of the supporting documents which are relevant to each portfolio). The supporting documents to cover requested evidences in articles 3-6 could be free format. Policy Issue 5 : None of the options given is welcome. As commented on article 7(6), Option A is potentially harmful for the industry, and may result in entities having to raise additional capital as a result of not getting an answer on an application which meets all the requirements. Option B can create lack of harmonisation between markets.	The decision was made not to specify/prescribe the detailed format of the application within the ITS. However, individual NCAs may decide to issue templates or formats that undertakings would be free to use if they would find this helpful to streamline the administration of the approval process. Re: issue 5, it was a clear intention to have a standardised process for the granting of approvals. This precludes the option of following local administrative rules. Thus the only options are 'silence means rejection', 'silence means neither approval or rejection', or 'silence means approval'. But silence cannot mean approval, because the ITS states elsewhere that approval only follows written confirmation. Given a choice between

				‘silence means rejection’ and ‘silence means neither approval nor rejection’, EIOPA assumes that undertakings would prefer the latter, as this avoids new applications being required in cases where the 6 month deadline for a decision would only have been missed by a few days.
91.	Insurance Europe	Annex I: Section 4	We are concerned that the regulations do not permit approval to be granted for prospective portfolios. Given the delay between application for MA approval and granting of this approval this provides serious issues both for firms with existing portfolios and for new entrants. For existing firms this brings forward the date at which they need to be matching adjustment compliant -an unhelpful step in an already very tight implementation timetable-. There are also clearly situations (such as transfers of business between firms) where it is appropriate for permission to be granted (to the firm receiving the business) prospectively. To prevent this could lead to material harm to policyholders in some circumstances. 9. We are also concerned about the competitive implications of this requirement. For a new entrant wishing to compete in a business line where competitors are already using the MA this requirement means that they have to operate in this market without use of the MA for up to six months. This will make it much more difficult to enter these markets and	See comments above re: approving prospective portfolios. EIOPA believes these issues can be resolved through the process of early dialogue between the supervisor and the undertaking. Further the ITS has been amended to make clear that undertakings do not need to re-apply for approval when writing more business of the same type as in an existing approved portfolio.

			compete effectively against incumbents. Given the significance of these issues it would be helpful for EIOPA to share the nature of the legal feedback received and explore whether an alternative interpretation might also be consistent with the directive.	
92.	Insurance Europe	Annex I: Section 5	Policy Issue 1: No standardised application template. This standard is sufficient for the check that all the necessary information is given. It might be required from the undertakings to point in the application which part satisfies which requirement. Policy Issue 5 Option A, Costs: Is it true that the failure of the supervisor not to reach the decision in the given timeframe has no costs for the supervisors. Is there no consequence for the supervisor if they don't follow the given timeframe elsewhere in the	It would certainly facilitate the review of the application if it is clear what evidence relates to what requirement in the ITS. Issue 5 option A has been amended.

			legislations? There's no assessment of the costs for the undertakings. At least for them it might have costs. If the undertaking has made its plans assuming the timeframes will be respected the failure might have some operational additional costs to fix the plans eg the capitalisation plans and unexpected capitalisation costs.	
93.	Insurance Europe	Annex I: Section 6	We agree with the preferred policy options that are suggested here and would like to emphasise in particular for option 8, that the result should not be just a 'pass/fail' decision but it should allow supervisors to set out adjustments they would wish to see to enable a pass.	The ITS would already allow supervisors to specify the adjustments that they would see as necessary. Further, reasons for rejection of an application must be clearly explained. This would enable an undertaking to make the necessary adjustments before resubmitting an application.

Annex III: Draft Implementing Technical Standard



EUROPEAN COMMISSION

Brussels, XXX
[…] (2011) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of [ ]

COMMISSION IMPLEMENTING REGULATION (EU) No .../.. of [date] laying down implementing technical standards with regard to the procedures to be followed for the supervisory approval of the application of a matching adjustment according to Article 77b(1) of Directive 2009/138/EC of the European Parliament and of the Council

of XXX

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union.

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)[3] and in particular Article 86(3) thereof,

Whereas:

(1) Article 77b of Directive 2009/138/EC allows insurance and reinsurance undertakings to apply a matching adjustment to the relevant risk-free interest rate term structure, subject to prior approval by the supervisory authorities where certain conditions are met.

(2) The present Regulation establishes the procedures to be followed for the approval of the application of a matching adjustment.

(3) In order for an application to be considered complete, it should include all relevant information necessary for the assessment and decision by the supervisory authorities. To provide a harmonised basis for the assessment and decision by supervisory authorities, an application should include evidence demonstrating that each of the conditions set out in Article 77b of Directive 2009/138/EC are met.

(4) As well as Article 77b, Directive 2009/138/EC contains other requirements that apply to all firms using a matching adjustment. An application should therefore include evidence that all of these other requirements will be satisfied if approval is granted, as set out in Article 6 of this Regulation.

(5) The procedures to be followed envisage ongoing communication between the supervisory authorities and insurance and reinsurance undertakings. This includes communication before a formal application is submitted to the supervisory authorities and, after an application has been approved, through the supervisory review process. Such ongoing communication is necessary to ensure that supervisory judgements are based on relevant and up-to-date information and evidence.

(6) To ensure a smooth and efficient process, supervisory authorities should be able to request that insurance and reinsurance undertakings make modifications to an application in order to address areas where the submitted evidence is insufficient to demonstrate compliance with the relevant conditions set by Article 77b of Directive 2009/138/EC, before deciding whether to finally accept or reject the application.

[3] OJ L 335, 17.12.2009, p.1-155

(7) In addition to considering the evidence included within an application, supervisory authorities should also consider other factors that are relevant when reaching a decision as to whether the requirements of Directive 2009/138/EC have been satisfied.

(8) Since matching portfolios may be managed on a going concern basis, undertakings that have received approval to use a matching adjustment to value the corresponding liabilities should also be allowed to use that adjustment to value future insurance obligations, to the extent that those obligations and the assets matching them possess the same features as the obligations and assets included in the initial matching portfolio and, consequently, entail the same risks for the undertaking concerned.

(9) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the European Commission.

(10) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Application to use a matching adjustment

(1) Insurance and reinsurance undertakings applying to use a matching adjustment shall submit a written application for prior approval by the supervisory authorities.

(2) The application shall be submitted in one of the official languages of the Member State in which the insurance or reinsurance undertaking has its head office, or in a language previously agreed by the supervisory authority, and shall contain at least the information required by Articles 3 to 6 of this Regulation.

(3) Insurance and reinsurance undertakings shall ensure that the application includes any other relevant information that they consider may be necessary for the assessment and decision by the supervisory authority.

(4) Where an application is submitted in respect of more than one portfolio of insurance or reinsurance obligations, the application shall set out the evidence required by Articles 3 to 6 of this Regulation separately for each portfolio that is covered by the application.

(5) The application shall be approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking and documentary evidence of this approval shall be submitted with the application.

Article 2

Content of the application relating to the assigned portfolio of assets

(1) In relation to the assigned portfolio of assets required by Article 77b(1)(a) of Directive 2009/138/EC, the application shall include at least the following:

(a) evidence that the assigned portfolio of assets meets all of the relevant conditions specified in Article 77b(1) of Directive 2009/138/EC;

(b) details of the assets within the assigned portfolio, which shall consist of line-by-line asset information together with the procedure used to group such assets by asset class, credit quality and duration for the purposes of determining the fundamental spread referred to in paragraph 1(b) of Article 77c of Directive 2009/138/EC;

(c) a description of the process used to maintain the assigned portfolio of assets in accordance with Article 77b(1)(a) of Directive 2009/138/EC, including the process for maintaining the replication of expected cash-flows where these have materially changed.

Article 3

Content of the application relating to the portfolio of insurance or reinsurance obligations

(1) In relation to the portfolio of insurance or reinsurance obligations to which the matching adjustment is intended to apply, the application shall contain at least the following:

(a) evidence that the insurance or reinsurance obligations meet all of the criteria specified in Article 77b(1)(d), (e), (g) and (j) of Directive 2009/138/EC;

(b) where mortality risk is present, quantitative evidence that the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under the mortality risk stress specified in Article 52 of the Implementing Measures.

Article 4

Content of the written application relating to cash-flow matching and portfolio management

(1) In relation to the cash-flow matching and management of the eligible portfolio of obligations and the assigned portfolio of assets, the application shall contain at least the following:

(a) quantitative evidence that the criteria of Article 77b(1)(c) of Directive 2009/138/EC are met, including a quantitative and qualitative assessment of whether any mismatch gives rise to risks which are material in relation to the risks inherent in the insurance business to which the matching adjustment is intended to be applied;

(b) evidence that adequate processes will be in place to properly identify, organise and manage the portfolio of obligations and assigned portfolio of assets separately from other activities of the undertaking, and to ensure that the assigned assets will not be used to cover losses arising from other activities of the undertaking, in accordance with Article 77b(1)(b) of Directive 2009/138/EC;

(c) evidence of how the own funds will be adjusted in accordance with Article 81 to reflect any reduced transferability;

(d) evidence of how the Solvency Capital Requirement (SCR) will be adjusted to appropriately reflect any reduced scope for risk diversification. Where relevant this shall include evidence of compliance with Articles 216, 217 and 234 of the Implementing Measures. Where insurance and reinsurance undertakings intend to calculate the Solvency Capital Requirement using an internal model but have not been granted the necessary supervisory approval, the evidence required by this paragraph shall be submitted on the basis of the standard formula result as well as the unapproved internal model.

Article 5

Additional content of the written application

(1) In addition to the information specified in Articles 3 to 5 of this Regulation, the application shall also include:

a) confirmation that the conditions of Article 77b(3) of Directive 2009/138/EC will be met if supervisory approval to apply a matching adjustment is granted;

b) the liquidity plan required under Article 44(2) of Directive 2009/138/EC;

c) the assessments required under Article 44(2)(a) and (b) of Directive 2009/138/EC;

d) the assessments required under Article 45(2)(a) of Directive 2009/138/EC;

e) a detailed explanation and demonstration of the calculation process used to determine the matching adjustment in accordance with the requirements of Article 77c of Directive 2009/138/EC;

f) a list of the other applications submitted by the insurance or reinsurance undertaking, or currently foreseen within the next six months, for approval of any of the items of the phasing-in listed in Article 308a(1) of Directive 2009/138/EC, together with the corresponding application dates.

Article 6

Assessment of the application

(1) The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking. The supervisory authority shall not consider an application to be complete until the application contains all of the evidence required by Articles 2 to 6 of this Regulation.

(2) Where the supervisory authority has considered an application to be complete, this shall not prevent the supervisory authority from requesting additional information necessary for its assessment. The request shall specify the additional information and the rationale for the request.

(3) Within 30 days of the receipt of an application, the supervisory authority shall determine whether the application is complete and communicate this in writing to the undertaking. Where an application is determined to be incomplete, the supervisory authority shall specify the additional information and evidence required to complete the application.

(4) The assessment of the application shall involve ongoing communication with the insurance or reinsurance undertaking and may include requests for adjustments from supervisory authorities to the way the undertaking proposes to apply a matching adjustment only in cases where the evidence

submitted in the application is insufficient to demonstrate compliance with the relevant conditions of Directive 2009/138/EC. If the supervisory authority determines that it is possible to approve the application of a matching adjustment subject to adjustments to the application being submitted, it may notify this to the insurance and reinsurance undertaking.

(5) The supervisory authority shall ensure that the time period to consider the application and communicate its decision does not exceed 6 months from the receipt of the complete application.

(6) Notwithstanding paragraph 5, the days between the date the supervisory authority requests further evidence or adjustments in accordance with paragraph 2 or 4 of this Article and the date the supervisory authority receives such information shall not be included within the period of time stated in paragraph 5.

(7) Insurance and reinsurance undertakings shall ensure that all the evidence required by the supervisory authority is made available to it throughout the assessment of the application including in electronic form.

(8) If, following a request from the supervisory authority for providing further evidence or adjustments, an undertaking makes a change to its application, this shall not be considered as a new application.

(9) Where an undertaking informs the supervisory authority of a change to its application other than in the situation described in paragraph 8 above, this shall be treated as a new application unless the supervisory authority considers that the change does not significantly affect the assessment and decision on the approval of the application within the time period set out in paragraph 4.

(10) An undertaking may withdraw an application by notifying in writing at any stage prior to the decision of the supervisory authority. In the case that an application is withdrawn, any updated or resubmitted application shall be treated as a new application.

Article 7

Decision on the application

(1) The supervisory authority shall only approve an application for the use of a matching adjustment if, on the basis of the written application, and any additional information received as described in this Regulation, the criteria set out in Article 77b and the calculation requirements set out in Article 77c of Directive 2009/138/EC are satisfied.

(2) The supervisory authority may consider other factors relevant to the use of a matching adjustment by insurance and reinsurance undertakings when reaching a decision on the approval of the application.

(3) The supervisory authority’s decision on the approval of the application shall be communicated in writing in the same language as the application.

(4) Where a single application has been received in respect of more than one portfolio of insurance or reinsurance obligations, the supervisory authority may decide to approve the application in respect of some but not all of the portfolios included in the application. In this case, the written communication of the decision shall specify to which portfolios of insurance and reinsurance obligations a matching adjustment can be applied.

(5) Where the supervisory authority decides to reject an application, for some or all of the portfolios included within an application, it shall state clearly the reasons for this decision.

(6) Insurance and reinsurance undertakings shall not use a matching adjustment for a portfolio until its application in respect of that portfolio has been assessed and approved by the supervisory authority. Insurance and reinsurance undertakings shall not consider an application in respect of a portfolio to have been approved until written notification of the approval has been received from the supervisory authority.

(7) Where insurance and reinsurance undertakings are granted approval to apply a matching adjustment to a portfolio of insurance and reinsurance obligations, the scope of that approval decision shall be considered to cover future insurance and reinsurance obligations and assets that are added to that matching portfolio, provided that undertakings can demonstrate that:

a) the future obligations and assets have the same features as the obligations and assets included in the matching portfolio for which the approval was granted;

b) the matching portfolio continues to meet the relevant conditions of Directive 2009/138/EC.

Article 8

Revocation of approval by the supervisory authority

(1) Where the supervisory authority considers that an insurance or reinsurance undertaking which approval to use a matching adjustment has ceased to comply with the conditions set out in Articles 77b or 77c of Directive 2009/138/EC, it shall inform the insurance or reinsurance undertaking immediately and explain the nature of the non-compliance. In this case, the insurance or reinsurance undertaking shall:

a) restore compliance with these conditions within two months;

b) remedy any governance failure that led to the non-compliance with these conditions not being identified or reported to the supervisory authority in accordance with Article 77b(2) of Directive 2009/138/EC, and;

c) demonstrate to the satisfaction of the supervisory authority that it has done so.

(2) Where an insurance or reinsurance undertaking is unable to restore compliance with the conditions specified in Article 77b and 77c of Directive 2009/138/EC within two months, it shall cease applying the matching adjustment to any of the insurance or reinsurance obligations within the portfolio(s) for which these conditions have been breached, according to Article 77b(2) of Directive 2009/138/EC. The insurance or reinsurance undertaking shall not apply the matching adjustment to the relevant portfolio(s) again for a period of a further 24 months and then only after prior approval by the supervisory authorities in accordance with the procedures set out in Articles 2 to 8 of this Regulation.

Article 9

Entry into force

(1) This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

[For the Commission

The President]

[On behalf of the President]
[Position]