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Final Report
on
public consultation no. 14/062 on the
Advice to the European Commission
in response to the Call for Advice
on recovery plan, finance scheme and
supervisory powers in deteriorating
financial conditions

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1. Executive Summary

Introduction

According to Article 143(2) of 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) in order to ensure consistent harmonisation in relation to Article 138(2), Article 139(2) and Article 141, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the recovery plan referred to in Article 138(2), and the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects. Power is delegated to the Commission to adopt these regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

According to Article 301b of Solvency II the Commission shall, when adopting for a first time the regulatory technical standards *inter alia* provided for in Articles 143 follow the procedure for adoption of delegated acts.

EIOPA received a formal request from the Commission to provide technical advice to assist the Commission on the possible content of the delegated acts on the following issues:

- the recovery plan referred to in Article 138 (2) of Solvency II;
- the finance scheme referred to in Article 139 (2) of Solvency II;
- with respect to Article 141 of Solvency II (supervisory powers in deteriorating financial conditions).

As a result of the above, on 3 December 2014 EIOPA launched a public consultation on the draft Advice to the European Commission in response to the Call for Advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions.

The Consultation Paper is published on EIOPA's website¹.

Content

This Final Report includes the feedback statement to the consultation paper (EIOPA-CP-14/062) and the full package of the public consultation, including:

Annex I: Technical Advice

Annex II: Impact Assessment and cost and benefit analysis

Annex III: Resolution of comments

¹ <https://eiopa.europa.eu/Pages/Consultations/Public-consultation-on-the-Set-2-of-the-Solvency-II-Implementing-Technical-Standards-%28ITS%29-and-Guidelines.aspx>

Next steps

The Advice in response to the Call for Advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions will be submitted to the Commission by the end of March 2015.

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 advice to the European Commission. The responses received have provided important guidance to EIOPA in preparing a final version of the advice 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 III.

Submission of estimates of the SCR and MCR whenever either the SCR or the MCR are not complied with

Stakeholders questioned the requirement to always provide estimates of the Solvency Capital Requirement (hereinafter "SCR") and the Minimum Solvency Requirement "MCR") even where only one of the capital requirements is not complied with, stressing that this information was already available from the own risk and solvency assessment (hereinafter "ORSA").

It is correct that undertakings are required to consider what their prospective SCR and MCR is going to be, looking into the medium term future, as part of the ORSA and that they will have to provide this information to the supervisory authority in their ORSA supervisory report. However, for a recovery plan or finance scheme undertakings cannot use the projections prepared in the last ORSA. The information to be submitted for the recovery plan or finance scheme has to be fully up-to-date – the last ORSA may have been performed months before the non-compliance with capital requirements is observed – and the estimates for the SCR and MCR have to be for specific time horizons for the recovery which may not coincide with the time horizons used for the projections included in the ORSA. Also the ORSA information does not yet include the effect of the proposed remedial measures.

Furthermore, the ORSA provides the undertaking's own view that could be challenged by the supervisory authority but it is not subject to supervisory approval. On the other hand, recovery plan or finance scheme are subject to supervisory approval so it is essential that the supervisory authority agrees that the plan/scheme is realistic to restore the financial situation of the undertaking. Approval of a recovery plan or finance scheme requires the supervisory authority to assess the impact of the proposed remedial measures holistically. Remedial measures will not only affect the overall financial position of the undertaking concerned, but may have an effect on the calculation of the capital requirement that is not breached by the non-compliance as well. In order not to miss any implications of the proposed remedial measures it is therefore necessary for the supervisory authority - and the undertaking also - to consider the impact of these measures on both the SCR and the MCR.

Link to the ORSA

Some stakeholders proposed that the link to the ORSA should be stressed in the Technical Advice.

EIOPA recognizes that there are similarities between what undertakings are required to do as part of the ORSA and what is required of them for the purpose of submitting a recovery plan or finance scheme. However, EIOPA cannot include any clarification of what undertakings are supposed to do in the ORSA, since elaboration on the ORSA is well outside the scope of the Technical Advice.

Use of reporting templates

Regarding the expected use of the reporting templates for the submission of information included in the recovery plan or finance scheme, some stakeholders considered this information to be more granular than necessary for the approval of a plan or scheme. That would put too much of a burden on the undertaking concerned at a time of stress, when its resources were better employed in dealing with the non-compliance with capital requirements.

EIOPA acknowledges that it is more difficult for the undertaking to provide information outside the regular reporting cycle to the supervisory authority at a time when it is required to fix a serious problem within a relatively short time frame. The information to be provided is, however, not additional reporting but information needed to assess the validity of the recovery plan or finance scheme the undertaking means to implement. The use of the regular reporting templates whenever possible is intended to facilitate the process both for the undertaking and the supervisory authority respectively when providing and analysing the information. Depending on what the proposed remedial measures entail, it may not be necessary to achieve the same high level of granularity of information for all the areas that the undertaking concerned has to cover, but it cannot be excluded that fully detailed information is needed on specific issues on a case by case basis.

EIOPA expects that when an undertaking notifies the supervisory authority of an observed non-compliance with capital requirements it will also be able to give some background information on the nature of the problem and some indication as to how it proposes to address the breach. This should enable the supervisory authority to form a view on the scope and level of granularity of the information it needs and to specify e.g. which reporting templates need to be provided, whether quarterly templates would suffice or whether some parts of the reporting templates to be used do not need to be filled in. EIOPA has amended the advice in order to clarify that the supervisory authority will have to decide what level of granularity is proportionate with regard to the specific situation and planned solution of the undertaking concerned. Supervisory authorities are expected to assess the completeness of the information provided by the undertaking taking account of the specific circumstances.

Sustainable recovery

Regarding the requirement to show that the undertaking would not fail to comply with the SCR or MCR again shortly after the end of the recovery period, stakeholders questioned whether this was in line with Solvency II, arguing that undertakings would in effect be required to hold capital in excess of the SCR without a legal basis. Others suggested that the reference to “within a short timeframe” should be changed to a term that was more in line with the terminology used in the Directive, such as “within the time up to the next reporting date” or referring to re-establishing “continuous compliance”.

It is true that an undertaking is not required to hold capital in excess of the SCR. The excess of the SCR will, however, be determining the intensity of the risk-based supervision and the supervisor’s scrutiny. Undertakings are obliged to ensure they comply with the capital requirements at all times. Undertakings are, therefore, required to consider the suitability of the measures presented in the recovery plan or finance scheme not only to restore the compliance with the capital requirements at the end of the recovery period but to allow a continuous compliance.

EIOPA has changed the wording in order to address concerns that “in a short timeframe” introduces a term not used in the Directive. A reference has, therefore, been included regarding the need for the recovery to be sustainable.

Prospective eligible own funds

Stakeholders have commented that the recovery plan requirements focus on the prospective solvency capital requirements, with no specific reference to the prospective eligible own funds.

Article 142(1) of Solvency II refers already to the estimates of the financial resources intended to cover the SCR and MCR. However, a more precise reference has been inserted in the Technical Advice in order to clarify the desirable level of granularity. Consequently, it has been made explicit that the recovery plan/finance scheme shall include the estimates on the eligible own funds intended to cover the SCR and the MCR, with the classification of the eligible own funds by tiers and by main items.

Group issues

Stakeholders suggested that the Technical Advice should also address group specificities with regard to information requirements when a recovery plan or finance scheme is to be submitted.

A clarification has been inserted to confirm that considering Article 218 (4) and Article 230 (2) of Solvency II, this Technical Advice should apply to groups in case of non-compliance with the SCR and with the minimum consolidated group SCR. EIOPA has considered whether the application of the Article 138 at the level of the group raises any specific questions that can be addressed within the scope of this Technical Advice. Further, EIOPA is aware that certain issues have to be addressed when an

undertaking that is part of the group gets financial support from other members of the group, e.g. can the other undertaking afford to provide this financial support or does the supporting measure affect group solvency. EIOPA does, however, not believe that these questions should result in additional information requirements as part of the recovery plan/finance scheme submitted by the undertaking that is non-compliant. Rather this is a matter to be addressed through supervisory engagement and cooperation.

IRSG opinion

The IRSG opinion as well as the particular comments on the Advice to the European Commission in response to the Call for Advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions, can be found on the EIOPA website².

Comments on the Impact Assessment

Four comments were received on the Impact Assessment, some agreeing and other disagreeing with the preferred policy options identified by EIOPA. The Impact Assessment provides a clear justification of the policy options adopted in the Technical Advice. Nevertheless, some revisions have been made to the Impact Assessment to align it with the drafting changes in the Technical Advice.

² <https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/opinions-feedback-from-the-eiopa-stakeholder-groups>

Annex I: Technical Advice

Legal background

According to Article 138(2) of 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 (hereinafter "Solvency II") the insurance or reinsurance undertaking (hereinafter collectively "undertaking") concerned shall, within two months from the observation of non-compliance with the Solvency Capital Requirement (hereinafter "SCR") submit a realistic recovery plan for approval by the supervisory authority.

According to Article 139(2) of Solvency II the undertaking concerned shall, within one month from the observation of non-compliance with the Minimum Capital Requirement (hereinafter "MCR") submit, for approval by the supervisory authority, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the MCR or to reduce its risk profile to ensure compliance with the MCR.

According to Article 141 of Solvency II the supervisory authorities shall have, within their supervisory powers in deteriorating financial conditions, the power to take all measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or the obligations arising out of reinsurance contracts, where the solvency position of the undertaking continues to deteriorate. Those measures shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

According to Article 142(1) of Solvency II the recovery plan and the finance scheme shall at least include particulars or evidence concerning the following:

- (a) estimates of management expenses, in particular current general expenses and commissions;
- (b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- (c) a forecast balance sheet;
- (d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;
- (e) the overall reinsurance policy.

According to Article 143(2) of Solvency II, in order to ensure consistent harmonisation in relation to Article 138(2), Article 139(2) and Article 141, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the recovery plan referred to in Article 138(2), and the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects. Power is delegated to the Commission to adopt these regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010. According to

Article 301b (1) the Commission will adopt these regulatory technical standards as delegated acts.

Unless otherwise stated, references in this Technical Advice concern the relevant provisions of Solvency II.

The Commission's call for advice

EIOPA is requested to provide technical advice on the following issues:

- the recovery plan referred to in Article 138(2);
- the finance scheme referred to in Article 139(2);
- with respect to Article 141 (supervisory powers in deteriorating financial conditions).

Recovery plan and finance scheme

Analysis

EIOPA considers it necessary to specify the components of the recovery plan and finance scheme listed in Article 142(1), as well as to add further important components, which are not covered by Article 142(1).

The requirements in Article 142(1) are applicable to the content of both the recovery plan and the finance scheme. However, the content of the finance scheme will be determined by the urgency of measures for the re-establishment of compliance with the MCR.

It is important that undertakings provide estimates of the SCR/MCR for the end of the recovery period which is the target SCR/MCR for the re-establishment of compliance with these capital requirements. Information on the estimates of the SCR could potentially be as granular as the information submitted by way of regular reporting, subject to supervisory judgement.

Irrespective of which capital requirement has been breached, the information on both the estimates on the SCR and the MCR should be provided in the recovery plan or finance scheme. Supervisory authorities should be provided with an updated overview of the current situation of the undertaking and not just focus on the part of the regulatory capital requirements for which a non-compliance has been identified.

In order to be able to assess whether the recovery plan or the finance scheme submitted is realistic, the supervisory authority needs information by the undertaking concerned on the bases and methods used for the estimates the undertaking provides.

EIOPA expects undertakings to analyse the reasons why a non-compliance with the SCR or the MCR has occurred and to address any deficiencies that are identified as the cause for the breach of the regulatory capital requirements. Supervisory authorities are expected to follow-up on this and to ensure that the undertaking implements the necessary measures in a timely manner. Supervisory authorities should be aware of the causes for the non-compliance from the undertaking's perspective as this may affect the assessment of the remedial measures the undertaking wants to take.

Before supervisory authorities approve a recovery plan or finance scheme, they need information on what remedial actions the undertaking has already taken, what further measures the undertaking plans to take and what is the immediate and anticipated effect of those envisaged measures. When looking at the effect of these measures, this should not be limited to the effect on the SCR and MCR, but on the business of the undertaking in general.

The aim of the recovery is not only to re-establish compliance with the SCR/MCR at a certain point in time, i.e. during the last days of the recovery period, but to achieve a sustained recovery. This means that the undertaking should analyse the adequacy of the measures included in the recovery plan or finance scheme with respect to the sustainable compliance with the SCR/MCR after the end of the recovery period.

A recovery plan or finance scheme requires the approval of the administrative, management or supervisory body (hereinafter "AMSB") before it is submitted to the supervisory authority. Supporting evidence should be provided to the supervisory authority to show the approval of the recovery plan or finance scheme by the AMSB and whether there were any concerns before approval was given.

Undertakings have to submit estimates as part of the recovery plan or finance scheme. These estimates have to meet certain requirements in order to be able to serve as a basis for the supervisory assessment of the plan or scheme. In particular, the estimates have to be realistic and need to include the remedial measures the undertaking plans to implement.

Whenever possible, information should be provided using the relevant quantitative reporting templates. The use of templates serves a harmonised approach and enables the later comparison of the prospective data with the actual numbers submitted and a better understanding of the effect of the proposed remedial measures. However, the supervisory authority should decide what level of granularity is proportionate with regard to the specific situation and planned solution for the undertaking concerned.

In order to assess the recovery plan or finance scheme the supervisory authority needs information about the expected overall financial situation of the undertaking at the end of the recovery period. Furthermore, the supervisory authority has to consider how the remedial measures will affect the undertaking concerned in the short and medium term. Therefore, the undertaking should provide information at least for the following additional time horizons: year-end information for the financial year in which the recovery period ends and year-end information for the subsequent financial year.

Information on reinsurance that supervisory authorities need for the assessment of the recovery plan or finance scheme should include whether there are any specific changes to the reinsurance cover on account of the non-compliance with the SCR/MCR and the remedial measures planned.

When there is non-compliance with the MCR the undertaking concerned will in most cases also be in non-compliance with the SCR. As the information to be included in a recovery plan and a finance scheme will in most cases be the same, and the finance scheme is only about re-establishing compliance with the MCR and not the SCR, the question arises, whether an undertaking which at the same time does not comply with

the SCR and the MCR should actually submit the same information twice for partially overlapping periods of time.

EIOPA considers that it should be possible for an undertaking to submit one combined finance scheme and recovery plan that covers both the recovery from the non-compliance with the MCR and with the SCR, as long as the supervisory authorities still get the information specifically needed to assess whether the remedies proposed to re-establish compliance with the MCR are suitable for achieving this aim within the three months recovery period.

Supervisory approval of the submitted recovery plan or finance scheme requires that the information is as reliable and complete as can be expected from the information which is collected outside the normal reporting cycle. Projections need to be realistic and proposed measures suitable to address the problem.

The supervisory authority should be satisfied that the recovery is sustainable based on credible information submitted by the undertaking.

EIOPA also considers that depending on the circumstances, remedial measures could have potential pro-cyclical effects. In this case EIOPA would expect supervisory authorities to require the undertaking concerned to choose alternative measures.

Undertakings can only submit the recovery plan and the finance scheme within the submission period set out in Articles 138 and 139 respectively. If they fail to do so or submit a plan or scheme that the supervisory authority cannot approve, the supervisory authority decides how the non-compliance is to be remedied. However, as long as the submission period has not expired, undertakings should be able to submit an improved recovery plan or finance scheme if the supervisory authority has decided not to approve the originally submitted plan or scheme.

On account of the option to allow the submission of a combined recovery plan and finance scheme, it is necessary to clearly set out that the supervisory authority may only approve the respective actions applied to comply with either the MCR or the SCR. In this case the undertaking concerned should also be able to submit an improved new document for the part that was rejected if there is still time left of the submission period.

With regard to Article 218(4) and Article 230(2), this Technical Advice applies to groups in case of non-compliance with the group SCR and the minimum consolidated group Solvency Capital Requirement. The particular issues arising in a group context should be addressed through supervisory engagement and cooperation in accordance with Article 218(5).

Proposal

Following the analysis above, in EIOPA's view the delegated acts with regard to the recovery plan referred to in Article 138(2) and the finance scheme referred to in Article 139(2) should be drafted as follows:

Article 1- Content of the recovery plan and finance scheme

(1) The recovery plan and the finance scheme shall include the following supplementary information:

- a) the estimates of the Solvency Capital Requirement and the Minimum Capital Requirement for the time horizons in Article 2 (c), with the estimates of the Solvency Capital Requirement split by risk modules where the undertaking uses the standard formula and by risk categories where the undertaking uses an internal model;
- b) the estimates on the eligible own funds intended to cover the Solvency Capital Requirement and the Minimum Capital Requirement for the time horizons in Article 2 (c), with the classification of the eligible own funds by tiers and by main items;
- c) the assumptions and methods used for deriving the estimates presented, including assumptions on economic scenarios;
- d) the insurance or reinsurance undertaking's own analysis of the causes for the non-compliance;
- e) the remedial measures already taken and remedial measures planned by the insurance or reinsurance undertaking, including the time schedule and the expected effects with regard to re-establishing compliance with the Solvency Capital Requirement or the Minimum Capital Requirement or both and with regard to the undertaking's overall business;
- f) the analysis of the adequacy of the measures with respect to the sustainability of compliance with the Solvency Capital Requirement or Minimum Capital Requirement after the end of the recovery period;
- g) evidence of the approval of the recovery plan or the finance scheme by the administrative, management or supervisory body and any concerns before approval was given.

(2) When the remedial measures planned include any commitments from third parties, the insurance or reinsurance undertaking concerned should provide relevant supporting evidence of such commitments.

Article 2- Forecast balance sheet and estimates

The forecast balance sheet and all estimates submitted by insurance or reinsurance undertakings as part of the recovery plan or finance scheme shall comply with the following:

- (a) they shall be based on realistic assumptions both in relation to the business of the insurance or reinsurance undertaking and economic scenarios;
- (b) they shall take into account the impact of the remedial measures the insurance or reinsurance undertaking concerned proposes to implement;
- (c) they shall be provided for at least three time horizons:
 - i) the end of the recovery period,
 - ii) the end of the financial year in which the recovery period ends;
 - iii) the end of the subsequent financial year;

- (d) they shall be provided using the relevant templates for regular supervisory reporting, wherever possible.

Article 3- Overall reinsurance policy

The overall reinsurance policy to be submitted according to Article 142(1) (e) of Directive 2009/138/EC shall reflect any changes the insurance or reinsurance undertaking concerned proposes to introduce and shall include information about the potential impacts of the proposed changes of the reinsurance programme.

Article 4- Non-compliance with both the Minimum Capital Requirement and the Solvency Capital Requirement at the same time

When an insurance or reinsurance undertaking observes a non-compliance with the Minimum Capital Requirement and with the Solvency Capital Requirement at the same time, the supervisory authority shall normally allow the insurance or reinsurance undertaking concerned to submit a combined finance scheme and recovery plan. In this case the combined finance scheme and recovery plan shall be submitted within the submission period applicable to the non-compliance with the Minimum Capital Requirement. If the supervisory authority is not convinced that the undertaking concerned can produce the combined finance scheme and recovery plan within one month, the supervisory authority shall require the undertaking concerned to first submit the finance scheme.

Article 5- Approval of the recovery plan and finance scheme

(1) The supervisory authority shall only approve a recovery plan or finance scheme where it considers that the plan or scheme is likely to result in the re-establishment of compliance with the Solvency Capital Requirement or Minimum Capital Requirement within the available recovery period based on the followings:

- a) the estimates provided by the insurance or reinsurance undertaking concerned are realistic;
- b) the information given by the insurance or reinsurance undertaking concerned is as complete and reliable as possible under the circumstances;
- c) the measures the insurance or reinsurance undertaking concerned proposes to take in order to increase the level of its eligible own funds or reduce its risk profile within the recovery period are adequate;
- d) the recovery plan or finance scheme does not have potential significant pro-cyclical effects.

(2) The supervisory authority shall not approve the recovery plan or finance scheme if, on the basis of the information supplied, it considers that the recovery is not sustainable.

(3) Where the supervisory authority, before the expiry of the submission period, concludes that a recovery plan or finance scheme shall be rejected, it shall explain the reasons for the rejection and allow the submission of a revised recovery plan or finance scheme, as long as it is submitted within the original submission period.

(4) The supervisory authority shall without delay inform the insurance or reinsurance undertaking concerned once it has identified any major concerns with regard to the submitted recovery plan or finance scheme.

(5) Where a combined finance scheme and recovery plan is submitted for approval, the supervisory authority may decide to approve only the respective actions applied to comply with either the Minimum Capital Requirement or the Solvency Capital Requirement. In this case, the supervisory authority shall explain the reasons for the partial rejection and allow the submission of a revised combined finance scheme and recovery plan, as long as it is submitted within the original submission period.

Supervisory powers in deteriorating financial conditions

Analysis

EIOPA considers that it is possible to identify supervisory measures that can be taken in case of deteriorating financial conditions, but that this list of measures should not be exhaustive. There needs to be flexibility as it is not possible to foresee what situations could arise and which measures could then be appropriate to ensure policyholder protection. It is also not deemed possible to describe which measures should be taken in which circumstances. In EIOPA's view it is, however, feasible to identify the factors that supervisory authorities should take into account when taking a decision on the measures they want to employ.

EIOPA holds that with regard to supervisory measures a distinction should be made between a situation where the deterioration of financial conditions takes place during a non-compliance with the SCR and a situation where the undertaking is in breach of the MCR. In the latter case, a withdrawal of the authorisation is mandatory under Article 144(1) if the non-compliance is not remedied within three months. A further deterioration of the financial conditions as opposed to an improvement of the situation is a very serious problem, and the supervisory authority should consider carefully whether the undertaking can still be considered capable of timely recovery. In such circumstances, according to Article 141, the supervisory authority is empowered to take all measures necessary to safeguard policyholders' interests. Therefore, if the deterioration of the financial conditions leads the supervisory authority to consider that the original finance scheme is manifestly inadequate, a withdrawal of the authorisation should be appropriate even before the three months recovery period has elapsed in order to protect policyholders.

In the case of non-compliance with the SCR, the supervisory authority should take into account the causes for the non-compliance when deciding on the concrete supervisory measures to be adopted, as supervisory measures should address the root of the problem, wherever possible. With regard to the severity of the supervisory measures that are appropriate it is important to consider the extent of the original non-compliance and the extent of the subsequent deterioration. The higher the degree of non-compliance, the more severe the supervisory measures should be.

Further relevant factors in the decision-making of the supervisory authority should be the nature of the business of the undertaking concerned and the level of implementation of the measures included in the recovery plan or finance scheme.

The supervisory authority has to monitor the recovery of the undertaking. Where the regular information is not adequate and does not allow the supervisory authority to follow up on undertakings that face deteriorating financial conditions, the supervisory authority should consider imposing additional reporting/information requirements for those undertakings concerned.

More generally, when deciding on supervisory measures the supervisory authority should take into account any measures the undertaking concerned itself has considered to be appropriate in case of financial stress. Such information could be found in any plan the undertaking has developed to address such financial stress. Supervisory authorities should also not solely focus on the short term problem; they

should take into account the longer term consequences of their intervention in order to achieve a sustained recovery of the undertaking concerned.

Article 28 requires that the supervisory authority shall duly consider the potential impact of their decisions on the stability of the financial systems in the European Union. In this context, in EIOPA's view, it is appropriate to explicitly state that supervisory authorities shall take due care to avoid pro-cyclical effects.

Proposal

Following the analysis above, in EIOPA's view the delegated acts with respect to Article 141 (supervisory powers in deteriorating financial conditions) should be drafted as follows:

Article 6- Supervisory measures in deteriorating financial conditions

(1) Where the solvency position of an insurance or reinsurance undertaking that does not comply with its Solvency Capital Requirement or its Minimum Capital Requirement deteriorates further after the first observance of the non-compliance, the supervisory authority shall consider taking one or several measures including the following:

- a) measures aimed at reducing the risk profile, such as
 - i) requiring the insurance or reinsurance undertaking concerned to refrain from underwriting new risks, or from renewal of pending contracts, in certain lines of business where this would increase its capital requirements;
 - ii) requiring the insurance or reinsurance undertaking concerned to take measures with regard to its asset portfolio with the aim of reducing the market and credit risk.
- b) measures aimed at limiting or preventing a reduction of financial resources, such as prohibiting the free disposal of assets;
- c) imposing additional reporting requirements to enable improved monitoring of the insurance or reinsurance undertaking concerned, including
 - i) increasing the frequency of the reporting for certain templates;
 - ii) requesting regular reports on the solvency position of the insurance or reinsurance undertaking;
 - iii) requesting an updated medium-term capital management plan;
 - iv) requesting prior notification to the supervisory authority before implementing any significant decision;.
- d) reorganisation measures to preserve or restore the financial situation of the insurance or reinsurance undertaking concerned.

(2) In deciding on which measures to take where the solvency position of an insurance or reinsurance undertaking that does not comply with its Solvency Capital Requirement deteriorate further, the supervisory authority shall take into account:

- a) the causes of the non-compliance;

- b) the extent of the initial non-compliance and of the deterioration of the solvency position;
- c) the relation between the Solvency Capital Requirement and the Minimum Capital Requirement;
- d) the nature of the business of the insurance or reinsurance undertaking concerned;
- e) the level of implementation of the measures foreseen in the recovery plan;
- f) the adequacy of the regular information submission in order to follow-up on the solvency position of the insurance or reinsurance undertaking concerned until a full and sustained recovery is achieved.

(3) Where the solvency position of an insurance or reinsurance undertaking that does not comply with its Minimum Capital Requirement deteriorates further, the supervisory authority shall consider whether it is still realistic that the implementation of the finance scheme will re-establish compliance with the Minimum Capital Requirement. If in view of the deteriorating solvency position the finance scheme is deemed to be manifestly inadequate, the supervisory authority shall withdraw the authorisation of the insurance or reinsurance undertaking concerned.

(4) When deciding on supervisory measures it should take, the supervisory authority shall consider any remedial measures the insurance or reinsurance undertaking concerned has envisaged as part of any plan the undertaking has drawn up for times of financial stress.

(5) The supervisory authority shall take due care to avoid pro-cyclical effects and shall also carefully balance the need to improve the solvency position of the insurance or reinsurance undertaking concerned at short notice with any long term adverse consequences these measures may have for the business of the undertaking.

Annex II: Impact Assessment and cost benefit analysis

Section 1: Procedural issues and consultation of interested parties

EIOPA received a call for advice from the Commission to provide technical advice to assist the Commission on the possible content of the delegated acts on the following issues:

- The recovery plan referred to in Article 138 (2) of Solvency II Directive;
- The finance scheme referred to in Article 139 (2) of Solvency II Directive;
- With respect to Article 141 of Solvency II Directive (supervisory powers in deteriorating financial conditions).

The draft regulatory technical standards on these issues to be developed by EIOPA will be adopted as delegated acts following the sunrise clause in Article 301b of Solvency II.

According to Article 10 of Regulation 1094/2010, EIOPA conducts analysis of costs and benefits when drafting regulatory technical standards. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

The draft Technical Advice and its Impact Assessment have been subject to public consultation between 3 December 2014 and 18 February 2015. The comments received from the stakeholders were duly taken into account and served as a valuable input in order to improve the Technical Advice.

The comments received and EIOPA's responses to them are summarised in the section Feedback Statement of the Final Report.

Section 2: Problem definition

To ensure consistent harmonisation with regard to the recovery plan and the finance scheme referred to in Articles 138 and 139 of the Solvency II Directive as well as with regard to the supervisory powers that national competent authorities may wield in deteriorating financial conditions where insurance or reinsurance undertakings already are in non-compliance with their Solvency Capital Requirement (hereinafter SCR) or their Minimum Capital Requirement (hereinafter MCR), national competent authorities shall require the same information from undertakings in financial difficulties and exercise their powers in a consistent way while taking into account the specificities of each individual case. EIOPA shall provide technical advice to the European Commission on regulatory technical standards with regard to the recovery plan, the finance scheme and supervisory powers in deteriorating financial conditions.

The absence of implementing measures might result in the following undesirable effects:

- (a) National competent authorities requiring different additional information from that envisaged in Article 142 and a different level of detail when asking

- insurance or reinsurance undertakings to submit a recovery plan or finance scheme;
- (b) National competent authorities applying different supervisory powers where insurance or reinsurance undertakings face deteriorating financial conditions;
 - (c) National competent authorities applying different criteria when approving a recovery plan or finance scheme thus creating uncertainty for undertakings.

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 for this Impact Assessment Report is based on the current situation of EU insurance and reinsurance markets, taking account of 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 will include:

- The content of Directive 2009/138/EC, as amended by Directive 2014/51/EU;
- The Commission Delegated Regulation 2015/35.

Article 143(2) of Solvency II Directive contains the legal requirement for EIOPA to develop draft regulatory standards on the recovery plan, finance scheme and supervisory powers in deteriorating financial conditions. According to Article 301b (1) in connection with Article 301a of the Directive, the European Commission will adopt these standards as delegated acts. In its letter from August 2014, the European Commission has requested that EIOPA should provide technical advice for these delegated acts.

Section 3: Objectives

Objective 1: To promote a consistent and harmonised approach to undertakings in non-compliance with capital requirements.

Objective 2: To ensure an equivalent level of protection for policyholders and beneficiaries where undertakings are in non-compliance with capital requirements.

Objective 3: To identify the information required from undertakings when they are in non-compliance with the SCR or the MCR.

These objectives correspond to the main objective of the Directive to protect policy holders and beneficiaries and the objective to enhance convergence of supervisory practices.

Section 4: Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has given consideration to the following issues:

- (1) how important it is to have a combined finance scheme and recovery plan submitted by the undertaking concerned where non-compliance with the MCR concurs with a non-compliance with the SCR;
- (2) the sustainability of the financial recovery the undertaking concerned has to show in order to obtain approval of a recovery plan or finance scheme by the supervisory authority;
- (3) the list of supervisory measures that national competent authorities may take in deteriorating financial conditions.

In this context, the following options have been analysed:

Policy issue 1: Concurrence of a non-compliance with the MCR with a non-compliance with the SCR.

- Option 1.1: Submission of a separate finance scheme and recovery plan.
- Option 1.2: Submission of a combined finance scheme and recovery plan.

Policy issue 2: Sustainability of the recovery.

- Option 2.1: Re-establish compliance with the SCR or MCR at the end of the recovery period.
- Option 2.2: Compliance with the SCR and MCR on a continuous basis.

Policy issue 3: Supervisory measures in deteriorating financial conditions.

- Option 3.1: Exhaustive list of measures to be taken.
- Option 3.2: Non-exhaustive list of potential measures.

Section 5: Analysis of impacts.

Policy issue 1. Concurrence of a non-compliance with the MCR with a non-compliance with the SCR

While it is possible that a non-compliance with the MCR occurs on account of the quality of the own funds for covering the MCR of an undertaking rather than the total amount of eligible own funds being insufficient, this is not expected to be the normal situation of the undertaking with regard to its MCR. In most cases where the MCR is breached the undertaking concerned will suffer from a lack of eligible own funds that results in a breach of the SCR as well. Where the undertaking does not experience deteriorating financial conditions after non-compliance with the SCR that ultimately lead to non-compliance with the MCR as well but immediately drops below both the SCR and the MCR it would have to submit a finance scheme within one month of identifying the breach of the MCR and a recovery plan within two months of identifying the breach of the SCR. EIOPA has considered whether it would be appropriate in this situation for a national competent authority to be able to allow the submission of one

combined finance scheme and recovery plan that covers both the re-establishment of compliance with the MCR and the SCR.

Option 1.1 Submission of a separate finance scheme and recovery plan

This is the requirement according to the Directive which sets out different submission periods, one month for the submission of a finance scheme and two months for the submission of the recovery plan.

Option 1.2 Submission of a combined finance scheme and recovery plan

The requirements on the content of the finance scheme and the recovery plan are the same. Therefore submitting some information only once would make it easier for undertakings and national competent authorities to consider recovery as one period instead of dealing with two separate recovery periods that overlap within the first three months.

The downside for undertakings is that in order to conform to the timelines set out in the Directive a combined approach requires that the information is submitted within the stricter of the two submission periods, i.e. within one month, even where the recovery concerns the SCR. However, submitting one document only is considered as something supervisory authorities may allow not something that is or can be required. So this "option" would only be used where it does not create time problems for the undertaking and the supervisory authority does not object.

Other stakeholders' interests

The issue is of interest for national competent authorities and insurance and reinsurance undertakings only. Other industry stakeholders and policyholders are not affected by the form or the timeframe in which the necessary information concerning the recovery from the breach of the MCR and the SCR are submitted to the supervisory authority.

Costs/benefits impact

Having to submit the full information twice and communication with the national competent authority separately for both breaches is expected to be more costly for undertakings compared to providing most of the information only once with a recovery from the breach of the MCR within three months treated as a specific milestone. For supervisory authorities a separate approach would also produce higher administrative expenses. An approach where combined finance scheme and recovery plan is submitted could help both undertakings and supervisory authorities in taking a more holistic view of the financial difficulties.

Policy issue 2. Sustainability of the recovery

According to the Directive, where non-compliance with the SCR occurs, the insurance or reinsurance undertaking concerned has to take the necessary measures to achieve, within six months from the observation of non-compliance with the SCR, the re-establishment of the level of eligible own funds covering the SCR or the reduction of its risk profile to ensure compliance with the SCR. The Directive also requires that

compliance with regulatory capital requirements is continuous. In light of this, EIOPA has considered whether it is sufficient for an insurance or reinsurance undertaking to show that it is able to meet the SCR or MCR at the end of the recovery period or whether it is necessary to provide additional information on the adequacy of the envisaged measures for the sustainability of compliance with the SCR and MCR.

Option 2.1 Re-establish compliance with the SCR or MCR at the end of the recovery period

By asking only for full compliance with the SCR/MCR at the last day of the recovery period undertakings get a clear and certain view that the goal is to meet the capital requirement as calculated for that point in time.

The downside is, in the light of continuing volatility, that a recovery that is tailored to achieve coverage of the SCR/MCR at a certain point in time carries the risk of another non-compliance soon afterwards.

Option 2.2 Compliance with the SCR and MCR on a continuous basis

Asking for suitable measures for the sustainable compliance with the SCR and MCR after the end of the recovery period provides better protection for policyholders.

Where an undertaking notifies the supervisory authority of a risk on non-compliance with regulatory capital requirement, the supervisory authority would have to consider initiating steps to ensure that the risk does not materialise. From the supervisory perspective it is therefore preferable that the initiative for further strengthening of the solvency position remains with the undertaking once the solvency position has been compromised.

The option requires more from undertakings as they have to demonstrate to the national competent authority - with the risk that the national competent authority does not accept this explanation - what kind of measures are suitable so that undertaking and supervisory authority can be reasonably sure that the recovery is sustainable after of the end of the recovery period. On the other hand it is in the undertakings' own interests to avoid a situation where financial problems are recurring.

Other stakeholders' interests

Policyholders and beneficiaries have an interest that undertakings in financial difficulties not only just re-establish compliance with regulatory requirements at a certain point in time but also that the recovery is sustainable.

Costs/benefits impact

Undertakings have to ensure that compliance with regulatory capital requirements is continuous in any case. So the task of the undertaking is not finished with re-establishing compliance at the end of the recovery period; additional efforts are necessary to ensure against the recurrence of non-compliance. Having to provide such

assurance within the recovery period may incur costs at an earlier point in time. On the other hand the degree to which such assurance is provided will influence the level of monitoring by the supervisory authority after the expiry of the recovery period.

Policy issue 3. Supervisory measures in deteriorating financial conditions

As part of the regulatory technical standards EIOPA has to specify supervisory measures that could be taken in deteriorating financial conditions. For this EIOPA considered whether an exhaustive list of potential supervisory measures should be developed.

Consideration was also given as to whether set out the circumstances under which the measures should potentially be implemented. It was however felt that this would not enhance harmonisation or provide more predictability for undertakings as any such descriptions would have to remain pure non-binding suggestions since the individual situation of the undertaking concerned and the external situation in which the financial difficulties take place will always need to be taken into account. It is not considered possible to develop "If X then Y" solutions for deteriorating financial situations that ensure that supervisory measures are proportionate and reflect the level and the duration of the deterioration of the solvency position as required by Article 141, second subparagraph of the Directive.

Option 3.1 Exhaustive list of measures to be implemented

Providing an exhaustive list of measures for national competent authorities to choose from, could enhance harmonisation and ensure that undertakings do not face more onerous supervisory measures in some Member States than in others. Such differences could potentially affect the competitive situation considerably. For undertakings an exhaustive list of supervisory measures would also make the exercise of supervisory powers more foreseeable and reduce uncertainty about the impact supervisory measures may have on the undertaking.

For national competent authorities a closed list of potential measures would reduce burden as they do not have to decide what would be the appropriate measures under the circumstances. However, a closed list may not provide appropriate solutions in certain circumstances and result in no measures or fewer or no appropriate measures being taken with detrimental effects on policyholder and beneficiary protection.

Option 3.2 Non-exhaustive list of potential measures

A non-exhaustive list of potential measures provides more flexibility on national competent authorities which however is accompanied by more responsibility as national competent authorities also have to consider other measures not included in the regulatory technical standards and assess their appropriateness and proportionality as well as their potential effects on financial stability. This flexibility could result in differences in supervisory approaches as some national competent authorities may exercise powers not included in the list. For undertakings the additional flexibility implies increased uncertainty and unpredictability as national competent authorities could intervene with quite specific solutions in their business.

This however may indirectly have a beneficial effect on compliance as it may encourage undertakings to avoid deteriorating financial conditions in order not to be subject to unpredictable and potentially more onerous supervisory measures.

'Other stakeholders' interests

From policyholders' and beneficiaries' point of view maximum flexibility of the national competent authorities to take any measure appropriate to remedy the deteriorating financial conditions is paramount.

Cost/benefits impact

The options do not result in additional administrative costs for undertakings whereas option 3.2 would increase administrative costs for national competent authorities slightly by requiring additional considerations and assessments. These additional costs are outweighed by the greater flexibility that option 3.2 provides for supervisory authorities.

Financial stability

The regulatory technical standards as such will have no direct impact on financial stability. The requirements on the content of the recovery plan and the finance scheme do not per se affect financial stability; but the measures an insurance or reinsurance undertaking in financial difficulties might propose to take to re-establish compliance with the MCR or the SCR could have an impact on financial stability. Since the Technical Advice does not envisage that national competent authorities should be required to approve a recovery plan or finance scheme irrespective of the effect that the proposed remedial measures may have on financial stability, this part of the Technical Advice ensures that any effect of the regulatory technical standards on financial stability would be positive. Concerning supervisory measures in deteriorating financial conditions the list of potential measures that national competent authorities are supposed to take into consideration contains measures that could potentially have an impact on financial stability. However, national competent authorities are not required to exercise any of these powers. On the contrary they are obliged to consider the impact of any such measures on financial stability under the specific circumstances of the case they have to decide, any effect of this part of the Technical Advice on financial stability should be beneficial as well.

Regarding the options, policy issues 1 and 2 are neutral with regard to financial stability. However, for policy issue 3 a decision to use an exhaustive list of supervisory measures in deteriorating financial conditions may indirectly provide more risk for financial stability as national competent authorities could be tempted to take a measure with a potential effect for financial stability in the specific situation when no other measures from the list are feasible rather than do nothing at all.

Social impact

Neither the regulatory technical standards nor the considered options are expected to have any social impacts.

Section 6: Comparing the policy options

The three policy issues and the options attached to each of them have been analysed independently.

- On policy issue 1 (**Concurrence of a non-compliance with the MCR with a non-compliance with the SCR**), it is considered that option 1.2 (*Submission of a combined finance scheme and recovery plan*) would provide a more practicable approach, making this the preferred option.
- On policy issue 2 (**Sustainability of the recovery**) option 2.1 (*Re-establish compliance with the SCR or MCR at the end of the recovery period*) carries the risk that undertakings do not implement sufficient measures to ensure that they recover from financial difficulties and re-establish not just compliance but also continuous compliance with regulatory capital requirements. Therefore option 2.2 (*Compliance with the SCR and MCR on a continuous basis*) is the preferred option.
- On policy issue 3 (**Supervisory measures in deteriorating financial conditions**), providing more flexibility to national competent authorities to choose supervisory measures that are appropriate and proportionate in a given situation and ensure that policyholders and beneficiaries interests are safeguarded is considered to be more important than aiming for more harmonisation by limiting the scope of potential supervisory measures. When an undertaking is in non-compliance with the MCR or SCR and faces deteriorating financial conditions the protection of policyholders and beneficiaries is key and should not be jeopardised in order to provide more predictability to undertakings with regard to potential supervisory measures.

Overall evaluation

As drafted, and after consideration of the various options, it is considered that the Technical Advice sets out requirements on the recovery plan, finance scheme and supervisory measures in deteriorating financial conditions in a manner that ensures an adequate level of harmonisation in supervisory practices. This would leave national competent authorities with sufficient flexibility to act appropriately in the interests of policyholder protection in any given situation where insurance or reinsurance undertakings are in non-compliance with regulatory capital requirements thus putting policyholders and beneficiaries at risk.

Annex III: Resolution of comments

Summary of Comments on Consultation Paper CP-14-062-Advice on recovery plan and finance scheme				
<p>EIOPA would like to thank Insurance and Reinsurance Stakeholder Group (IRSG), Actuarial Association of Europe (AAE), AMICE, Deloitte Touche Tohmatsu (DTT), GDV, Insurance Europe, and Investment & Life Assurance Group (ILAG).</p> <p>The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-14-062.</p>				
No.	Name	Reference	Comment	Resolution
1.	IRSG	General Comment	<p>It is not apparent that EIOPA will allow a public consultation of the final RTS. This will be problematic, given that this Call for Advice once adopted will be legally binding, and it will remain unclear from this current draft what the actual legal requirements of the RTS will be. We therefore urge EIOPA to perform a public consultation of the final version of the RTS.</p> <ul style="list-style-type: none"> Supervisors' should have an obligation to remove the capital add-on as soon as the company has addressed the issue giving rise to the add-on. The RTS list extensive requirements, however it should be made clear that not every one of these will necessarily apply in every case - there should be sufficient flexibility to ensure that the recovery plan/finance scheme and the supervisory measures taken in deteriorating financial conditions are tailored to the particular company and their specific situation. 	<p>The adoption of these RTS by the Commission as delegated acts is according to Article 301b (1) of the Directive. Since EIOPA is not adopting the final legal text, it can only consult on its response to the COM Call for Advice.</p> <p>This comment is not related to the content of the Consultation Paper.</p> <p>The idea of flexibility is already included in the Technical Advice.</p> <p>In the Technical Advice,</p>

			<ul style="list-style-type: none"> The proposal provides leeway for supervisors to request any additional information for any particular period outside of the Solvency II regular reporting requirements – it should make clear that such requests should be focused to what is necessary and take into account the cost and impact during deteriorating financial conditions of providing additional reporting. 	<p>the imposition of additional reporting requirements is linked to an improved monitoring of the undertaking. Supervisory authorities are required to take into account the adequacy of the regular information submission for following-up on the solvency position of the undertaking concerned.</p>
2.	Actuarial Association of Europe (AAE)	General Comment	<p>We highly appreciate the opportunity to support the drafting of the legal basis for the processes to be followed in a critical situation for the undertaking concerned and the supervisory authority being in charge of finding and supporting decisions to best care for the protection of policyholders.</p> <p>As actuarial considerations are of central importance for finding adequate solutions we especially would like to underline:</p> <ul style="list-style-type: none"> - focus should be set to develop recovery measures rather than on reporting - special care should be taken for small undertakings where capacity is tight and the same people to develop appropriate measures will typically have to set up (formal) reporting; irrespective of the size of the undertaking any required calculations might interfere with the calculations for regular reporting and thus take place in a time of stretched resources - the timeframe set (by the framework directive) for recovery and setting up the recovery plan resp. finance scheme is proportionate for a crisis situation but is also quite ambitious which has to be reflected in the formal requirements as well as to be supported by a close cooperation of undertakings and supervisory authorities concerned as it is implemented for banking supervision - usage of QRTs is a natural choice and will support processes within the undertaking concerned as well as within the supervisory authorities 	<p>A detailed response is provided for each comment.</p>

			<p>nevertheless information resp. granularity should be proportionate to allow for concentration of capacity on developing and implementing measures to recover from the breach of capital requirements, quarterly templates rather than the full granularity of annual submissions should be the first choice</p> <ul style="list-style-type: none"> - for effort and time reasons calculations of both SCR and MCR should follow regular reporting dates rather than newly set out time spans - the delegated acts should make use of legal concepts established within the framework directive rather than setting up indeterminate legal concepts as e.g. "short timeframe" - "pro-cyclical" should be understood with respect to actions taken by the undertaking concerned and not refer to pro-cyclical influences on the local or European financial market; nonetheless, observed macroeconomic environments need to be taken into account within the recovery measures set out in the plans - measures taken by the supervisory authority (ladder of intervention in practice, esp. withdrawal of authorisation) should be proportionate to the risk exposure for policyholders; in particular, only measures that are effective for the restoration of the security of policyholders can be imposed on undertakings; the measures should take into account local prudent accounting principles and safety buffers vs. volatility from the market in comparable short recovery periods. (Cf. our comment on the level playing field with banking supervision and the duration of liabilities and former regulation e.g. in Directive 2002/83/EC). <p>To ease reference we would like to propose to introduce the following abbreviations: Use Draft-Article RPFS x for "Recovery Plan and Finance Scheme" with x chosen in the order of appearance e.g. Draft-Article RPFS 1 for "Content of the recovery plan and finance scheme".</p>	
3.	AMICE	General Comment	AMICE welcomes the opportunity to comment on the Advice to the EC in response to the call for advice on recovery plan, finance scheme, and supervisory powers in deteriorating financial conditions.	Noted.
4.	Deloitte Touche Tohmatsu	General Comment	- We suggest EIOPA indicates if special provisions and criteria are applicable in the case of an extension of the recovery periods in case of exceptional adverse situations (art. 138-4 – OII).	EIOPA considers that such types of provisions would be out of the scope

	(DTT)			of the empowerment for this Technical Advice. EIOPA draft Guidelines on extension of the recovery period addresses this issue.
5.	GDV	General Comment	<p>GDV welcomes the opportunity to comment on the Advice to the EC in response to the call for advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions (hereafter RTS).</p> <p>In general, it would improve oversight and transparency if the regulatory approach to reporting requirements about the recovery plan and finance scheme is clearly worded, in line with requirements stated in the Solvency II Directive, and the list of measures to be taken is well defined. In particular the requirements in Article 142 (1) of the Solvency II Directive and the proposal on the content of the recovery plan and finance scheme (on p. 8 of the consultation paper) are not consistent.</p>	Article 142 (1) of the Directive states the minimum information that at least should be provided as part of a recovery plan/finance scheme. The Technical Advice specifies the components of the recovery plan and finance scheme listed in Article 142(1) and adds further important components, which are not covered by Article 142(1).
6.	Insurance Europe	General Comment	<p>Insurance Europe welcomes the opportunity to comment on the Advice to the EC in response to the call for advice on recovery plan, finance scheme, and supervisory powers in deteriorating financial conditions (hereafter the Advice).</p> <p>Insurance Europe finds it very problematic that a consultation, where the industry would be consulted on the final RTS, is not foreseen by EIOPA. The current version does not meet the standards of an actual legal draft (eg structure of the documents and wording of the text). It is unclear what the actual legal requirements will be as the poor current drafting does not provide for a clear understanding. This gives raise to great concern from the industry as this Call for Advice once adopted will be</p>	See comment 1 (paragraph 1) as regards the procedure applicable to this Technical Advice.

			<p>binding in its entirety.</p> <p>We strongly believe that a more principles based approach is needed rather than a purely rules based approach. From insurance undertakings point of view the rules based approach could force undertakings to take drastic short term measures. This indeed could harm the purpose of undertakings core business objectives which is to provide a long term business proposition for the policyholders. Therefore, we propose that the recovery plan is not only based on quantitative measures but also factors in a fair level of flexibility regarding management actions to cope with market conditions in order to agree on a more realistic recovery plan. It is important that the Advice strikes a balance between a realistic recovery plan/finance scheme and supervisory measures in deteriorating financial conditions.</p> <p>Supervisors should take due care when requesting additional reporting requirements from undertakings, limiting this information to what is deemed relevant considering the exceptional circumstances the undertakings are in. The need for additional information should be assessed on a case-by-case basis and the cost and impact during deteriorating financial conditions of providing additional reporting should be considered.</p>	<p>The recovery period is determined by the Directive. When preparing the recovery plan/finance scheme undertakings are required to consider the most suitable remedial actions to restore the compliance. In order to avoid the adoption of drastic short term measures, the undertakings should consider in advance a proper contingency planning.</p> <p>See comment 1 (paragraph 3)</p>
7.	IRSG	Recovery plan and finance scheme: analysis	<p>The IRSG agrees that it should be possible for an undertaking to submit one recovery plan/finance scheme that covers both the recovery from the non-compliance with the MCR and with the SCR.</p> <p>In the first sentence of the third paragraph on p. 7, second line, the reference should be to the "information about the expected overall financial situation of the undertaking at the end of the recovery period".</p> <p>With reference to paragraph 4 and the scope for supervisors to request both prospective SCR and MCR regardless of whether the undertaking</p>	<p>Agreed.</p> <p>Agreed.</p> <p>Disagreed.</p>

			<p>has to submit a recovery plan or finance scheme - this is unacceptable. Any extension in scope should be justified as there is a prospective SCR in the ORSA, and the finance scheme includes both a prospective SCR and MCR.</p>	<p>The prospective SCR and MCR requested are to be based on the most up to date information for specific time horizons which may be different from those used in the ORSA.</p> <p>The assessment to be done at the recovery plan/finance scheme is focused on the fact that there is an actual breach of the SCR/MCR.</p>
8.	AMICE	Recovery plan and finance scheme: analysis	<p>Can EIOPA provide clarification on whether the prospective SCR/MCR should include the impact of the proposed measures taken by the insurer to remedy the breach of the SCR/MCR?</p> <p>If the prospective SCR/MCR does not take into consideration the measures taken, the ORSA should be allowed as reference unless the data provided is outdated.</p> <p>In paragraph 4 EIOPA states that a prospective SCR/MCR is always to be submitted regardless of whether a recovery/finance scheme has been sent. Further clarification is needed on the implications of such a request. Can EIOPA clarify whether such information should be provided in going Yconcern? We would like to remind EIOPA that this information is not to be reported but it is normally available in the ORSA.</p>	<p>Yes, the remedial measures included in the recovery plan/finance scheme should also be taken into account when calculating the prospective SCR/MCR.</p> <p>Undertakings are requested to provide both MCR and SCR since any remedial action taken could affect the calculation of both capital requirements. Information on recovery should be provided in going concern. Prospective capital requirements are included in the regular ORSA supervisory report, according to Article 306</p>

			<p>In paragraph 5 EIOPA states that supervisory authorities need information on how estimates are made. AMICE members believe that this should already be covered in the ORSA review and should not constitute a request for further information. An insurer should continue with the approaches it has defined and set up. An information flow is needed only when a change is envisaged. Duplication of information should be avoided particularly in these types of circumstances.</p> <p>EIOPA is requesting an SCR with the same level of granularity as the regular reporting. However, regular reporting grants longer time horizons than needed for example in the finance scheme (1 month versus 6 weeks). How realistic is it to request the same level of granularity in the SCR? More importantly, does this provide additional benefits when considering the short-term financing plan?</p>	<p>of the Commission Delegated Regulation.</p> <p>As regards the different perspective between recovery plans/finance schemes and the ORSA, see response comment 7. Supervisors should be provided with an explanation of the calculations included in the recovery plan/finance scheme, so that they fully understand the document subject to their approval.</p> <p>The reliability of the SCR calculation included in the recovery plan/finance scheme is of utmost importance. Supervisors should ultimately decide which templates to use and on the precise suitable level of granularity, based on the underlying reasons of the breach.</p>
9.	Deloitte Touche Tohmatsu (DTT)	Recovery plan and finance scheme: analysis	<ul style="list-style-type: none"> - We suggest the recovery plan / finance scheme include a link with the last ORSA report, to highlight why the SCR / MCR have been breached whilst ORSA was supposed to prevent such a situation, and why the contingency plan foreseen by the ORSA has not been effective. - In case of a breach on the SCR/MCR and due to the expectation of a projected finance scheme and projected balance sheet estimates: we 	Undertakings are expected to review their ORSA procedures in case of a breach of the SCR/MCR. However, a revision of the ORSA could be done after the

			understand that the ORSA methodology is expected to be revised as part of the recovery plan / finance schemes, as ORSA is supposed to prevent SCR/MCR breaches	recovery and not necessarily in the context of the recovery plan/finance scheme.
10.	Insurance Europe	Recovery plan and finance scheme: analysis	<p>As this section has no subheadings we have made reference to the individual paragraphs. Hence, paragraph 1 starts with "EIOPA considers that is necessary..." and paragraph 2 starts with "As far as the content is concerned..." etc.</p> <p>In paragraph 4, the scope for supervisors to ask for both prospective SCR and MCR irrespective of whether the undertaking has to submit a recovery plan or a finance scheme is not acceptable. There is a prospective SCR in the ORSA and when submitting a finance scheme this covers both a prospective SCR and MCR. Hence, the scope should not be extended without providing further details and justification as to why this is necessary. We believe prospective SCR and MCR should always include the impact of the proposed remedial measures and therefore not be asked out of context of the recovery plan or finance scheme. In particular, the information requested for the sake of determine the prospective SCR be aligned with the granularity expected for the annual RSR reporting. Therefore, we propose the following redrafting of the first sentence of this paragraph: "information on the prospective SCR should be sufficiently reliable and accurate such that the supervisor can take a decision."</p> <p>Paragraph 5: This should already be covered in the ORSA review and should not be additional information needed. Only when a change in the methods is envisaged an additional information flow is needed. Duplication of information should be avoided especially in these types of circumstances.</p>	<p>See comment 8 (third paragraph)</p> <p>Undertakings are requested to provide the methods used to derive the concrete information included in the submitted recovery plan/finance scheme. The projections included in the ORSA and the estimates in the recovery plan/finance scheme are of different nature.</p>

			<p>In paragraph 8: last sentence could be very difficult to achieve in practice as it is very generic. Instead, reference should be made to going concern of the undertaking being re-established.</p> <p>Paragraph 11 (page 7) should be redrafted to better reflect that progress information can be based on the Solvency II reporting package, which is already submitted quarterly. Any additional reporting should only happen under exceptional circumstances (strong supervisory needs) and should be kept flexible in terms of means and content (only ask for what is necessary). Besides the spirit of paragraph 15 in this section should be kept in mind.</p> <p>Paragraph 12 (page 7) gives too much leeway for supervisors to request additional reporting which will be very burdensome (reference to "at least").</p> <p>Paragraph 17 (page 7): Although 'no material risk of another non-compliance' seems fine for the MCR however, it is too stringent for the SCR. Not only do you need to re-establish the SCR but depending on what 'material risk' means also a rather large buffer. Accordingly, we propose to align the language used in paragraph 17 on page 7 with paragraph (2) on page 10 on approval to be consistent, with the following redrafting: "For the recovery plan or finance scheme to be taken as realistic, the supervisory authority should consider it unlikely that the insurance or reinsurance undertaking concerned will face another non-compliance within a short timeframe following the end of recovery period"</p> <p>In paragraph 18 please replace "period" with "plan" in the following sentence on page 8: "the undertakings can only submit the recovery plan</p>	<p>Undertakings must comply with the capital requirements on a continuous basis. The referred sentence has been redrafted.</p> <p>See comment 8 (paragraph 4)</p> <p>Supervisors should justify a requirement beyond what is stated.</p> <p>The paragraph has been deleted. So the suggested inconsistency no longer applies.</p> <p>Done.</p>
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			and the finance scheme within the submission period..."	
11.	Investment & Life Assurance Group (ILAG)	Recovery plan and finance scheme: analysis	<p>We query whether it is proportionate to require an insurer to provide the level of granularity of detail suggested ie. broken down by risk modules for prospective solvency capital requirements and presenting this information using the quantitative reporting templates (where possible). While we agree that it is preferable to receive detailed information to assess changes to an insurer's risk profile, it is not practical to deliver such granularity within condensed timescales. It may take several days to run and re-run models in order to assess the impact of various management actions and scenarios to deliver quality analysis.</p> <p>It would be more practical to monitor projections against a narrower range of metrics (agreed between supervisor and the insurer) which target the key drivers of the breach. We recognise that identifying the drivers of the breach may of course require this level of detail (but these drivers would be based on actual, rather than projected numbers).</p> <p>Where deficiencies are identified as the cause for the breach of regulatory capital requirements, firms should be able to discuss and agree with their supervisor an appropriate timeframe in which to address the deficiencies and implement necessary changes.</p> <p>It would be beneficial to allow firms to submit a combined finance scheme and recovery plan where a breach of MCR and SCR happens concurrently should they wish to do so. However, a firm should not be required to do so when it may benefit from the flexibility of submitting these documents separately as the directive provides for different timelines to do so.</p>	<p>See comment 8 (paragraph 4)</p> <p>See comment 8 (paragraph 4)</p> <p>Timelines are determined by the Directive.</p> <p>The paragraph has been redrafted to make it clearer.</p>

12.	IRSG	Content of the recovery plan and finance scheme (1)	<p>The IRSG agrees that undertakings should avoid the use of "quick fixes" that may lead to another non-compliance of the SCR or MCR in the short time following the recovery period. Supervisors should make sure that the measures they impose on undertakings do not lead them to use "quick fixes", which will likely lead to further non-compliance.</p> <p>We also propose that paragraph (1)(e) should be deleted due to the following reasons:</p> <p>Article 138(3) of the Directive already requests a SCR ratio $\geq 100\%$ and that non-compliance should only be averted for the following three months.</p> <p>Furthermore, requesting to avert another non-compliance of the SCR or MCR in the following three months suggests that an additional capital buffer is needed on top of the SCR. This measure is not acceptable.</p> <p>Further redrafting suggestions for this section:</p> <ul style="list-style-type: none"> - littera a): it is unclear what is meant with the concept of "former split" - littera d): the text should read: "remedial measures which the insurance or reinsurance undertaking concerned has already..." - littera e): last line: "following the end of the recovery period" 	<p>See comment 10 (paragraph 3)</p> <p>Partial redrafting according to the suggestions.</p>
13.	Actuarial Association of Europe (AAE)	Content of the recovery plan and finance scheme (1)	<p>With respect to the arguments given below we propose the following amendments to the draft:</p> <p>Add a new guiding paragraph:</p> <p>(1) The actions taken by the insurance and reinsurance undertaking concerned to set up the recovery plan and finance scheme to be submitted by insurance or reinsurance undertakings to the supervisory authority according to Article 138(2) respectively Article 139(2) of Directive 2009/138/EC shall be focussed on implementing remedial measures to re-establish the compliance with the capital requirements and to support these by particulars and evidence on items specified in Article 142(1) of Directive 2009/138/EC and below to prove the adequacy</p>	<p>The suggested addition has not been considered since this would not be within the scope of the empowerment for this Technical Advice.</p>

		<p>of measures and foster the assessment and approval. Documentation and evidence should reflect nature, scale and complexity of the undertaking concerned as well as the measure to be assessed for approval.</p> <p>Change former draft paragraph (1) to the following where c) and d) only have editorial changes:</p> <p>(2) In accordance with paragraph 1 of this article the recovery plan and the finance scheme supplementing Article 142(1) of Directive 2009/138/EC should additionally include particulars or evidence concerning the following:</p> <p>a) estimates of the solvency capital requirement and the minimum capital requirement;</p> <p>b) assumptions and methods used for deriving the estimates referred to in Article 142(1) of Directive 2009/138/EC and above, including economic scenarios;</p> <p>c) own analysis of the causes for the non-compliance performed by the insurance or reinsurance undertaking;</p> <p>d) remedial measures already taken and remedial measures planned by the insurance or reinsurance undertaking, including their time schedule, and their effects with regard to re-establishing compliance with the solvency capital requirement, minimum capital requirement or both and with regard to the undertaking's overall business;</p> <p>e) adequacy of the measures to re-establish compliance with the solvency capital requirement, minimum capital requirement or both on a continuous basis;</p> <p>f) approval of the recovery plan respectively finance scheme by the administrative, management or supervisory body.</p> <p>Add a new paragraph on formats:</p>	<p>a) Agreed.</p> <p>b) Agreed.</p> <p>c) Not agreed. The current drafting is considered right.</p> <p>d) Agreed.</p> <p>e) This letter has been redrafted in line with the comment.</p> <p>f) Disagreed. Supervisors should have all the relevant information about the decision making within the undertaking as regards the recovery plan/finance scheme.</p> <p>See comment 8 (paragraph 4)</p>
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			<p>(3) Preparing the recovery plan and the finance scheme in accordance with paragraphs 1 or 2 the insurance or reinsurance undertaking shall as far as possible make use of the standard reporting templates used within in regular supervisory reporting or the own risk and solvency assessment to assure a consistent and coherent submission.</p> <p>Reasoning:</p> <p>Ad new paragraph (1):</p> <p>Rather than providing full information e.g. given with QRTs the undertakings and supervisory authorities joint priority should be set on the impact and adequacy of remedial measures or key figures behind SCR and MCR calculation respectively with regard to the tight time frame defined in the Directive 2009/138/EC.</p> <p>Ad amending former paragraph (1):</p> <p>Besides editorial changes:</p> <p>ad a): Frequency and key date for calculation should be defined by the draft "Forecast balance sheet and estimates", please refer to our respective proposals.</p> <p>ad b): Reference made explicit and thus best case improved.</p> <p>ad c): editorial moving item at the beginning of the sentence.</p> <p>ad d): editorial replacing "it" by "insurance or reinsurance undertaking".</p> <p>ad e): Replace indeterminate legal concept "short timeframe" by requirement set by the framework directive; calculation respectively key date will be set below (cf. lit. a)).</p> <p>ad f): Delete "any concerns before approval was given". Evidence should be focussed rather on the adequacy of the measures proposed than on historical information. Concerns will have been dealt with and will have been respected in the final recovery plan resp. finance scheme. Documentation of discussions is neither necessary nor proportionate and will be an undue burden in a stressed situation.</p>	
14.	AMICE	Content of the recovery plan and finance scheme (1)	Paragraph (e) by which undertakings should prove the adequacy of the measures to avoid another non-compliance of the SCR or MCR following the end of the recovery period is not in line with the Framework Directive. We request this paragraph be deleted.	See comment 10 (paragraph 3)

15.	Deloitte Touche Tohmatsu (DTT)	Content of the recovery plan and finance scheme (1)	<p>MCR/SCR projections during recovery period:</p> <ul style="list-style-type: none"> - NCAs have to approve the plan based a.o. on the MCR/SCR projections which are not explicitly mentioned in the content of the recovery plan and finance scheme <p>MCR/SCR projections after recovery period:</p> <ul style="list-style-type: none"> - We suggest that the prospective SCR/MCR should be provided for the same deadlines as for the balance sheet, and not only at the end of the recovery period (projected balance sheet is required at the end of the recovery period, end of related financial year and end of subsequent financial year). We understand from policy issue 2 on "Sustainability of the recovery" that this would be the purpose to have such an information but this is not explicitly mentioned in the content of the recovery plan and finance scheme. 	<p>The recovery plan/finance scheme shall necessarily include the estimates of the Solvency Capital Requirement and the Minimum Capital Requirement at the end of the recovery period.</p> <p>Agreed. The drafting has been adjusted to clarify it.</p>
16.	GDV	Content of the recovery plan and finance scheme (1)	<p>GDV finds it difficult to see the added value of additional reporting requirements in excess of Article 142 (1) of the Solvency II Directive. The information requests in Art. 142 (1) of the Solvency II Directive are already detailed and contain the words "at least", indicating further leeway for the supervisory authority. Thus, there is no need for a further specification on Level 2/3, especially concerning methodology, estimation, and analyses.</p> <p>When asking for information required from insurance and reinsurance undertakings, the supervisory authority should take the severity of the situation, the necessity of the information, the expected results as well as proportionality into consideration when making such requests.</p>	<p>Disagree.</p> <p>Article 143 (2) of the Solvency II Directives establishes the need of further regulatory development for the sake of consistent harmonisation.</p>
17.	Insurance Europe	Content of the recovery plan and finance scheme (1)	<p>Paragraph (1)(e) should be deleted. We agree that undertakings should avoid "quick fixes", which could lead to another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period. However, we believe it does not make sense to require a demonstration that this is not going to happen, for the following reasons:</p> <p>It is not in line with the Directive and the Delegated Acts. Article 138(3) of the Directive merely asks for a SCR ratio $\geq 100\%$. The avoidance of another non-compliance within the next three months is the only one required.</p>	<p>See comment 10 (paragraph 3), as regards the need of continuous compliance with the capital requirements.</p>

			<p>Asking “to avoid another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period” without further precision seems to imply the systematic use of an additional capital buffer on top of the SCR. The latter is already supposed to withstand extreme circumstances. Therefore, this approach is too conservative as there is a wide range of other measures which could be more appropriate.</p> <p>Besides, instead of the above, supervisors should ensure that the measures or pressure they impose on the undertaking do not precisely lead them to resort to quick fixes, which will make another non-compliance more likely to happen.</p> <p>EIOPA also requests the submission of additional reporting items as listed in indent a) to f) which seems in excess of what is requested by Article 142 of the Directive. The reporting requested should be proportionate, reflect the level and duration of the deterioration of the solvency position and be based on the regular supervisory reporting as set out in Article 35 of the Directive to the largest extent possible. Any requests for additional and more detailed reporting items should be duly justified by the supervisor.</p>	
18.	Investment & Life Assurance Group (ILAG)	Content of the recovery plan and finance scheme (1)	<p>While the recovery plan requirements focus on the prospective solvency capital requirements in detail, it remains silent around prospective eligible own funds. We would anticipate that some management actions may impact either both own funds and SCR (for example raising subordinated debt may increase own funds, but may also increase interest rate risk charge) or solely own funds (for example additional ordinary share capital). Whilst a forecast balance sheet will help with this assessment, it will not necessarily reflect issues of availability or eligibility of own funds.</p> <p>In terms of remedial actions planned, we would expect that the supervisor would be interested in reviewing the full set of options that the insurer believes it has as well as the feasibility of preferred options. These should reflect any practical obstacles that may prevent the recapitalisation of the insurer (such as lack of investor appetite or costly</p>	A specific reference has been included to address the need of estimates as regards the eligible own funds explicitly.

			<p>debt markets).</p> <p>Given that these requirements will also apply at group level (by virtue of Article 218(4) of the Solvency II directive); we might have expected the Consultation Paper to consider whether any additional information might be required from an insurer in relation to the impact on its group solvency position in particular whether the restoration of solvency at a local level has a significant / detrimental impact. However any additional information deemed necessary should strike a balance to avoid creating unnecessary cost and burden on insurers.</p>	<p>A clarification has been inserted to confirm that considering Article 218 (4) and Article 230 (2) of Solvency II, this Technical Advice should apply to groups with regard respectively to the non-compliance with the Solvency Capital Requirements as well as to the minimum consolidated group Solvency Capital Requirement. EIOPA is aware that certain issues have to be addressed when the concerned undertaking is part of a group. EIOPA does however not believe that these questions should result in additional information requirements as part of the recovery plan/finance scheme submitted by the undertaking that is non-compliant.</p>
19.	IRSG	Content of the recovery plan and finance scheme (2)	<p>Redrafting suggestion:</p> <p>"....the insurance or reinsurance undertaking concerned should provide..."</p>	<p>Agreed.</p> <p>Redrafting according to the suggestion.</p>
20.	Actuarial Association of Europe (AAE)	Content of the recovery plan and finance scheme (2)	<p>We propose to delete this paragraph.</p> <p>Reasoning: Appropriate evidence will have to be given for every measure including commitments from third parties. Evidence for every measure</p>	<p>Disagreed.</p> <p>If the remedial measures include commitment from</p>

			should be proportionate to nature, scale and complexity of the measure and its "exposure" but with this reference to the proportionality principle will have to comply with requirements set by Solvency II regulation. Please also refer to our proposal to add a guiding subparagraph.	third parties, specific evidence should be provided. Otherwise, supervisors cannot assess if the recovery plan/finance scheme is realistic.
21.	Deloitte Touche Tohmatsu (DTT)	Content of the recovery plan and finance scheme (2)	<ul style="list-style-type: none"> - We would expect some information w.r.t. the level of non-compliance: solo or group and interactions within the group structure (e.g.: is a parent company in state to provide additional funds without breaching its own SCR?) - There appears to be no specific extra requirement for undertakings that are considered as systemic. 	See comment 18 (paragraph 2)
22.	Actuarial Association of Europe (AAE)	Forecast balance sheet and estimates	<p>With respect to the arguments given below we propose the following amendments to the draft:</p> <p>Change the heading: "Forecast balance sheet and Estimates: Reporting dates and assumptions"</p> <p>Extend scope to the estimates of SCR and MCR required by the draft DA above referred to as "Draft-Article RPFS 1":</p> <p>"The forecast balance sheet and all estimates referred to in Article 142(1) of Directive 2009/138/EC or by Draft-Article RPFS 1" are to be submitted by insurance or reinsurance undertakings as part of the recovery plan or finance scheme shall comply with the following:"</p> <p>Leave (a) and (b) unchanged.</p> <p>Change c) to:</p> <p>"c) they shall be provided as estimates for the reporting date which is the nearest future reporting date to the date of finding the non-compliance and additionally for the nearest regular reporting date by which the undertaking is to have reached sustainable recovery."</p>	<p>Partially agreed.</p> <p>The current heading is considered more appropriate taking account of the covered content.</p> <p>The drafting suggestion has been taken into account.</p> <p>Agreed.</p> <p>Disagree.</p> <p>Estimates should be necessarily provided for the end of the recovery period. The subsequent time horizons requested are regular reporting dates in any case.</p>

			<p>Deleted d).</p> <p>Add the following requirement:</p> <p>"Additionally the insurance or reinsurance in accordance with Article 45 (5) of Directive 2009/138/EC the undertaking should perform an own risk and solvency assessment or at least update the last one performed taking into account the remedial measures immediately after having successfully passed the supervisory approval of the recovery plan respectively finance scheme and the recovery period."</p> <p>Reasoning:</p> <p>Ad Scope / first sentence:</p> <p>We propose to define calculation dates in one article rather than in two.</p> <p>Ad c) and additional sentence:</p> <p>End of the recovery period will not necessarily be a typically reporting date or a quarter end. As technical requirements for sub-quarterly and even sub-annual calculations cause some effort we would like to propose to restrict calculations to those reporting dates for which processes are properly implemented.</p> <p>Additionally we would like to propose to avoid to introduce the indeterminate legal concept of "short timeframe" and refer to processes and concepts well established within the the Solvency II framework e.g. "to achieve sustainable recovery" and use the ORSA processes including its forecast requirements. But as a full ORSA would not be proportionate within the recovery period we would like to propose to restrict the calculations for the recovery plan to two reporting dates and add an ORSA performance afterwards as requirement.</p> <p>Ad d): Submission format is dealt with in our proposal for Draft-Article RPF5 1 and thus can be deleted here.</p>	<p>Disagree.</p> <p>See comment 8 (paragraph 4) as regards the use of templates at level of granularity requested.</p> <p>The suggested requirement is outside the scope of the empowerment of this Technical Advice.</p>
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23.	GDV	Forecast balance sheet and estimates	<p>First, GDV finds it excessive for insurance and reinsurance undertakings to supply information from QRTs when supplying forecast balance sheets and estimates. In general, planning processes in insurance undertakings are not as detailed as the QRT reporting under Solvency II.</p> <p>Second, paragraph (c) should specifically specify which time horizons are considered by the supervisory authority. It is not clear what "at least" means. This gives too much leeway to the supervisory authority to request many different forecasts.</p>	Disagreed. See comment 8 (paragraph 4) as regards the use of templates and level of granularity requested.
24.	Insurance Europe	Forecast balance sheet and estimates	<p>It is very onerous and unrealistic that supervisors can request to use QRTs for the forecast balance sheet and estimates especially in times of distress. Besides, indent (c) gives too much leeway to supervisors to request many different forecasts (reference to "at least"). (c) ii) and iii) should also be deleted as article 138(3) of the Directive only asks for an SCR compliance at the end of the recovery period. Forecasts for future periods, as mentioned under ii) and iii) are therefore unnecessary.</p> <p>In particular, for (c)(iii) a more high level approach should be envisaged, e.g. the long term capital planning done for the ORSA.</p> <p>Generally speaking, the spirit of paragraph 15 under the "analysis" section, where reference is made to "...the information is as reliable and complete as can be expected of information that is collated outside the normal reporting cycle" should be explicitly included in the draft Articles.</p>	Disagreed. See comment 8 (paragraph 4) as regards the use of templates and level of granularity requested.
25.	Investment & Life Assurance Group (ILAG)	Forecast balance sheet and estimates	The end of the recovery period is most unlikely to be co terminus with a year end of the firm. It should be noted therefore that preparation of a forecast balance sheet at such a date is likely to be more challenging than at the end of a financial year.	Noted.
26.	IRSG	Overall reinsurance policy	<p>Redrafting suggestion:</p> <p>"... any changes the insurance or reinsurance undertaking concerned proposes to introduce with regard to its reinsurance policy and shall include information..."</p>	<p>Agreed.</p> <p>Redrafting according to the suggestion.</p>
27.	Actuarial Association of Europe (AAE)	Overall reinsurance policy	We suppose that this draft Delegated Act takes up Article 142(1)(e) of Directive 2009/138/EC and is about evidence on the impact of the measures taken on the overall reinsurance policy but not setting up a new policy requirement i.e. changes in the reinsurance treaties and cover	Agreed.

			are to be documented.	
28.	Deloitte Touche Tohmatsu (DTT)	Overall reinsurance policy	- We suggest that other policies than the reinsurance policy could be considered here (eg risk management policy,...). as they might also have an important impact on SCR/MCR coverage. We acknowledge that art. 142 of S2 does not foresee any other policy but this could be included in additional information.	Disagreed. The eventual review of any other of the undertaking's policies cannot be requested as part of the recovery plan/finance scheme.
29.	Actuarial Association of Europe (AAE)	Non-compliance with both the MCR and the SCR at the same time	We appreciate this proposal and would like to see it supported by replacing "may allow" by "upon request should allow".	See comment 11 (paragraph 4)
30.	Deloitte Touche Tohmatsu (DTT)	Non-compliance with both the MCR and the SCR at the same time	- We would welcome the possibility of submitting a single report in such a case. - A maximum deadline for approval or rejection by the supervisory power should be defined	See comment 11 (paragraph 4)
31.	Insurance Europe	Non-compliance with both the MCR and the SCR at the same time	In the process, it should be considered to ask the undertaking of its preference between submitting a combined recovery plan/finance scheme or separate ones following their respective deadlines.	See comment 11 (paragraph 4)
32.	Investment & Life Assurance Group (ILAG)	Non-compliance with both the MCR and the SCR at the same time	It would be beneficial to allow firms to submit a combined finance scheme and recovery plan where a breach of MCR and SCR happens concurrently should they wish to do so. However, a firm should not be required to do so when it may benefit from the flexibility of submitting these documents separately as the directive provides for different timelines to do so. However the focus of a firm should be the finance scheme and it may not be practical for a firm to submit a combined finance scheme and recovery plan within one month.	See comment 11 (paragraph 4)
33.	IRSG	Approval of the recovery plan and finance scheme	Paragraph 2 should be deleted: Article 138(3) of the Directive already requests a SCR ratio $\geq 100\%$ and that non-compliance should only be averted for the following three months. Furthermore, requesting to avert another non-compliance of the SCR or MCR in the following three months suggests that an additional capital buffer is needed on top of the SCR. This measure is not acceptable.	Partially agreed. Redrafted. See comment 10 (paragraph 3)

			<p>Supervisors should make sure that the measures they impose on undertakings do not lead them to use “quick fixes”, which will likely lead to further non-compliance</p> <p>Paragraph 3 does not address the case if the supervisory authorities have the resources to analyse and give feedback to the undertaking submitting the recovery plan/finance scheme in time, particularly where it cannot be approved for the first time. It should be acknowledged that deadlines for feedback to the undertaking are very tight and that the supervisors should ensure that the response time is as short as possible.</p> <p>Paragraph 4 does not address the case if the combined recovery plan and finance scheme are partially rejected, and the deadline for the submission period expires prior to the undertaking re-submitting part of the combined recovery plan and finance scheme that was originally rejected. The comment from paragraph 3 on tight deadlines also applies here.</p> <p>We also suggest the following redrafting suggestions to the text:</p> <ul style="list-style-type: none"> - under (1) c): “...the future solvency capital requirement or minimum capital requirement...” (delete “s”) - under (1) d): “... or reduce its risk profile within the recovery period...” (delete “in”) - under (2) second line: “... on the basis of the information supplied, it considers it likely...” - under (4) second line: “... the supervisory authority may decide to only approve ...” 	<p>A new paragraph 3 has been introduced to explicitly request the supervisors to give a reply without delay.</p> <p>The part of the combined finance scheme and recovery plan that has been rejected initially, should be considered definitively rejected if it is not re-submitted within the respective submission period.</p> <p>Redrafting according to the suggestions.</p>
34.	Actuarial Association of Europe (AAE)	Approval of the recovery plan and finance scheme	<p>We appreciate this proposal and would like to propose the following supplements:</p> <p>(1) e) “the recovery plan or finance scheme does not have potential significant pro-cyclical effects on the undertakings financial position.”</p>	Disagree.

			<p>(2) replace "within a short timeframe" by "within the time up to the next regular reporting date".</p> <p>(4) Ad "respective" at the end of this paragraph to refer to the relevant breach: "submitted within the original respective submission period."</p> <p>Add two new paragraphs:</p> <p>"(5) In their assessment the supervisory authorities should take into account potential adverse situations as referred to in Article 138(4) of Directive 2009/138/EC. In assessing the ultimate risk for payments to policyholders, means from local prudent accounting principles and additional safety buffers may be taken into account."</p> <p>"(6) The supervisory authority should offer timely response, close co-operation and active involvement to support the insurance or reinsurance undertaking in setting up the recovery plan or finance scheme within the prescribed timeframe especially by answering questions in due course."</p> <p>Reasoning:</p> <p>Ad (1) e): Explicitly state a common understanding.</p> <p>Ad (2): Change to achieve consistency with our proposals made above.</p> <p>Ad (4): Rather editorial.</p> <p>Ad (5): Although the current proposals deal with individual undertakings the macroeconomic background has to be reflected as it is done in Article 138(4) of Directive 2009/83/EC. Furthermore the ladder of intervention in practice has to be calibrated with care and proportionate to the risk</p>	<p>The Technical Advice has been drafted according to the meaning of "pro-cyclical effects" in Article 143 of the Directive.</p> <p>The paragraph has been redrafted. See comment 10 (paragraph 3)</p> <p>Disagree. For the combined recovery plan/finance scheme there is a single submission period of 1 month.</p> <p>Disagree. Out of the scope of the empowerment of this Technical Advice.</p> <p>A new paragraph 3 has been inserted to mention that supervisors are requested to reply without delay.</p>
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			<p>exposure for policyholders taking into account e.g. local prudent accounting principles and safety buffers vs. volatility from the market in comparable short recovery periods. Cf. our comment on the level playing field with banking supervision and the duration of liabilities. Please also refer to the former regulation e.g. in Directive 2002/83/EC. where especially the withdrawal of the authorisation was a "may" and based on prudent accounting rather than (volatile) market values.</p> <p>Ad (6): Referring to our general comments from our point of view the timeframe is ambitious and thus close cooperation of undertaking concerned and supervisory authority will be essential. To our knowledge such a close cooperation and short feedback times are implemented in the corresponding banking supervision.</p>	
35.	AMICE	Approval of the recovery plan and finance scheme	Paragraph 3: when the supervisory authority does not want to approve a recovery plan or finance scheme and requests the submission of a revised plan or scheme, the supervisory authority should be allowed to extend the original submission period.	Disagree. The submission period is defined in the Directive.
36.	Insurance Europe	Approval of the recovery plan and finance scheme	<p>2. Paragraph (2) should be deleted. We agree that undertakings should avoid "quick fixes", which could lead to another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period. However, we believe it does not make sense to require a demonstration that this is not going to happen, for the following reasons:</p> <p>It is not in line with the Directive and the Delegated Acts. Article 138(3) of the Directive merely asks for a SCR ratio $\geq 100\%$. The avoidance of another non-compliance within the next three months is the only one required.</p> <p>Asking "to avoid another non-compliance of the solvency capital requirement or minimum capital requirement in a short timeframe following the end of recovery period" without further precision seems to be imposing a stress on a stress scenario, which is too conservative.</p> <p>Besides, instead of the above, supervisors should ensure that the measures or pressure they impose on the undertaking do not precisely lead them to resort to quick fixes, which will make another non-compliance more likely to happen.</p>	See comment 10 (paragraph 3)

			<p>For (3) The submission period is one month from observation of non-compliance with the MCR and two months for the observation of non-compliance with the SCR. It is an unaddressed necessity that the local supervisory authorities have the necessary manpower to analyse and give feedback to the undertaking submitting the recovery plan/finance scheme in due time, especially where the recovery plan/finance scheme cannot be approved the first time. It should be recognised that deadlines for feedback to the undertaking are extremely tight and that the supervisory authority should take every measure to keep the response time as short as at all possible.</p> <p>For (4) This paragraph sets out how the combined recovery plan and the finance scheme might only be partially approved. However, the paragraph mentions nothing about what happens if the combined recovery plan and the finance scheme are partially rejected, and the deadline for the submission period expires, before the undertaking can re-submit the part of the combined recovery plan and the finance scheme that was initially rejected. The comment for paragraph (3) on the recognition of tight deadlines also applies to this paragraph.</p> <p>There should be references to Article 144 of the Directive which sets out the last supervisory measures to be applied if re-establishment of compliance with the MCR is unrealistic or not attained. Perhaps a paragraph (5) could be added stating: "Where the undertaking fails to establish compliance with the MCR or the submitted finance scheme is inadequate and unrealistic the supervisory measures in Article 144(1) applies."</p>	<p>A new paragraph 4 has been inserted to address this issue.</p> <p>See comment (paragraph 4)</p> <p>Disagree. It is already in the Directive.</p>
37.	AMICE	Supervisory powers in deteriorating financial conditions: analysis	In this process EIOPA should also consider the dialogue with the insurer concerned on the appropriateness of the measures and whether the measures will not worsen the situation (as mentioned under paragraph 5).	Agreed.
38.	Deloitte Touche Tohmatsu (DTT)	Supervisory powers in deteriorating financial conditions: analysis	- We understand the balance between convergence versus flexibility to address properly a situation. Without considering the need for an exhaustive list, some examples would be welcome (incl. illustration of possible pro-cyclical effects).	The legal text does not allow including examples.

39.	GDV	Supervisory powers in deteriorating financial conditions: analysis	Supervisory measures should take into account in which dimension the business model of the undertakings is affected by deteriorating financial conditions. In this regard there is a difference between the most recent financial crisis starting in 2007 and the current low interest rate environment.	Agreed.
40.	Insurance Europe	Supervisory powers in deteriorating financial conditions: analysis	In this process EIOPA should also consider the dialogue with the insurer concerned on the appropriateness of the measures and whether the measures will not worsen the situation (as mentioned under 5).	Agreed.
41.			This comment was submitted as confidential by the stakeholder.	
42.	IRSG	Supervisory powers in deteriorating financial conditions: analysis	The supervisor should provide justification if they impose additional reporting requirements. These additional reporting requirements should only contain the necessary numbers to assess the progress made in deteriorating financial conditions. Additionally, there should be a balance between the quality and reliability of the estimates (the shorter the reporting period, the rougher the estimate).	In deteriorating financial conditions, the imposition of additional reporting requirements is already linked to an improved monitoring of the undertaking. Supervisory authorities are required to take into account the adequacy of the regular information submission for following-up on the solvency position of the undertaking concerned. The reporting requirements do not refer to estimates but to the current situation of the undertaking. When requiring estimates in the context of recovery plans/finance scheme the short timeframe is taken into account as regards the quality of the submitted information.

			Redrafting suggestion under d): "...the financial situation of the insurance or reinsurance undertaking concerned"	Redrafting according to the suggestion.
43.	AMICE	Supervisory powers in deteriorating financial conditions: analysis	The supervisor should consider when imposing the additional measures the ability of the insurer to remain on a going concern basis.	Agreed.
44.	GDV	Supervisory powers in deteriorating financial conditions: analysis	<p>The wording is difficult to understand and too imprecise. The phrase "...the supervisory authority shall consider taking one or more measures including the following..." leaves too much leeway to the supervisory authority and hence, additional reporting requirements are difficult to comprehend.</p> <p>Because Article 141 of the Solvency II Directive clearly states that "measures shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned", GDV asks the supervisory authority to strongly justify what kind of additional reporting requirements are imposed in case of deteriorating financial conditions. Again, it is important that the supervisory authority takes into account what kind of information is necessary to assess the progress made by insurance and reinsurance undertakings.</p>	<p>Supervisors should have enough flexibility to adopt the most suitable measures according to the specific circumstances of the undertaking.</p> <p>As regards reporting requirements, see comment 42.</p>
45.	Insurance Europe	Supervisory powers in deteriorating financial conditions: analysis	It should be strongly justified if a supervisor imposes additional reporting requirements and the reporting should only contain numbers that are deemed necessary to assess the progress made, in case of deteriorating financial conditions. There should be an appropriate balance between the reporting requested in the recovery plan/finance scheme and the quality and reliability of the estimates (the shorter the reporting period, the rougher the estimate). The supervisor should, when considering imposing additional measures, take into consideration the undertakings ability to stay in going concern.	See comment 42.
46.	Investment & Life Assurance Group (ILAG)	Supervisory powers in deteriorating financial conditions: analysis	If a supervisory authority takes the measure of requiring a firm to change its asset portfolio to reduce market and credit risk, consideration should be given as to whether, in certain market conditions, this would have a detrimental effect on the proceeds of such disinvestment and thus disadvantage policyholders further.	<p>Agreed.</p> <p>The Technical Advice contains this idea in paragraph 5 of Article 6.</p>
47.	IRSG	Supervisory powers	When supervisors consider imposing additional reporting requirements, it	See comment 42.

		in deteriorating financial conditions: analysis	should be justified and the additional reporting should only be what is deemed necessary to assess the progress made in deteriorating financial conditions. It should be taken into consideration that the shorter the reporting period the less quality and reliability of the estimates can be expected.	
48.	IRSG	Supervisory powers in deteriorating financial conditions: analysis	Redrafting suggestion: “... shall withdraw the authorisation of the insurance or reinsurance undertaking concerned”	Redrafting according to the suggestion.
49.	IRSG	Supervisory powers in deteriorating financial conditions: analysis	Redrafting suggestion: “...any remedial measures the insurance or reinsurance undertaking concerned....”	Redrafting according to the suggestion.
50.	IRSG	Supervisory powers in deteriorating financial conditions: analysis	Redrafting suggestion: “...the financial conditions of the insurance or reinsurance undertaking concerned at short...”	Redrafting according to the suggestion.
51.	Actuarial Association of Europe (AAE)	Supervisory powers in deteriorating financial conditions: analysis	We highly appreciated this paragraph and would like to add the following sentence or put it as a new paragraph: “To the extent possible the measures taken should follow a hierarchy starting with light intervention with high positive impact to expensive intervention with low impact.”	Disagree. The idea of proportionality is already captured in paragraph 2 of Article 6. The ladder of supervisory intervention provided in the Directive does necessarily apply. The suggested insertion has not been considered necessary.
52.	Actuarial Association of Europe (AAE)	Annex I – Section 4	Concerning the policy options we support choices for Policy issues 1 and 3 and would like to propose to amend the drafts for policy issue 2. Please refer to our proposals above.	See comment 10 (paragraph 3)
53.	Actuarial Association of Europe (AAE)	Annex I – Section 5	We support the choice of an open list of supervisory actions giving the supervisory authority more flexibility to adapt to specific circumstances of a particular case of non-compliance.	Agreed.
54.	Investment &	Annex I – Section 5	Policy issue 1. It would be beneficial to allow firms to submit a combined	Noted.

	Life Assurance Group (ILAG)		<p>finance scheme and recovery plan where a breach of MCR and SCR happens concurrently should they wish to do so. However, a firm should not be required to do so when it may benefit from the flexibility of submitting these documents separately as the directive provides for different timelines to do so. However the focus of a firm should be the finance scheme and it may not be practical for a firm to submit a combined finance scheme and recovery plan within one month. We would contend that policyholders are affected by the form and timeframe in which the necessary information concerning the recovery from the breach are submitted as a more comprehensive and timely scheme / plan will increase the prospect of recovery and therefore more likely to protect their benefits.</p> <p>Policy issue 2. We agree that it make sense for an insurer to be able to demonstrate the sustainability of its solvency position for some time following the end of the recovery period. However, it would be appropriate for supervisory teams to discuss with a firm its expectations in this regard as this is likely to vary from case to case.</p> <p>Policy issue 3. It would be useful to have a list of potential supervisory measures in such circumstances. However, it is not necessary for such a list to be exhaustive provided that any measures are not automatic, are considered for appropriateness in a particular set of circumstances and are exercised within the scope and powers provided to the respective national competent authority by relevant national legislation.</p>	<p>Noted.</p> <p>Noted.</p>
55.	Deloitte Touche Tohmatsu (DTT)	Annex I – Section 6	<p>- As indicated above, we would promote sustainability of the recovery even before the end of the recovery period of the recovery plan. This requirement is only considered in case of further deterioration.</p>	<p>Sustainability of the recovery should be also considered in the context of a recovery plan/finance scheme.</p>