

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

CEIOPS would like to thank ACA , AMICE, Association of British Insurers, CEA

ECO-SLV-09-632, Centre Technique des Institutions de Prévoyance (C, CFO Forum, CRO Forum, Deloitte European Union member firms of Deloitte T, DIMA (Dublin International Insurance & Management , Federation of European Accountants (FEE), FFSA, GDV (German Insurance Association), GROUPAMA, Groupe Consultatif, Institut des actuaires (France), Investment & Life Assurance Group Ltd, IUA, Just Retirement Limited, Legal & General Group, Lloyd's, Lucida plc, Munich Re, RBS Insurance, ROAM , RSA Insurance Group, and XL Capital Ltd

The numbering of the paragraphs refers to Consultation Paper No. 64 (CEIOPS-CP-64/09)

No.	Name	Reference	Comment	Resolution
1.	ACA	General Comment	<p>The paper focused on extension of the recovery period in case of "financial crisis". Although this is a very important topic, we think that in some other situations, an extension of the recovery period must be allowed.</p> <p>In particular, we think of a situation where a major reinsurance company collapse. We suggest an extension of the definition of "financial markets" to include "reinsurance market".</p>	CEIOPS advice cannot go beyond the Level 1 text which refers to "an exceptional fall in financial markets" only A single failure of a major reinsurance company would presumably not qualify as an exceptional fall in financial markets.
2.	AMICE	General Comment	<p>These are AMICE 's views at the current stage of the project. As our work develops, these views may evolve depending in particular on other elements of the framework which are not yet fixed.</p> <p><input type="checkbox"/> We agree with CEIOPS' consideration that defining an "exceptional fall" too narrowly would defeat the aim of the level 1 provision. This definition should therefore not be defined in a way that practically precludes this judgement.</p> <p><input type="checkbox"/> Given that the level 2 measure is to set a maximum extension period (which can always be shortened by a specific decision), we suggest leaning towards the "longer end" of the</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>politically acceptable spectrum and to propose a maximum period of 36 months.</p> <p><input type="checkbox"/> We make several proposals with regard to the external and internal factors to be taken into account.</p> <p>For mutual and cooperative insurers it is crucial take into account the specific situation of an undertaking when assessing whether possible solutions are effectively available (with regard to the availability of external capital) to that undertaking.</p> <p><input type="checkbox"/> Any disclosures in the context of extension periods granted require utmost discretion since they could severely deteriorate an undertaking’s standing and financial position and thus directly destroy the purpose of an extension granted. The publication of consolidated data and/or averages does not help in cases where only one or very few undertakings are affected.</p>	<p>Noted.</p> <p><u>Disclosures by the undertaking of non-compliance with the SCR and MCR are governed by article 54 of the Level 1 text. As regards disclosures by supervisory authorities article 31 of the Level 1 text applies. This includes confidentiality issues, that however do not apply insofar as the relevant information is in the public domain already..</u></p>
3.	Association of British Insurers	General Comment	<p>The ABI broadly agrees with the proposed maximum recovery period of 30 months in total, including the normal 3+6 months extension in normal market circumstances.</p> <p>However, it is unclear to us how this tool would be used in practice:</p> <p><input type="checkbox"/> We are concerned that the wording used in this CP might be too restrictive when defining an “exceptional fall in financial markets”, making any type of fall ineligible to the extension of the recovery period. Whilst we agree the Pillar II dampener should not act as a cure to every drop in the market, we believe it should be a</p>	<p>Noted.</p> <p>CEIOPS would consider the financial crisis of the last two years as an event that could have qualified as an exceptional fall in financial markets.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>usable tool not just in the event of 1929 style collapse but also in times of significant movements as we have experienced in the past two years and in 2002-2003.</p> <p><input type="checkbox"/> Where an “exceptional fall” reverts back to a normal downturn, it is unclear to us what recovery timeframe would be available to undertakings. We would assume that, in such context, firms would be allowed to use the extension period under normal circumstances (i.e. 6+3 months). Otherwise it would be highly damaging and procyclical to withdraw entirely any form of extension period. We hope CEIOPS can clarify this point.</p> <p><input type="checkbox"/> We believe the list of factors that will be taken into consideration by supervisors when deciding whether or not to grant an extension period for the restoration of the SCR is not sufficiently comprehensive. In particular, the impact on policyholder confidence should also form part of internal factors considered. This process should also include appropriate representations from (and open dialogue with) the undertaking.</p>	<p>Any extension granted during the exceptional fall would have to be reassessed if reversion occurs before the individual extension period has run out (as reassessment could take place if there was a significant unanticipated deterioration). So there could be a reduction of the extension period if this was appropriate under the changed circumstances taking into account the remedial measures the undertaking has implemented so far. The remaining extension period could be shorter than the “normal” recovery period (i.e. 6 + 3 months): Since the normal recovery period would start running with the observance of an SCR breach there can be no automatic falling back on this timeframe when the extension no longer applies.</p> <p>CEIOPS has changed the factors accordingly.</p>
--	--	--	---	---

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<ul style="list-style-type: none"> <input type="checkbox"/> We would seek further clarification on how a group will be treated and what adaptations CEIOPS considers necessary to Articles 136 and 138 (2) for groups as such provisions shall apply to them mutatis mutandis (article 218 (4)). <input type="checkbox"/> The impact on reporting requirements have not been fully considered in the CP. We would warn against any mandatory disclosure that would damage the anticyclical purpose of the Pillar II dampener. <input type="checkbox"/> The effects of a fall occurring outside the EEA have not been dealt with in this paper and we believe cross-border issues will need to be carefully taken into consideration. 	<p>CEIOPS does not think that the application of the extension of the recovery period mutatis mutandis requires further explanation as on a factual level the decision is not different. What may need further consideration is the process of the decision-taking but this is outside the scope of this Advice.</p> <p>On the disclosure requirements please refer to comment 2, last bullet point and comment 5 below.</p> <p>When the process through which CEIOPS is consulted before a supervisory authority decides on the applicability of article 138(4) is further specified, the effects of a fall occurring outside the EEA may be taken into account. It is</p>
--	--	--	---	---

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			We are concerned that there might be a tension in this paper between the occurrence of exceptional falls in financial markets that would affect insurers across the board and the discretion granted to supervisors when deciding on a recovery period extension on a case by case basis. Whilst we agree local regulators should be able to opine on the definition of an “exceptional market fall” for their own national market, we believe that careful consideration should be given to ensure a level playing field and consistency of treatment across market players through supervisory convergence and regulatory disclosure.	expected that this will possibly be more relevant in a group context. Noted.
4.			Confidential comments deleted.	
5.	CEA ECO-SLV- 09-632	General Comment	<p>The CEA welcomes the opportunity to comment on the Consultation Paper (CP) No. 64 on Extension of recovery period – Pillar II dampener.</p> <p>It should be noted that the comments in this document should be considered in the context of other publications by the CEA.</p> <p>Also, the comments in this document should be considered as a whole, i.e. they constitute a coherent package and as such, the rejection of elements of our positions may affect the remainder of our comments.</p> <p>These are CEA’s views at the current stage of the project. As our work develops, these views may evolve depending in particular, on other elements of the framework which are not yet fixed.</p> <p>Moreover, it should be noted that this consultation has been carried</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>on an extremely short time frame which has not allowed a complete analysis of all the advice. Therefore, the following comments focus only on the main aspects of Ceiops' advice and are likely to be subject to further elaboration in the future.</p> <p>We generally agree with the proposal made by Ceiops for the extension period of the recovery period.</p> <p>However we recall that the Insurance Industry has commented on CP 57 regarding the Capital-add-ons indicating that the standard recovery period of 6 months to achieve an adequate SCR again might be too rigid. SCR problems caused by flaws in Internal Models or Governance might take more time.</p> <p>We would like the advice to encompass the process by which supervisory authorities decide that an "exceptional fall in financial markets" has occurred.</p> <p>We would like to emphasize the potential lack of harmonization at the European Level due to the discretion allowed to supervisors. This could lead to an unlevel playing-field for the European market, if some supervisors allow a recovery period for their national companies and others do not. Therefore, in order to harmonize the conditions for all undertakings, we propose that the decision about the understanding of the economic fall would be taken at the European level.</p> <p>"Exceptional fall in financial markets" is defined in such a way that it is extremely difficult for a fall to qualify for this.</p>	<p>Noted.</p> <p>These kinds of problems are not covered by Article 138.</p> <p>This is outside the scope of the Level 2 Advice. However, as referred in the Advice, CEIOPS is likely to address this issue in the Level 3 guidance.</p> <p>Noted.</p> <p>That is what the "exceptional" is</p>
--	--	--	---	---

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>We therefore doubt that this type of fall will occur. Or by the time it is decided that an “exceptional fall in financial markets” has occurred it is not possible to recover anymore.</p> <p>Whilst we agree the Pillar II dampener should not act as a cure to every fall in the market, we believe it should be a usable tool not just in the event of 1929 style collapse but also in times of significant movements as we have experienced in the past two years and in 2002-2003.</p> <p>We also suggest including periods of high market volatility into this definition.</p> <p>The CP should explain what is the extension period when an “exceptional fall in financial markets” has taken place and the situation has recovered to a normal downturn.</p> <p>We assume that after an “exceptional fall in financial markets” no longer applies, an undertaking that was previously granted an extension under this would still have the normal 6 months + 3 months extension to meet its SCR. We would ask Ceiops to include this explicitly in the final advice.</p> <p>Ceiops should make the list of factors at Level 2 more complete</p>	<p>about.</p> <p>We have likely experienced such an exceptional fall within the last decade. The more extreme the situation has to be to qualify as an exceptional fall the easier and faster it is to take the decision when it occurs.</p> <p>See comment 3 above.</p> <p>The extension of the recovery period is a tool against procyclicality; it is not supposed to be a help for undertakings whenever the situation of volatile financial markets occurs.</p> <p>See comment 3 above.</p>
--	--	--	--	--

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>(see Par. 3.35).</p> <p>1Harmonisation should also apply to the factors supervisors should take into account when granting an extension.</p> <p>The CP should give consideration to group perspective.</p> <p>The CP should consider what would be the impact on the group of one of the solo entities breaching its SCR. The only reference to group is 3.38 (g) but Ceiops does not elaborate further.</p> <p>Article 218 (4) allows an extension of the recovery period for groups mutatis mutandis, but CP 64 does not cover this particular issue. We therefore would like an expansion of the paper’s scope.</p> <p>The paper does not state how the extension may impact the reporting requirements.</p> <p>It seems to be essential to clarify whether reporting of SCR breach/extension of recovery period is abandoned for that period or not. One should keep in mind that reporting might trigger surrenders of policies.</p>	<p>CEIOPS has added to the list of factors in its final Advice.</p> <p>See comment 3, fourth bullet point above.</p> <p>See comment 2, fourth bullet point above.</p> <p>The Level 1 text does not envisage that a breach should not be disclosed in a situation where an extension is or could be granted.</p>
6.	Centre Technique des Institutions de Prévoyance (C	General Comment	<p>We agree with the reasons given by CEIOPS in favor of an intermediate recovery period.</p> <p>However, since many important decisions the management of the undertakings make are effective for one year (premium rates, reinsurance programs), a maximum recovery period of 36 months (option 3) seems to be a more convenient reference.</p>	<p>Noted.</p> <p>Noted.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			Furthermore we believe that the maximal extension of the recovery period should be rather long to allow the supervisory authority to fix the period which is convenient for the whole insurance and reinsurance undertakings.	Any extensions within the maximum possible extension period are individual.
7.	CFO Forum	General Comment	<p>Market perception of insurers could be damaged by inappropriate or unnecessary public disclosures.</p> <p>The primary concern is that there should not be inappropriate or unnecessary public disclosures that cause unnecessary damage to market perception of insurance industry or individual insurers.</p> <p>Whilst implicit in the consultation paper, it would be beneficial if the proposals required individual supervisors to have meaningful conversations with insurers in order to determine how they respond to such a fall. The emphasis on company specific and local market factors is appropriate.</p> <p>In the event of a solvency breach, a suitable approach should be determined based on a one to one meeting between undertaking and supervisor.</p> <p>It would be preferable for undertakings to have one to one meetings with the local supervisor to determine an approach in the event of a solvency breach rather than waiting for the local supervisor to decide on whether an 'exceptional circumstance' had occurred.</p>	<p>See comment 2, fourth bullet point and comment 5 above.</p> <p>CEIOPS considers it perfectly obvious that during an exceptional fall the whole insurance market comes under close supervisory scrutiny with supervisors wanting to know how undertakings deal with the problems facing them.</p> <p>The dialogue between the undertaking and the supervisor and the decision by the supervisor will follow due process.</p> <p>Actually it is up to the undertaking to propose a solution. It is up to the supervisor to approve a realistic recovery plan proposed by the undertaking.</p> <p>Article 53 (1) requires that any</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>Also, the consultation paper is proposing to state when the recovery period is withdrawn. As stated above, recovery plans should be a matter for discussion between the undertaking and the supervisor and no explicit public disclosure should be required.</p> <p>Well-defined and realistic interim goals are required to be set by the regulator to reduce the risk of increased losses from risk-taking undertakings.</p> <p>Undertakings that have already breached Solvency Capital Requirements may be less risk averse. The CFO Forum believes that well-defined and realistic interim recovery period goals should be set by the regulator to mitigate the risk of increased losses from these undertakings.</p> <p>The proposed regular progress reports from other undertakings that are on a recovery plan may unduly influence the expected requirements of solvent insurers.</p> <p>For undertakings that are on a recovery plan whose regular progress reports do not show "significant progress", there is a risk of the regulator stipulating more onerous requirements for solvent undertakings as a compensating measure. The CFO Forum believes that well-defined and realistic interim recovery period goals should be set by the regulator.</p>	<p>major development affecting significantly the relevance of the information be disclosed. Article 54 included requirements on non-compliance with the SCR and MCR.</p> <p>A realistic recovery plan by the undertaking (to be approved by the supervisor) presupposes well-defined and realistic interim.</p> <p>CEIOPS expects that the quarterly progress reports will have a direct link with the well defined and realistic interim goals set by the undertakings.</p> <p>According to the Level 1 text it is mandatory that the extension is withdrawn if no significant progress is demonstrated. As in the case of undertakings failing to remedy the SCR breach within the normal recovery period CEIOPS will have to consider what is required in such a situation. As the undertaking is in non-</p>
--	--	--	---	--

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				compliance with the SCR and has failed to adequately implement its own recovery plan (otherwise there would be significant progress), more onerous requirements for the undertaking concerned could hardly be seen as "undue influence".
8.	CRO Forum	General Comment	<p>64.A We believe that a maximum extension of 36 months in total is the appropriate time period (priority: high)</p> <p>The CRO Forum agrees with the concept of extending the recovery period during periods of exceptional falls in financial markets. We also acknowledge that, in general, 21 months is a reasonable amount of time to recovery. We do however recommend a certain amount of flexibility in this time-line for peculiar circumstances. Flexibility above 21 months could be considered on a case by case basis (i.e. based on the specific issues affecting the company concerned) following consultation with the relevant supervisor, therefore we propose a MAXIMUM extension period should be set at 36 months.</p> <p>64.B A clear up-front communication ensures the firm can take the most appropriate actions (priority: high)</p> <p>Once a decision regarding an appropriate extension (or maximum extension) has been made, we recommend this is fully communicated to the firm up-front to ensure the firm can then schedule the most appropriate SCR restoration activities to address SCR deficiencies and manage internal and external expectations.</p> <p>64.C Application of a harmonised approach across Member States</p>	<p>Noted.</p> <p>(9 +) 21 months is a maximum possible timeframe that will not be granted across the board.</p> <p>Noted.</p> <p>See comment 7 above on the dialogue between the undertaking and the supervisor.</p> <p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>by supervisors (priority: high)</p> <p>We are concerned that the advice – in its current form – will lead to insufficient harmonisation of approach across Europe. It is important that CEIOPS ensures supervisory convergence is achieved between Member States to ensure provision of a level playing field. We recommend that the following aspects are considered:</p> <p>1 In the assessment in which companies will be allowed an extension;</p> <p>2 In the setting of the extension period (for example, one supervisor may allow all companies the maximum time period but another supervisor may set a different time period for each company)</p> <p>3 In the way in which company progress is assessed under recovery planning</p> <p>4 Regarding the amount of information that is disclosed to the market. We recommend that the market is informed where an extension has been granted but not in instances where permission is subsequently withdrawn because it is our interpretation that once the extension is withdrawn the undertakings will revert back to the “normal” recovery period of 6 + 3 months.</p>	<p>The purpose of the relevant factors presented in the Advice is precisely to enhance this harmonisation.</p> <p>Supervisors are required to take decisions on the appropriate extension of the recovery period on a case-by-case basis taking into account all relevant factors. They cannot generally allow the maximum time period for all undertakings.</p> <p>See comment 7 above. A significant progress will be assessed against the well defined and realistic interim goals set by the undertaking and approved (through approval of the recovery plan) by the supervisor..</p> <p>The interpretation is not correct. The recovery period – whether normal or exceptional – starts to run at the point in time when the non-compliance is first observed. Anyway, once an undertaking has failed an exceptional extension it can of course not expect to be granted a “normal” extension of 3 months. So the undertaking only</p>
--	--	--	---	---

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				is not immediately in trouble if the withdrawal happens after the first three months. Even then the fact that it has significantly failed to comply with the recovery plan is a major development that requires disclosure (article 54).
9.	Deloitte European Union member firms of Deloitte T	General Comment	<p>European Union member firms of Deloitte Touche Tohmatsu are currently involved in the Level 2 Impact Assessment of Solvency II conducted by the European Commission. "Pillar 2 Dampener" is one of the policy issues and options dealt with by this impact assessment. As a consequence, we have restricted our comments to those areas where there is no overlap with the issues addressed in the Impact Assessment.</p> <p>We believe that most points in this Consultation Paper are reasonable (however, we do not take position on the length of the maximum extension period for the reason mentioned above).</p> <p>However, the text has been kept quite vague to leave supervisory authorities more flexibility. We believe this could lead to inconsistencies across the EU and go against the principles of having a level playing field under SII. We consider that, beyond coordination between national supervisors, a broader role should be given to the new EIOPA in relation to with its banking and securities counterparts. The rationale is that exceptional falls in financial markets are likely to be felt at a European, if not a global, level. EIOPA should be entitled to state when a fall is deemed exceptional, giving way to supervisory action at the Member State level.</p>	<p>Noted.</p> <p>Noted.</p> <p>At this point in time, i.e. before the relevant Omnibus Directive is signed, CEIOPS in drafting its advice and the EU COM in drafting the Level 2 Implementing Measures cannot yet refer to EIOPA.</p>
10.	DIMA (Dublin International)	General Comment	<p>DIMA welcomes the opportunity to comment on this paper.</p> <p>Comments on this paper may not necessarily have been made in conjunction with other consultation papers issued by CEIOPS.</p>	<p>Noted.</p> <p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	Insurance & Management		<p>The paper is clearly written with the most recent financial systemic crisis in mind. It is not clear whether the advice contained herein will withstand the test of time in the event that a financial crisis with very different characteristics hits the financial markets or the insurance sector in particular.</p> <p>This consultation paper attempts to find middle ground between company specific and market consistent criteria, timelines and measures to re-establish the SCR. We do not believe this aim will be achieved.</p> <p>The question arises whether the Level 1 text requires a uniform fixed maximum period for the extension of the recovery of the SCR to be defined. If so, it is doubtful whether a uniform extension period will be appropriate in all events, causing an "exceptional fall in financial markets".</p> <p>While an EU-wide consistent approach regarding the maximum time allowed for recovery of individual supervised entities is laudable, the recent crisis has shown that the impact (severity and nature) on each individual supervised entity is very different. This requires different measures and timelines. Therefore a harmonised maximum recovery period may be impossible to define as it is driven by the event causing the shortfall in the SCR and the nature of the market impact. The decision may have to be left at the discretion of each individual home country supervisor as they are likely to be best placed to assess the financial situation of the "local" insurance industry sector as well as of the individual entity which fails to meet the SCR. A decision by the home country supervisor could be made subject to the approval of a college of supervisors (or an appropriate EU body such as CEIOPS or its successor EIOPA), in particular where the entity has a presence in more than one member state. This would ensure coordination and</p>	<p>On the contrary. Since CEIOPS is aware that each financial crisis is different, the draft advice was not prepared having exclusively the most recent financial systemic crisis in mind.</p> <p>Noted.</p> <p>The Level 1 text requires a uniform maximum period of time. Refer to article 143, first subparagraph.</p> <p>CEIOPS does not propose that decisions about individual recovery periods be taken at EU level. In the context of cross-border activities (branches) and of groups it is expected that the home supervisor of group supervisor will consult other relevant supervisors before taking a decision on an extension of the recovery period.</p>
--	------------------------	--	---	---

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			consistency.	
11.	Federation of European Accountants (FEE)	General Comment	<p>We have considered as we have been developing our detailed responses to individual Consultation Papers whether there are any matters which come to mind as generic observations that CEIOPS and the European Commission might find helpful.</p> <p>We are mindful that the general principle underlying the regulatory framework is to develop Level 2 and Level 3 regulation and guidance which supports the intention of the Directive. Whilst we recognise the challenge faced by CEIOPS in sustaining where possible a principles based regulatory framework, our sense is that the detail developed in most of the Consultation Papers have tended to be more prescriptive than might initially have been envisaged. There is little doubt that to achieve consistency of application a degree of clarification is necessary. Accountants and auditors face the same challenge when interpreting Accounting Standards with many correspondents seeking greater clarity. However, the temptation to publish detailed supplementary guidance or rules should be strenuously avoided where possible.</p> <p>We suggest that the European Commission in making the final Level 2 regulation might best be focused on narrowing down rather than extending the guidance proposed by CEIOPS where possible. This would have the added advantage of reducing the apparent and ever increasing weight of the regulatory text.</p>	<p>Noted.</p> <p>Noted.</p> <p>Generally CEIOPS' Consultation Papers – as required by the EU COM – are not limited to providing Level 2 advice but also contain what would be regarded as possible Level 3 guidance.</p>
12.	FFSA	General Comment	<p>We consider that in very exceptional or unseen cases, the maximum extension period could turn to be inadequate. Under these cases, a process could be set up at the level of the CEIOPS and supervisors to revise the maximum period of 30 months, to extend it to 60 months (6+3+51).</p>	<p>This suggestion is not in line with the Level 1 text which does not allow for an extension of the maximum possible timeframe but explicitly states that this</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>Moreover, the scope of an “exceptional fall in financial markets” should be defined, in terms of what it implies in the insurance market, foreign exchange, without making a list which would be too restrictive. Case-by-case basis and flexibility in the scope remain essential and FFSA would prefer CEIOPS gives more examples (as the liquidity factor), rather than a list.</p> <p>The decision to determine an exceptional fall or to accept a period extension seems to be too strongly in the hands of CEIOPS or supervisors.</p> <p>We would like to emphasize the potential lack of harmonization at the European Level due to the discretion allowed to supervisors. This could lead to an unfair level playing-field for the European market, if some supervisors allow a recovery period for their national companies and others not. Moreover, in order to harmonize the conditions for all undertakings, FFSA proposes that the decision about the understanding of the economic fall would be taken at the European Level. A second level would be set up for specific-entity considerations.</p> <p>Decision from supervisor should be quick, well documented and a preventive period and advice should be granted by the supervisor to the undertakings before withdrawal happen. FFSA requires the CEIOPS a clear timing and process for granting the recovery period.</p>	<p>maximum timeframe is the same for all undertakings.</p> <p>This is outside the scope of the Level 2 advice. However the issue will be addressed in the future.</p> <p>Not the determination of the exceptional fall which CEIOPS clearly states requires some sort of consultation on EU level. Granting an extension on the other hand is at the discretion of the supervisors with harmonisation achieved by basing the decision on the same factors.</p> <p>There is no legal basis for this and CEIOPS does not consider it appropriate that entity-specific decisions should be taken on EU level.</p> <p>CEIOPS intends to develop the due process to be followed at Level 3.</p>
13.			Confidential comments deleted.	
14.	GDV	General	GDV recognises CEIOPS’ effort regarding the implementing	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	(German Insurance Association)	Comment	<p>measures and likes to comment on this consultation paper. In general, GDV supports the detailed comment of CEA. Nevertheless, the GDV highlights the most important issues for the German market based on CEIOPS' advice in the blue boxes. It should be noted that our comments might change as our work develops.</p> <p>Based on our experience during the previous two consultation waves we also want to express our concerns with regard to CEIOPS decisions:</p> <ol style="list-style-type: none"> 1. restricting the consultation period of the 3rd wave to less than 6 six weeks 2. splitting the advice to the EU-commission in two parts ((1) first+second wave and (2) third wave) although both parts are highly interdependent 3. not taking into account many comments from the industry due to the high time pressure (first+second wave) <p>These decisions could reduce the quality of the outcome of this consultation process. Therefore we might deliver further comments after we fully reviewed the documents.</p> <p>From our point of view, it could be foreseen that especially the calibration of the QIS5 will not be appropriate nor finalised when beginning in August 2010.</p> <p>We generally agree with the proposal made by CEIOPS for the extension period of the recovery period.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
--	--------------------------------	---------	---	---

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>We would like the advice to encompass the process by which supervisory authorities decide that an “exceptional fall in financial markets” has occurred.</p> <p>“Exceptional fall in financial markets” is defined in such a way that it is extremely difficult for a fall to qualify for this. Further, we would like to highlight that it does not necessarily have to be an exceptional fall such that market developments are to be recognised as disadvantageous for (re)-insurance undertakings. Obviously the fall of interest rates leads to rising bond prices. Therefore “exceptional fall” should be interpreted as disadvantageous for market participants. On this account we also suggest to include periods of high market volatility into this definition. We expect CEIOPS to clarify this issue.</p> <p>CEIOPS should make the list of factors at Level 2 more complete (see Par. 3.35).The CP should give consideration to group perspective. Art 218 (4) allows an extension of the recovery period for groups mutatis mutandis, but CP 64 does not cover this particular issue. We therefore would like an expansion of the paper’s scope.</p> <p>The paper does not state how the extension may impact the reporting requirements. It seems to be essential to clarify whether reporting of SCR breach/extension of recovery period is abandoned for that period or not. One should keep in mind that reporting might trigger surrenders of policies.</p>	<p>This is outside the scope of the Level 2 advice.</p> <p>A determination of an exceptional fall in financial markets is not about the cause but about the effect. Any adverse development could potentially cause an exceptional fall.</p> <p>See comment 3 above.</p> <p>See comments 2 and 5 above.</p> <p>See comment 5 above.</p>
15.	GROUPAMA	General Comment	<p>The maximum recovery period should not be the norm but as it is prescribed in the Directive we support a maximum at 60 months. We question the CEIOPS option at 21 months: what will happen if it</p>	<p>Noted.</p> <p>If it turns out the maximum</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>proves that the length of recovery period at 21 months is too short? (3.11)</p> <p>We are concerned that an important discretionary power is given to the supervisor and could lead to an unfair level playing field. What has CEIOPS planned to avoid these effects? We suggest that undertakings be allowed to appeal the decisions of their local supervisor at CEIOPS (or EIOPA) level to be sure that all undertakings are considered equally across Europe. (3.11)</p> <p>What constitutes "significant progress"? It should be defined more precisely to limit the discretionary power of the supervisor. To assess accomplished progress, the supervisor should compare progress with an action plan which he has previously validated. (3.46)</p>	<p>timeframe is too short to minimise procyclical effects the maximum timeframe would be revised. This would require a Commission action as the maximum timeframe is set at level 2. If the maximum timeframe proves to be too short for (some) individual undertakings this is irrelevant.</p> <p>Decisions by supervisors will, according to Member state rules and regulations and where applicable, be open to appeal procedures applicable in each member state. CEIOPS suggests a consultation process on the question of whether an exceptional fall in financial markets is taking place and also communication during the exceptional fall as to how individual supervisors deal with the extension.</p> <p>See comment 7 above.</p>
16.	Groupe Consultatif	General Comment	Generally we feel it important that the supervisor has the power to extend the recovery period accordingly. We feel that the challenge is to retain the idea of full harmonisation here and there the core is the concept of an exceptional fall. It is important that the decision	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			about the understanding of the economic fall is taken at the European level.	
17.	Institut des actuaires (France)	General Comment	Institut des actuaires supports the dampener approach.	Noted.
18.	IUA	General Comment	<p>On the whole we are generally supportive of the draft advice on the extension of the recovery period.</p> <p>We note that the paper is silent on whether a supervisor can extend an extended recovery period. Whilst we understand that the directive is clear that "significant progress" towards SCR compliance needs to be demonstrated by firms in their progress report, and therefore the need for an extension to the extended recovery period will be rare, there might still be rare circumstances where there are two "exceptional falls" within the recovery period extension. We would therefore question whether supervisors would have the option to extend the extended recovery period in circumstances where continuing significant progress had been made in restoring SCR compliance, but further exceptional market falls have created a set-back for the entity in question.</p>	<p>Noted.</p> <p>The details will have to be discussed at a later time on Level 3. But since it is too late to extend the extension period once the undertaking has failed to demonstrate significant progress – withdrawal of the extension is mandatory in this case – the undertaking would have to submit a new (extended) recovery plan for approval if circumstances changed so significantly that the original recovery plan did not and could not cover this contingency. The maximum possible extension period would still apply.</p>
19.	Just Retirement Limited	General Comment	<p>We support the proposed recovery period of 21 months in addition to the combined 6+3 months in normal conditions.</p> <p>However, we believe greater clarity is needed in the practical application of the recovery period so that it achieves the stated goal of avoiding pro-cyclicality.</p>	<p>Noted.</p> <p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>In particular:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The definition of “exceptional fall” is unclear and subject to considerable supervisory discretion. <input type="checkbox"/> The length of the recovery period once markets cease to be “exceptional” is unclear <p>The failure of smaller institutions (e.g. Northern Rock) can have far-reaching consequences either through inter-connectedness or because they trigger a loss of confidence which increases rapidly. We would therefore caution against presuming that smaller insurers involve little systemic risk.</p>	<p>This is not a procyclicality problem. For procyclicality considerations the less well defined are the preconditions for the extension of the recovery period the better (more flexibility). An unclear definition could however – depending on the decision process - be a problem for the level playing field.</p> <p>Extended recovery periods can only be granted while there is an exceptional situation following an exceptional fall. Once markets cease to be exceptional supervisors can no longer apply Article 138 (3). Extensions granted that are still running would have to be reassessed. See comment 5 above.</p> <p>CEIOPS does not automatically assume that smaller insurers involve little systemic risk.</p>
20.	Legal & General Group	General Comment	The CP is constructive that it recognises that in exceptional circumstances a recovery time of more than 9 months is required to ensure market stability. I was surprised that the framework is	Noted. The framework presented by CEIOPS is aligned with the Level 1 text.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>the same irrespective of whether the cause is internal or external.</p> <p>A concern is that the paper does not provide firms with any certainty over the extension period and it also creates the likelihood of inconsistency between each countries application and between firms with similar issues being treated differently. It would be interesting if CEIOPS ran an exercise to see what regulators would have done had this been in effect for recent events.</p> <p>There is also a concern that a market falling fast would be treated more favourably than an equivalent change in spreads over say 2 years.</p>	<p>Undertakings should not rely on being granted a certain extension of the recovery period in case of financial crisis. They might be less risk averse otherwise. This is the normal pitfall of a principles-based approach and in no way specific to the extension of the recovery period. In any case, the inclusion of a list of factors in the Level 2 advice intends to achieve some consistency between practices. Furthermore, CEIOPS might also develop Level 3 guidance on these aspects, in order to contribute to that objective.</p> <p>The extension of the recovery period is an anti-procyclicality tool only and not for the purpose of bringing relief in difficult market situations generally.</p>
21.	Lloyd's	General Comment	<p>We broadly agree with the proposals in this paper. It is important, in order to maintain policyholder and public confidence in the SCR, that the proposed arrangements are applied sparingly in 'exceptional cases'.</p> <p>Once such a circumstance has been determined, it is then important that extensions granted to undertakings by national supervisors are granted on a consistent, harmonised basis, varying</p>	<p>Noted.</p> <p>Noted. That is CEIOPS' objective, too.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			with the circumstances of each undertaking.	
22.	Lucida plc	General Comment	<p>Lucida is a specialist UK insurance company focused on annuity and longevity risk business. We currently insure annuitants in the UK and the Republic of Ireland (the latter through reinsurance).</p> <p>Having a fixed recovery period overlooks a key mitigant for insurers with illiquid liabilities. Provided a company is not a forced seller then there is every likelihood that bonds and other credit assets that are not impaired will redeem at par at maturity. This could be many years beyond the period cited. Such an insurer should be allowed more freedom where SCR coverage has reduced as a result of 'short term' market to market volatility and this should be reflected in this document.</p>	<p>Noted.</p> <p>CEIOPS suggests that this is a factor to be taken into consideration, see internal factor e)</p>
23.	Munich Re	General Comment	<p>We fully support all of the GDV statements and would like to add the following points:</p> <p>The lack of clarity in the definition of "financial markets" and "exceptional fall in financial markets" has a negative effect on the conclusions of the CP. Furthermore, there is apparently no harmonisation as to the decision making process regarding the determination of an "exceptional fall in financial markets". Obviously each supervisor can decide at his own discretion if the economic preconditions are such that he may extend the recovery period. Different views of supervisors may well lead to a distortion of competition. Therefore, it must be ensured that the result of the assessment of the (external) economic factors is the same in all EU countries.</p>	<p>This is not what the advice says. On the contrary it stresses the importance of a harmonised approach.</p>
24.	ROAM	General Comment	As mentioned in other CP, ROAM would stress the importance of dialogue between supervisor and undertaking in order to	An exceptional fall can only affect the (national) insurance market

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>determine, first if the undertaking is experiencing an exceptional fall, and secondly whether the supervisor agrees to grant a delay to restore conformity according to its requested solvency.</p> <p>About exceptional fall, and by definition, we do not control the event's extent and consequences. So, simple and pragmatic solutions are needed.</p> <p>ROAM supports a 60 months recovery period (6+3+51), as FFSA opinion. This extension of time is an upper bound and the supervisor can decide on a shorter period if it seems more appropriate.</p> <p>For example, who is able to predict today the date of the end of the 2008 crisis ?</p>	<p>as such, not only one individual undertakings.</p> <p>Noted.</p> <p>The maximum timeframe is not supposed to be long enough to cover the whole period of crisis. It only is supposed to be long enough to enable supervisors to avoid procyclical effects.</p>
25.	RSA Insurance Group	General Comment	<p>Defining "exceptional falls" is clearly extremely difficult. However, we are concerned that the absence of a definition of exceptional falls in financial markets and the discretion granted to supervisors when deciding on a recovery period extension on a case by case basis will result in an un-level playing field across market players.</p> <p>We recommend CEIOPS plays the same role on the dampener as is proposed in other papers on capital add-ons. Namely CEIOPS is notified of all agreed applications of the dampener by local supervisors and reports annually on the use of the mechanism across the EEA.</p>	<p>Noted. It is CEIOPS intention to enhance convergence of supervisory practices in these aspects.</p> <p>This is not envisaged in the Level 1 text. Anyway, the mechanism would not be applied on an annual basis but only under very exceptional circumstances.</p>
26.			Confidential comments deleted.	
27.	XL Capital Ltd	General Comment	<p>We welcome CEIOPS' attempt to provide practical recommendations on how SCR breaches should be dealt with during 'exceptional market circumstances', and we find the 21 month maximum extension period (over an above the normal recovery period) to be a reasonable proposal.</p> <p>Our main concerns are that:</p>	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p><input type="checkbox"/> The consideration of 'exceptional circumstances' appears to be too narrow and restrictive. The circumstances during which extended recovery decisions can be made should, in our view, be more loosely defined (see comments at 3.2 below);</p> <p><input type="checkbox"/> It is unclear how CEIOPS is going to ensure that a level playing field exists across the EEA, and at present, we see a real risk that one country may assess that current economic circumstances warrant the implementation of extended recovery period, whilst another country may take a different view;</p>	<p>The term is supposed to be restrictive as the extension of the recovery period is a tool to avoid procyclical effects not a means to help undertakings in disadvantageous market conditions.</p> <p>CEIOPS acknowledges the problem and explicitly states that harmonisation is necessary and that there is going to be a consultation process. Details will be discussed and provided later. There are developments under way (establishment of EIOPS, the ESRB (European Systemic Risk Board)) which could well have an impact on how this is going to be decided.</p>
28.	Lloyd's	1.6.	It is essential that, if an extension to the recovery time is agreed at European level, the process of national level supervisors agreeing extensions to undertakings is conducted in a consistent harmonised way, i.e. it should not be regarded as carte blanche for one supervisor to generally allow affected undertakings an extension to the full or near full term of the extension, and another supervisor to apply a much more restrictive approach.	For this purpose the relevant factor to be taken into account will be prescribed on Level 2.
29.	CEA ECO-SLV- 09-632	3.1.	It does not seem to be reasonable to put the decision when financial markets are subject to exceptional falls at the discretion of national supervisory authorities since this would undermine the establishment of a level-playing field.	Noted. This is why CEIOPS proposes a consultation process.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

30.	CRO Forum	3.1.	<p>The term "exceptional fall" is ambiguous and clearly needs to be distinguished from smaller common market falls.</p> <p>Overall, an objective assessment of whether an exceptional fall is taking place is suggested. We recommend that Level 2 implementing measures on what might constitute an exceptional fall are developed. For example, a time period dimension may be considered, such that the aggregate equity market fall over a period of "x" days is at least "y"% on the starting (time zero) level of the relevant equity market index, and similar for other financial market shocks. It should be noted that also a large earthquake combined with a moderate fall in the financial markets can also be considered as an unforeseen, sharp and steep fall seriously affecting the financial situation of a number of undertakings and hence triggering a recovery period.</p> <p>Therefore, the definition of an exceptional fall could be based on the standard model calibration and the impact on SCR over the prior quarter (or appropriate period).</p> <p>We would recommend the decision whether there is an exceptional fall is made EEA-wide by the most appropriate supervisory authority. We believe that this is CEIOPS. The supervisory authority should determine when there is an exceptional fall and to which countries it applies and this is binding for all EEA regulators.</p>	<p>Noted.</p> <p>This is outside the scope of Level 2 Implementing Measures as set out on Level 1.</p> <p>According to the Level 1 text on an exceptional fall in financial markets is a relevant trigger. Other events that affect the financial situation of a number of undertakings adversely, even to the same extent as an exceptional fall in financial markets, do not meet the preconditions for an extension of the recovery period.</p> <p>Noted. Under current regulation however, such a decision could not be legally binding.</p>
31.	DIMA (Dublin International Insurance &	3.1.	<p>As captive entities focus on the risk of their parents (as opposed to general insurance market risk), would there be a scenario where supervisory action would cause pro-cyclical effects?</p>	<p>Yes. It is the effect of the remedial actions that is relevant.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

	Management			
32.	GDV (German Insurance Association)	3.1.	It does not seem to be reasonable to put the decision when financial markets are subject to exceptional falls at the discretion of national supervisory authorities since this would undermine the establishment of a level-playing field.	See comment 29 above.
33.	Investment & Life Assurance Group Ltd	3.1.	Although CEIOPS draw a clear distinction between exceptional falls and normal cyclical falls, there seems to be no mechanism to determine whether what had appeared to be a cyclical fall was turning into an exceptional fall demanding urgent action. Presumably CEIOPS would need to retain expert market advisers to ensure, as far as possible, that control of the situation is retained. CEIOPS describe themselves as performing a consultative role, which is fine when there is time for considered consultation but may not be appropriate when urgent, even instant, action is required.	The more urgent the situation the less difficult it is to determine the exceptional fall.
34.	Lloyd's	3.1.	These provisions should only be applied sparingly, in 'exceptional' cases, to maintain public and policyholder confidence in the SCR.	Noted.
35.			Confidential comments deleted.	
36.			Confidential comments deleted.	
37.	CEA ECO-SLV-09-632	3.2.	22. We would prefer to change the statement in the second sentence in such a way that it does not only focus on situations where the economy is in a depression. We suggest a more general: "[...] when financial markets fluctuate". 23.	CEIOPS changed the word "depression" to "downturn".
38.	CRO Forum	3.2.	We do not agree with the use of the word "depression" in this paragraph. The economy being in a "depression", i.e. a sustained, long-term economic downturn could be caused by an exceptional fall in financial markets. Also, the term "exceptional" has not been defined.	See comment 37 above.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			We suggest that the word "depression" is replaced with "downturn".	
39.	Deloitte European Union member firms of Deloitte T	3.2.	The definition of an "ordinary" and "exceptional" downturns needs to be considered in greater detail. We would welcome more clarity on the methodology and considerations which would apply to the downturn severity identification. In the absence of such guidance it is not immediately clear how these concepts will be interpreted and applied for regulatory purposes. In particular would a protracted and sustained fall in the capital markets over a long period of time be distinguished from a short and sharp fall for the purpose of the capital management - and if such distinction is drawn why would this be the case the two scenarios have a similar impact on the capital position albeit over different horizons.	The "definition" of what constitutes an "exceptional fall in financial markets" is outside the scope of the Advice and will be considered at a later stage. See comment 5 above.
40.	FFSA	3.2.	The CP raises the following issue: which event can be considered as an exceptional event? The CEIOPS states: "ordinary downturns that occur at more or less regular intervals as part of the economic cycle would not suffice to trigger the supervisory power of granting extended recovery periods even if they are somewhat more severe and longer lasting than usual". How do we consider "ordinary" downturns when their frequency changes? We think that considering past events represent a restricted view and therefore, CEIOPS should also consider all possible unknown downturns.	See comment 39 above. Ordinary" downturns do not constitute a case where an extension of the recovery period is possible. It is exactly because CEIOPS thinks that past events could offer a somewhat restricted view that CEIOPS does not consider it possible to exactly define what constitutes an "exceptional fall".

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

41.	GDV (German Insurance Association)	3.2.	We would prefer to change the statement in the second sentence in such a way that it does not only focus on situations where the economy is in a depression. We suggest a more general: "[...] when financial markets fluctuate".	See comment 37 above.
42.	XL Capital Ltd	3.2.	We believe that CEIOPS consideration of an "exceptional fall" in financial markets in paragraph 3.2 to 3.5 is too restrictive in our view. We would favour a broader set of principles which would allow more flexibility for supervisors / firms to invoke the extended recovery rules at time of severe downturns (e.g. 2001 WTC, 2005 KRW cats...)	The term is used on account of it being restrictive. Supervisors are not supposed to have flexibility in applying extended recovery periods in any severe downturn but only in very exceptional cases where there is a danger of supervisory action producing a procyclical effect.
43.	AMICE	3.3.	We agree with those that argue that the case of the "exceptional" fall in financial markets should not be defined in a way that practically precludes this judgement. (see also CEIOPS' own consideration in par 3.5.)	See comment 42 above.
44.	Association of British Insurers	3.3.	<p>We are concerned that the wording used in this CP might be too restrictive when defining an "exceptional fall in financial markets", making any type of fall ineligible to the extension of the recovery period. In particular we believe the sentence "even if they are somewhat more severe and longer lasting than usual" might introduce some uncertainty. Whilst we agree the Pillar II dampener should not act as a cure to every drop in the market, we believe it should be a usable tool not just in the event of 1929 style collapse but also in times of significant movements as we have experienced in the past two years and in 2002-2003.</p> <p>We believe that cumulative falls, that would not be steep if taken individually, could result in exceptional falls in financial markets over a number of months, which should also trigger supervisor's ability to grant extended recovery period.</p>	<p>See comment 42 above.</p> <p>This is strictly something that happens fast as an exceptional fall needs to be distinguished from a general severe downturn coverage of which is not the aim</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			To get a better understanding of what would constitute an “exceptional in financial markets” it would be helpful if CEIOPS could provide examples of periods over the past 40 years that would meet the criteria of such falls, as well as those significant falls which would not meet the criteria, including equity, bond and property.	of the article. These details will have to be determined later. But an exceptional downturn is certainly a rare occurrence. See also comment 3.
45.			Confidential comments deleted.	
46.	CEA ECO-SLV- 09-632	3.3.	<p>“Exceptional fall in financial markets” is defined in such a way that it is extremely difficult for a fall to qualify for this.</p> <p>We therefore doubt that this type of fall will occur. Or by the time it is decided that an “exceptional fall in financial markets” has occurred it is not possible to recover anymore. Whilst we agree the Pillar II dampener should not act as a cure to every fall in the market, we believe it should be a usable tool not just in the event of 1929 style collapse but also in times of significant movements as we have experienced in the past two years and in 2002-2003.</p> <p>In any case, the term should be defined more clearly. It would be helpful if Ceiops gave examples of past events that could be considered as “exceptional falls in financial markets”.</p> <p>In our opinion the term “exceptional” should also be applicable when a (part of the) market becomes suddenly inactive. In normal economic cycles markets are normally active whether in a downturn or in an upturn. When such a situation occurs pricing and valuation become very difficult and the pro-cyclical nature of regulation becomes more visible and damaging. This comment also applies to 3.4.</p>	<p>See comment 42 above.</p> <p>See comment 44 above.</p> <p>Noted. How difficult pricing and valuation gets is not relevant for the purposes of the article.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>The CP does not consider a case where there are several cumulative falls.</p> <p>We believe that cumulative falls, which would not be steep if taken individually, but which would occur in a short period of time and result in exceptional falls in financial markets should also trigger supervisor’s ability to grant extended recovery period.</p> <p>We strongly suggest that the sentence “even if they are somewhat more severe and longer lasting than usual” is deleted.</p> <p>Although we recognise the challenge of distinguishing between “exceptional” and “ordinary” financial downturns, we strongly suggest to cancel the derogation “even if they are somewhat more severe and longer lasting than usual”, since this does not increase the degree of clarity. In contrast it introduces new definition problems.</p>	<p>Ongoing moderate declines definitely do not qualify. Article 138 does not cover adverse movements in the financial market that are gradual and foreseeable as undertakings are expected to capture these developments through appropriate risk and capital management</p> <p>See comment 53 below as well.</p> <p>CEIOPS disagrees. A downturn of the financial cycle does not qualify as “exceptional” just because its severity and duration are above average.</p>
47.	CRO Forum	3.3.	<p>We do not agree with this statement. An aggregate fall of “x” to the starting level of the financial market over a pre-defined time period should ideally be considered adverse regardless of the way in which the fall has occurred.</p> <p>Where a number of falls that might individually not be steep occur in a short period of time and cumulatively have the effect of an exceptional fall in financial markets, this should trigger supervisors’ ability to grant an extended recovery period. From a statistical</p>	<p>See comment 46 above.</p> <p>See comment 46 above.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>perspective the cumulative impacts of a sharp decline versus an ongoing moderate decline could be equivalent. The impact of each on a firm’s SCR may also be equivalent.</p> <p>Since a firm is required to consider the extent to which there is a risk it could breach its SCR within a three month period, it is sensible that it gives due attention to the impact of sustained market falls over the same period.</p> <p>We recommend that CEIOPS reconsider this proposal.</p>	
48.	Deloitte European Union member firms of Deloitte T	3.3.	<p>An exceptional fall specification requires greater clarity, perhaps a definition in terms of a possible range of extreme percentile specified falls would give regulators sufficient flexibility in determining what constitutes exceptional circumstances, while at the same time providing the insurance industry with great understanding of the judgement frameworks which will be applied.</p>	<p>An extension of the recovery period is not something undertakings may count on or something that should influence their behaviour. So while the level playing field requires some harmonisation, “predictability” of what constitutes an exceptional fall for undertakings is not an issue here.</p>
49.	FFSA	3.3.	<p>The CP raises the following issue: which event can be considered as an exceptional event?</p> <p>The CEIOPS states: “ordinary downturns that occur at more or less regular intervals as part of the economic cycle would not suffice to trigger the supervisory power of granting extended recovery periods even if they are somewhat more severe and longer lasting than usual”.</p> <p>How do we consider “ordinary” downturns when their frequency changes?</p> <p>We think that considering past events represent a restricted view and therefore, CEIOPS should also consider all possible unknown downturns.</p>	<p>See comments 40 and 46 above.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			The term "exceptional" should also be applicable when a (part of the) market becomes suddenly inactive. In normal economic cycles markets are normally active whether in a downturn or in a upturn. Especially when such a situation occurs, pricing and valuation becomes very difficult and the pro-cyclic nature of regulation becomes more visible and damaging. Besides, it would be helpful if CEIOPS gave examples of past events that could be considered as "exceptional falls in financial markets".	
50.	GDV (German Insurance Association)	3.3.	"Exceptional fall in financial markets" is defined in such a way that it is extremely difficult for a fall to qualify for this.	See comment 42 above.
51.			Confidential comments deleted.	
52.	Just Retirement Limited	3.3.	Greater clarity is needed on the definition of an exceptional fall, in such a way that sensible steps can be taken as the fall is taking place to avoid pro-cyclical behaviour (e.g. forced sales).	The details will need to be determined later.
53.	Lucida plc	3.3.	We are concerned about the narrowness of the description in this paragraph. "Exceptional" conditions need not arise as a result of a sharp and steep movement. A gradual deterioration which was expected, to reverse but which continued could also lead to "exceptional" conditions.	Undertakings are required to have risk and capital management strategies and policies that enable them to deal with gradual developments. This would also be expected to be part of the ORSA. See also comment 46 above.
54.	RBS Insurance	3.3.	We believe that prolonged and severe downfalls should also be taken into the account by supervisors when considering granting an extension to a recovery period.	See comments 46 and 53 above.
55.	ROAM	3.3.	As FFSA point of view, ROAM think that considering past events represent a restricted view and therefore, CEIOPS should also consider all possible unknown downturns	It is exactly because CEIOPS does not only consider past events that CEIOPS thinks "exceptional fall"

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				should not be too narrowly defined so as not to exclude future financial crises that are different from past ones.
56.	RSA Insurance Group	3.3.	Cumulative falls (perhaps not steep individually) should also be allowed to trigger the response allowed under “exceptional falls”, i.e. trigger supervisor’s ability to grant extended recovery period.	See comment 53 above.
57.			Confidential comments deleted.	
58.			Confidential comments deleted.	
59.	XL Capital Ltd	3.3.	See 3.2 above	See comment 42 above.
60.	AMICE	3.4.	We agree with CEIOPS that the term “financial markets” should not be defined narrowly in this context by requiring that the fall must occur on a global scale. Particularly small and medium-sized insurers are completely embedded in and dependent on their regional environment, not only in terms of business focus, but also with regard to their investments and financing possibilities.	Noted.
61.	Association of British Insurers	3.4.	Although we understand “financial markets” in the context of exceptional falls would not necessarily refer to global financial markets but could apply to sub categories, it is unclear to us whether national markets could also fall within this scope. We would like to better understand how CEIOPS could apply the Pillar II dampener to markets other than equity – for example, bond markets and how they would assess an “exceptional fall”.	All these questions are widely outside the scope of the Level 2 advice and will be addressed at a later point.
62.	CEA ECO-SLV-09-632	3.4.	See comment to 3.3. Although we understand “financial markets” in the context of exceptional falls would not necessarily refer global financial markets but could apply to sub categories, it is unclear to us whether national markets could also fall within this scope. We also suggest including periods of high market volatility into this	See comment 42 above. See comment 5 above.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			definition.	
63.	DIMA (Dublin International Insurance & Management)	3.4.	A large number of captives are likely to use cash deposits with banks as an asset class. Will the unforeseen demise of a specific bank or sharp collapse in banking sector confidence be classed as "exceptional fall"?	See comment 62 above. So, the answer is no.
64.	FFSA	3.4.	The term "financial market" used in level 1 text is not enough defined. Notably, the CP is mentioning insurance market, we would like to understand what it covers : pandemy, large increase in laps, mortality, real estate...	See comment 62 above.
65.	GDV (German Insurance Association)	3.4.	See comment to 3.3. Further, we would like to highlight that it does not necessarily have to be an exceptional fall such that market developments are to be recognised as disadvantageous for (re)-insurance undertakings. Obviously the fall of interest rates leads to rising bond prices. Therefore "exceptional fall" should be interpreted as disadvantageous for market participants. On this account we also suggest to include periods of high market volatility into this definition. We expect CEIOPS to clarify this issue.	See comments 42 and 62 above.
66.	Investment & Life Assurance Group Ltd	3.4.	This is a power that should be used very sparingly. If a recovery plan acceptable to all parties has been agreed and is being implemented, undertakings should not need to be constantly checked or pressurised to make faster progress. The results of the withdrawal of an extension leading to public disclosure and the adverse effect on SFCR are so drastic that CEIOPS should ensure that alternative measures are adopted wherever possible.	See comment 7 above. The withdrawal of an extension in case of an undertaking failing to demonstrate significant progress is mandatory according to the Level 1 text.
67.	RBS	3.4.	Further clarification is needed whether national markets are within	Further details on what

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

	Insurance		the scope of "financial markets" term.	constitutes an exceptional fall in financial markets requires in depth discussion on Level 3.
68.	ROAM	3.4.	ROAM believes that the term "capital markets" should not be defined too narrowly.	Noted.
69.	RSA Insurance Group	3.4.	The scope of "financial markets" requires some clarity. It is unclear to us whether national markets could also fall within this scope or indeed an asset class.	See comment 67 above.
70.			Confidential comments deleted.	
71.	XL Capital Ltd	3.4.	See 3.2 above	See comment 42 above.
72.	AMICE	3.5.	We agree with CEIOPS' consideration that defining an "exceptional fall" too narrowly would defeat the aim of the level 1 provision. Par. 3.3. should therefore be changed.	See comment 43 above.
73.	Association of British Insurers	3.5.	Please refer to our comments under 3.3 We agree with CEIOPS the definition of "exceptional falls in financial markets" should not be too narrowly defined.	See comment 44 above.
74.	CEA ECO-SLV-09-632	3.5.	We agree with the following Ceiops comment: "if an exceptional fall in financial markets was too narrowly defined, it would defeat the aim of Article 136(3a), forcing supervisors to require short-term recovery plans even if this results in procyclical effects".	Noted.
75.	FFSA	3.5.	We agree with the following CEIOPS comment: "if an exceptional fall in financial markets was too narrowly defined, it would defeat the aim of Article 136(3a), forcing supervisors to require short-term recovery plans even if this results in procyclical effects". FFSA does not consider it appropriate to prescribe in detail what would constitute a trigger event or to introduce thresholds for	Noted. Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>"exceptional" falls in financial markets.</p> <p>We would like to get a detailed description of the consultation process which will lead to decide whether an event can be considered as an "exceptional fall in financial markets" or not.</p> <p>Decision seems to be in the hands of CEIOPS, when the exceptional event occurs at a country level. As such, the process should be clearly defined; including the potential request by undertaking to CEIOPS or supervisor .</p>	<p>This question is out of the scope of the Level 2 advice and should be determined at a later stage.</p>
76.	Munich Re	3.5.	<p>CEIOPS recognizes that it is important to achieve a degree of convergence in the assessment of the preconditions for granting an extension, but apparently no conclusions are drawn from this statement, in particular there is no explanation how convergence could be reached.</p>	<p>See comment 75 above.</p>
77.	ROAM	3.5.	<p>As AMICE point of view, we agree with CEIOPS' consideration that defining an "exceptional fall" too narrowly would defeat the aim of the level 1 provision. Par. 3.3. should therefore be changed</p>	<p>See comment 55 above.</p>
78.	XL Capital Ltd	3.5.	<p>We share CEIOPS concern that if an exceptional fall in financial markets were too narrowly defined, it could force supervisors to require short-term recovery plans even if this resulted in procyclical effects.</p>	<p>Noted.</p>
79.	AMICE	3.6.	<p>We are concerned about the idea that a process should be established "through which [CEIOPS] is consulted before a supervisory authority decides on any application of [the extension of the recovery period]", even if it is claimed that this could then lead to "rapidly" arriving at a common understanding. More certainty about this process would be desirable already at the present point of time.</p>	<p>Noted.</p> <p>See comment 75 above.</p>
80.	Association of British Insurers	3.6.	<p>We are concerned that the process suggested here by CEIOPS in order to decide whether an "exceptional fall in financial markets" is occurring might stall the decision making process on the extension</p>	<p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>of the recovery period. In such circumstances speedy measures will be needed in order to avoid any pro-cyclical effects.</p> <p>Furthermore, whilst we agree local regulators should be able to opine on the definition of an “exceptional market fall” for their own national market, we believe that careful consideration should be given to ensure a level playing field across market players through supervisory convergence and regulatory disclosure.</p>	Noted.
81.			Confidential comments deleted.	
82.	CEA ECO-SLV- 09-632	3.6.	<p>The process for determining whether an “exceptional fall in financial markets” has occurred should be clearly defined and we strongly disagree with leaving this outside the scope of this CP.</p> <p>It does not seem to be appropriate to postpone the discussion about the design of the mechanism whether an “exceptional fall in financial markets” has occurred and when it is over. The issues mentioned in footnote 2 are key issues for assessing the appropriateness of the “extension concept” of CP 64.</p> <p>We would like to get a detailed description of the consultation process for determining whether an event can be considered as an “exceptional fall in financial markets” or not. While we agree that decisions on whether to grant an extension need to be made on a case-by-case basis (see 3.32), there must be a common understanding of how “exceptional fall” and “financial markets” are defined, since they define the initial trigger point for this supervisory tool. It does not seem to be reasonable to put the decision when financial markets are subject to exceptional falls at the full discretion of national supervisory authorities since this would undermine the establishment of a level-playing field.</p>	<p>The design of the mechanism is not subject to Level 2 regulation. It further cannot be meaningfully discussed on Level 3 at this point in time as the design of the mechanism is not necessarily independent of current developments (EIOPA, ESRB).</p> <p>See comment 75 above.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>In addition, any process designed should have a "short cut"; that is a possibility to intervene as quickly as possible. The recent period has shown the speed at which developments may take place. Without disregarding a proper due process it is important to be able to act quickly.</p> <p>To ensure timely responses to "exceptional fall in financial markets", it might be worth maintaining the involvement of the European Commission in the process.</p>	<p>Noted.</p> <p>Noted.</p>
83.	CRO Forum	3.6.	<p>The process suggested by CEIOPS to decide whether an "exceptional fall in financial markets" is occurring could hinder supervisors' ability to make a timely decision about the extension of the recovery period. In such circumstances speedy measures are needed in order to avoid any pro-cyclical effects</p> <p>Also, we would welcome further guidance on the process which CEIOPS and the supervisors will go through to determine whether an exceptional fall in financial markets has taken place, in particular with regard to:</p> <ul style="list-style-type: none"> i) The timeline to which the process should adhere, including how often the situation is re-assessed ii) Whether the definition of an exceptional fall can apply to one country in Europe or should apply across Europe iii) Factors to consider when determining whether an exceptional fall is over <p>Since firms are expected to take actions to restore their Solvency II balance sheets following an SCR breach, it is essential that the decision is reached quickly. From here, a firm could then decide on optimal de-risking strategies and specifically, on optimal times to</p>	<p>Noted.</p> <p>See comment 75 above.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>engage in such activities.</p> <p>In defining and exceptional fall careful consideration must also be made as the global extent of a financial crisis and the interconnectivities between the various EU-based and non-EU financial sectors and economies. The various actions by governments, regulators and central banks of emerging and non-emerging economies and the ability of the markets within such economies to respond to the measures that are installed is necessarily complex and should not be understated.</p>	<p>CEIOPS is aware that these are very difficult questions which need to be considered carefully.</p>
84.	Deloitte European Union member firms of Deloitte T	3.6.	<p>We agree that a process to define on a case by case basis what is deemed an exceptional fall in financial markets, is a better option than predefined metrics. However, we believe that this process should be harmonised with the banking and securities industries to avoid competitive distortions in critical market conditions (for example in terms of need and access to capital sources).</p> <p>CEIOPS should make clear at level 2 which authority would be in charge of triggering the process and make the final decision whether a fall is exceptional or not. To foster harmonisation, we suggest this authority be the new EIOPA, in consultation with national supervisor and the new European Authorities for the banking and securities industries.</p> <p>CEIOPS should also make clear at this level what should be the timeframe for deciding whether the fall is exceptional: undertakings need to know quickly how much pressure they will have on re-establishing their SCR level. Otherwise, the risk would be that pro-cyclical actions would already be underway when the supervisor grants the extension. We suggest this timeframe to be less than 3 weeks.</p>	<p>Noted.</p> <p>See comment 82 above.</p> <p>Following the decision that an exceptional fall in financial markets has occurred that would allow for an extension of the recovery period in case of a breach of the SCR this decision will be disclosed to the market as soon as possible. It is however up to the undertaking to decide to apply for an extension of the recovery period and to provide evidence for that (based among</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				others on the factors included in CEIOPS' advice), including a realistic recovery plan. The recovery plan, possibly after amendments required by the supervisor, needs its approval. Upon approval of the supervisor the extended recovery period will apply.
85.	FFSA	3.6.	<p>We agree with the following CEIOPS comment: "if an exceptional fall in financial markets was too narrowly defined, it would defeat the aim of Article 136(3a), forcing supervisors to require short-term recovery plans even if this results in procyclical effects".</p> <p>FFSA does not consider it appropriate to prescribe in detail what would constitute a trigger event or to introduce thresholds for "exceptional" falls in financial markets.</p> <p>We would like to get a detailed description of the consultation process which will lead to decide whether an event can be considered as an "exceptional fall in financial markets" or not.</p> <p>Decision seems to be in the hands of CEIOPS, when the exceptional event occurs at a country level. As such, the process should be clearly defined; including the potential request by undertaking to CEIOPS or supervisor .</p>	See comment 75 above.
86.	GDV (German Insurance Association)	3.6.	The process for determining whether an "exceptional fall in financial markets" has occurred should be clearly defined and we strongly disagree with leaving this outside the scope of this CP. It does not seem to be appropriate to postpone the discussion about the design of the mechanism whether an "exceptional fall in financial markets"	See comment 82 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			has occurred and when it is over. The issues mentioned in footnote 2 are key issues for assessing the appropriateness of the "extension concept" of CP 64.	
87.			Confidential comments deleted.	
88.	IUA	3.6.	We support the suggestion that CEIOPS does not prescribe in detail what would constitute a trigger event or to introduce thresholds. This is consistent with the principle based philosophy underlying Solvency II	Noted.
89.	Munich Re	3.6.	The idea of a consultation process with CEIOPS has to be elaborated in more detail. Unfortunately the design of the "mechanism" of consultation is said to be outside of the scope of the CP. This makes it impossible to evaluate the suggestions of the CP. The process of how to come to the decision whether an "exceptional fall in financial markets" has occurred is key for maintaining a level playing field.	See comment 82 above.
90.	RBS Insurance	3.6.	We are concerned that the process proposed to decide whether "exceptional fall" is taking place might delay granting the extension of the recovery period.	CEIOPS does not envisage a process that is so complicated as to take months. In any case, as a reminder, there is always the normal recovery period of six months.
91.	ROAM	3.6.	As FFSA point of view, ROAM does not consider it is appropriate to describe in detail what would constitute a trigger event or to introduce thresholds for "exceptional" falls in financial markets. We would like to get a detailed description of the consultation process which will lead to decide whether an event can be considered as an "exceptional fall in financial markets" or not. Decision seems to be in the hands of CEIOPS, when the exceptional	See comment 82 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			event occurs at a country level. As such, the process should be clearly defined; including the potential request by undertaking to CEIOPS or supervisor.	
92.			Confidential comments deleted.	
93.	XL Capital Ltd	3.6.	The concept of CEIOPS being consulted to determine whether "exceptional falls" in financial markets have occurred and have ended is good, and we welcome more detail on how this consultation process would work in practice. Would it be possible for an exceptional fall to be country specific, or would the decision always be on a global basis?	<p>Noted.</p> <p>The consultation process will be discussed at a later time when the role of EIOPA and the ESRB is clearer.</p> <p>What constitutes an exceptional fall will have to be discussed further as well. However; CEIOPS considers that Member State specific exceptional falls could be conceivable.</p>
94.			Confidential comments deleted.	
95.	Munich Re	3.7.	It is not clear who will determine an "exceptional fall in financial markets": CEIOPS, only some supervisors concerned, in a common position, or each individual supervisor after consultation of his colleagues?	See comment 82 above.
96.	XL Capital Ltd	3.7.	Once it has been determined that an "exceptional fall" is occurring, national supervisors will have the possibility to grant extensions to the recovery period. We see a risk that different rules may be applied across member states, thereby distorting competition between EU insurers.	This is where the relevant factors to be taken into account in the decision of whether and how long an individual extension can be granted come in.
97.	CRO Forum	3.8.	We do not agree with this statement. The end of an exceptional fall does not mean that there will be a return to normal markets straight away. Following an exceptional market event, appropriate	The end of an exceptional fall does not (only) mean the falling has stopped, it means the

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>suppliers of instruments and services may be in short supply or provide terms that are prohibitively expensive. Another factor is liquidity. A firm may need an extension of appropriate duration to manage upwards levels of balance sheet liquidity to be able to trade and engage with such suppliers.</p> <p>We recommend that CEIOPS consider these issues and revise this statement.</p>	<p>financial markets have recovered (sufficiently) and procyclicality is no longer an issue.</p>
98.	Deloitte European Union member firms of Deloitte T	3.8.	<p>We would welcome greater clarity in terms of explanation and quantitative specification for the exceptional fall definition, for example in terms of a range for the recovery levels expressed in terms of percentage from pre-fall market values.</p>	<p>See comment 93 above.</p>
99.	DIMA (Dublin International Insurance & Management	3.8.	<p>It is unclear how it will be determined that an "exceptional fall" is no longer taking place.</p>	<p>This has to be determined in detail at a later stage and will depend on the consultation process and the "definition" of exceptional fall".</p>
100.	IUA	3.8.	<p>The CP notes that "once this "exceptional fall" is deemed to be over no further extensions may be granted". We would question whether it might be beneficial to clarify this as follows: "once this "exceptional fall" is deemed to be over no further extensions may be granted for that fall".</p>	<p>CEIOPS does not consider that this clarification is necessary.</p>
101.	Munich Re	3.8.	<p>Also it is not clear who will monitor whether the "exceptional fall in financial markets" is still taking place.</p>	<p>See comment 99 above.</p>
102.	Association of British Insurers	3.9.	<p>Where markets recover to what is considered an ordinary downturn, following an exceptional fall in financial markets, it is unclear what would be the timeframe for recovery. It would seem unreasonable in this context to require undertakings to restore their</p>	<p>See comment 3 above.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			SCR immediately. We would therefore expect the normal market circumstances recovery period (i.e. 6+3 months) to apply. It would be helpful if CEIOPS could confirm our interpretation.	
103.			Confidential comments deleted.	
104.	CEA ECO-SLV- 09-632	3.9.	Where markets recover to what is considered an ordinary downturn, following an exceptional fall in financial markets, it is unclear what would be the timeframe for recovery. It would seem unreasonable in this context to require undertakings to restore their SCR immediately. We would therefore expect the normal market circumstances recovery period (i.e. 6+3 months) to apply. It would be helpful if Ceiops could confirm our interpretation.	See comment 3 above.
105.	CRO Forum	3.9.	A definition of what is considered an ordinary downturn after an exceptional fall should be provided. Furthermore, where markets recover to what is considered an ordinary downturn following an exceptional fall in financial markets, it is unclear what would be the timeframe for recovery. It would seem unreasonable in this context to require undertakings to restore their SCR immediately. We would therefore expect the normal market circumstances recovery period (i.e. 6+3 months) to apply. It would be helpful if CEIOPS could confirm our interpretation.	See comment 3 above.
106.	Deloitte European Union member firms of Deloitte T	3.9.	We would welcome more clarity on what would be deemed an 'ordinary downturn in the financial markets cycle'	An adverse market situation which does not constitute an exceptional fall.
107.	DIMA (Dublin	3.9.	It is unclear here what or who will determine when "normal levels" have been reached, and by what process this decision will be taken.	This is connected to the "definition" of and decision taking

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

	International Insurance & Management			process for an exceptional fall.
108.	Just Retirement Limited	3.9.	We consider it unreasonable to require insurers to restore their SCR as soon as an exceptional fall is determined to have recovered to the level of an ordinary downturn. We would therefore expect the normal market circumstances recovery period (i.e. 6+3 months) to apply from that point onwards. In certain circumstances, an intermediate "downturn" recovery period might be appropriate.	For recovery plans approved after the exceptional fall is over, the normal recovery period applies. The Level 1 text does not allow for this normal recovery period to be extended to a timeframe between "normal" and exceptional".
109.	RSA Insurance Group	3.9.	Where markets recover to what is considered an ordinary downturn, following an exceptional fall in financial markets, it is unclear what would be the timeframe for recovery. Also what is the process to decide the exceptional period has passed?	See comments 3 and 99 above.
110.	Federation of European Accountants (FEE)	3.10.	<p>During the extension period, where the undertaking does not comply with SCR requirements, it should be useful to consider the information to include in the Solvency and Financial Conditions Report (SFCR): eligible own funds and SCR, causes of a breach, measures to re-establish the eligible own funds and the progress to achieve re-compliance in consistency with the progress report to the Supervisor. As it could be difficult to identify a breach due to an exceptional market fall from others factor more internal or specific to undertakings, we agree that causes have to be assessed, described and documented properly.</p> <p>In accordance with article 136 - 3a of the Directive, CEIOPS proposes in paragraphs 3.10 to 3.24 the maximum period of time which Supervisors should be able to allow, with a view on market stability and policyholders' protection. Four options are considered for the extension period; 6, 15, 27 and 51 months period. CEIOPS</p>	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>is of the opinion that, as the recovery period should be neither very short, nor very long, the middle ground between option 2 (a 15 months period) and option 3 (a 27 months period) provides the best solution. In the impact assessment, CEIOPS considers that options 2 and 3 offer a more appropriate extension period, with little to choose between them (paragraph 4.24).</p> <p>In our view, an exceptional market fall should require maximum flexibility for supervisors in the decision making, so that a longer maximum period (option 3 or 4 by example) seems better. An argument presented for a short maximum period (paragraph 3.20) is that a reduced period will enhance harmonisation of supervisory practices and limit the use of national discretion. However, a longer maximum period could also be possible if supervisory practices are harmonised with a re-enforced coordination process on the definitive period adopted by each supervisor.</p> <p>This comment also applies to paragraphs 3.11 to 3.24.</p>	
111.	CEA ECO-SLV- 09-632	3.11.	<p>In deciding on the further time needed by an undertaking, the supervisor should also consider whether more than one undertaking is affected and if they together could negatively affect the market. This comment also applies to 3.43.</p>	<p>This is the former external factor a).</p>
112.	FFSA	3.11.	<p>The maximum recovery period should not be the norm but may be necessary in individual circumstances.</p> <p>We consider that in very exceptional or unseen cases, the thirty month maximum extension period could turn to be inadequate. Under these cases, a process could be set up at the level of the CEIOPS and supervisors to revise the maximum period of 30</p>	<p>The maximum extension period will be prescribed on Level 2 and cannot be changed by a decision of CEIOPS and/or national</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			months, to extend it to 60 months (6+3+51).	supervisors.
113.	GROUPAMA	3.11.	<p>The maximum recovery period should not be the norm but as it is prescribed in the Directive we support a maximum at 60 months. We question the CEIOPS option at 21 months: what will happen if it proves that the length of recovery period at 21 months is too short?</p> <p>We are concerned that an important discretionary power is given to the supervisor and could lead to an unfair level playing field. What has CEIOPS planned to avoid these effects? We suggest that undertakings be allowed to appeal the decisions of their local supervisor at CEIOPS (or EIOPA) level to be sure that all undertakings are considered equally across Europe.</p>	<p>Noted.</p> <p>The normal Member State appeal process will apply. See comment 15 as well.</p>
114.	ROAM	3.11.	<p>Because the objective of level 2 is to determine a maximum period of recovery, ROAM wishes the option n°4 (60 months). Nevertheless, the choice of duration will be determined on a case by case basis. Option 4 is a maximum period.</p> <p>In a major crisis context, ROAM is convinced we could still suffer a systemic risk up to a 36 months period.</p>	Noted.
115.			Confidential comments deleted.	
116.	AMICE	3.12.	See 3.24	See comment 146 below.
117.	CRO Forum	3.12.	Please see response to 3.24	See comment 150 below.
118.	FFSA	3.12.	<p>The maximum recovery period has been set at 60 months in Option 4, what are the historical criteria used to choose this duration? Indeed penultimate severe stock market crisis (in 2000) lasted more than five years.</p>	<p>The maximum extension is not supposed to be as long as the longest conceivable financial crisis. The extension only has to be long enough that remedial actions do not force procyclical effects, on the one hand and to</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				protect the policyholders' interests on the other. A too long extension period would be detrimental to the policyholders' interests. .
119.	ROAM	3.12.	See 3.11	See comment 114 above.
120.			Confidential comments deleted.	
121.	CEA ECO-SLV- 09-632	3.14.	<p>We strongly agree with the Ceiops advice relating to a short extension of recovery period which states: "During exceptional market falls a short extension may place too hard a requirement on undertakings and be harmful in that it may result in further destabilizing effects on financial markets (pro-cyclicality)".</p> <p>We would like to draw attention to the fact that if many undertakings are forced to take similar actions within an extended time frame, this does not necessarily mean that those actions are undertaken in a co-ordinated way.</p>	Noted.
122.	FFSA	3.14.	We strongly agree with the CEIOPS advice relating to a short extension of recovery period which states : "During exceptional market falls a short extension may place too hard a requirement on undertakings and be harmful in that it may result in further destabilizing effects on financial markets (pro-cyclicality).	Noted.
123.	GDV (German Insurance Association)	3.14.	We appreciate CEIOPS' intention to eliminate pro-cyclical effects. However, we would like to draw attention to the fact that if many undertakings are forced to take similar actions within an extended time frame, this does not necessarily mean that those actions are undertaken in a co-ordinated way.	Noted.
124.	ROAM	3.14.	As FFSA point of view, ROAM agrees with CEIOPS about the fact	Noted.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			that a shorter extension period would be more dangerous than beneficial for undertakings and financial market	
125.	ROAM	3.15.	See 3.14	See comment 124 above.
126.	CRO Forum	3.16.	The Commission should have regard to the possibility that SCR restorative activities could result in funds being diverted outside the EU region to safer havens or to optimise imbalances and opportunities that may exist externally. A short maximum extension period increases the risk that this might occur.	Noted.
127.	CRO Forum	3.17.	Note that mandating re-compliance with the SCR over a long-time frame does not guarantee that there would be no adverse pro-cyclical effects and market instability, although the chance of this is lessened.	Noted.
128.	CRO Forum	3.18.	We partially agree. The maximum extension should take account of the time frames needed to ensure that markets have stabilised to a level where trades can be conducted at "rational" or "orderly" levels. Please also see the response to 3. 8	Noted. See comment 97 above.
129.	ROAM	3.18.	See 3.11	See comment 114 above.
130.			Confidential comments deleted.	
131.	CEA ECO-SLV- 09-632	3.19.	We agree with this comment, however we emphasize the fact that a long maximum recovery period has to be set up, considering past crises.	See comment 118 above.
132.	CRO Forum	3.19.	We disagree. 1. We agree that the SCR is not just relevant under normal conditions but the supervisor should recognise that there is a	Both suggestions are incompatible with the Level 1 text.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>tolerance of acceptable levels of SCR for the same risk profile at the same level of confidence. We recommend that supervisors judge a firm on the restorative actions that are planned rather than the exactitude of the SCR and accept a tolerance around any SCR non-coverage.</p> <p>2. At a practical level, suspension of SCR rebalancing / restorative activities may be sensible and should be considered.</p>	
133.	FFSA	3.19.	<p>The impression that the SCR is only relevant under “normal circumstances” whereas in difficult financial conditions sound capital requirements are in effect suspended until the situation is back to normal should be avoided.</p> <p>We agree with this comment, however we emphasize the fact that a long maximum recovery period has to be set up, considering past crisis.</p>	<p>Noted.</p> <p>See comment 118 above.</p>
134.	ROAM	3.19.	See 3.11	See comment 114 above.
135.			Confidential comments deleted.	
136.	CRO Forum	3.20.	We disagree. The improvement of harmonisation of supervisory practices should not be a factor in determining the appropriate maximum extension period. There should be sufficient guidance and processes in place to ensure harmonisation without relying on the choice of the maximum extension period.	The argument here is that the longer the maximum possible extension period the more room there is for wider deviations between the individual extension periods granted by different supervisors.
137.	FFSA	3.20.	How will the harmonization be enhanced?	See comment 136 above.
138.	CRO Forum	3.21.	We request that the maximum extension to the recovery period is considered independently from the one-year horizon used for the SCR assessment as these two types of assessments are not linked. It would be more appropriate that the consideration of a recovery period would be informed by a firm’s ORSA then its SCR.	As CEIOPS clarified, the argument put forward is ultimately not considered to be valid.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

139.	ROAM	3.21.	ROAM strongly disapproves this CEIOPS proposal. Since the beginning of the consultation, ROAM disapproves the one-year horizon because it is not appropriate for the undertaking asset / liability insurance and especially on the long tails risks.	This is not a proposal. See comment 138 above.
140.			Confidential comments deleted.	
141.	CRO Forum	3.23.	Please see response to 3.24	See comment 150 below.
142.	FFSA	3.23.	Refer to 3.11	See comment 112 above.
143.	Lucida plc	3.23.	The decision to recommend a maximum extension of 21 months seems somewhat arbitrary. Whilst Option 4 could be considered too long, the case for 21 months versus 36 months isn't clear from the consultation paper. In the scenario where a large part of the insurance industry is adversely affected, it is easy to imagine that one company's attempts to re-build capital could be slowed by the actions of others. For example, many insurers including those not breaching their SCR could be trying to raise funds in the capital markets at the same time, making it more difficult and expensive for the weaker insurers. Hence we would recommend Option 3. This comment also applies to 3.24.	Although any timeframe chosen would be somewhat arbitrary, CEIOPS chooses a middle ground between the need to prevent procyclical effects and the aim to protect policyholders' interests through enforcement of the SCR requirement. Noted.
144.	ROAM	3.23.	See 3.11	See comment 114 above.
145.			Confidential comments deleted.	
146.	AMICE	3.24.	From today's point of view, we agree with CEIOPS that the discussion about the maximum time frame can be reduced to options 2 and 3. However, given that the level 2 measure is to set	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>a maximum extension period (which can always be shortened by a specific decision), it could be more appropriate not to pre-empt the undoubtedly political discussion on this issue by taking the mathematical average of options 2 and 3, but by leaning towards the longer option (max 36 months).</p> <p>It is clear that the concept of the "exceptional fall" is influenced by the current financial crisis, and the real duration of the current crisis is yet unforeseeable. We suggest therefore that any decision for a maximum period is subject to regular review.</p>	<p>CEIOPS took the current crisis into consideration but did not draw the regime with this crisis in mind. It is not possible to know where the next crisis will come from and the regime should apply to any sort of crisis.</p> <p>The maximum extension period is supposed to cover the average duration of an exceptional fall in financial markets.</p>
147.	Association of British Insurers	3.24.	<p>We believe 21 months to be a reasonable timeframe for most recessions.</p> <p>However, it might be necessary to review this timeframe in the future if there is evidence that an exceptional fall would require a longer recovery period.</p>	Noted.
148.			Confidential comments deleted.	
149.	CEA ECO-SLV-09-632	3.24.	<p>The proposed maximum extension period seems reasonable to us.</p> <p>However, it may need to be reviewed in the future if it is shown that an exceptional fall in financial markets requires a longer recovery period. We note that in the Annex in paragraph 23 Ceiops states that "the decision on which option to choose cannot be based</p>	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			on any experience other than the recent crisis". The proposed maximum extension period is therefore based on a limited amount of data.	
150.	CFO Forum	3.24.	<p>Market perception of insurers could be damaged by inappropriate or unnecessary public disclosures.</p> <p>The primary concern is that there should not be inappropriate or unnecessary public disclosures that cause unnecessary damage to market perception of insurance industry or individual insurers.</p> <p>Whilst implicit in the consultation paper, it would be beneficial if the proposals required individual supervisors to have meaningful conversations with insurers in order to determine how they respond to such a fall. The emphasis on company specific and local market factors is appropriate.</p>	<p>See comment 2, fourth bullet above.</p> <p>It is inconceivable that a supervisor would fail to discuss how an undertaking means to remedy an SCR breach or to monitor the undertaking's remedial process.</p>
151.	CRO Forum	3.24.	<p>We recommend option 3 as the maximum time period to ensure that SCR restoration activities can be scheduled and conducted at the most appropriate times – i.e. in orderly markets and to minimise negative impacts on policyholders.</p> <p>However we note that the extension period granted to a company should be informed by the ability of firm's to react / respond to financial crises and the availability of economically priced instruments and services. The maximum period should not be granted automatically.</p> <p>It is essential that harmonisation is achieved across European supervisors in granting the extension period.</p>	<p>Noted.</p> <p>Correct. The Level 1 text requires that an individual decision is taken on the extension period, taking into account all relevant factors, including those referred in CEIOPS' Level 2 advice.</p>
152.	DIMA (Dublin International Insurance &	3.24.	<p>The maximum available extension is set at 21 months (+ 6 months / 9 months recovery period).</p> <p>The question arises whether a uniform fixed maximum period will be appropriate in all events causing an "exceptional fall in financial</p>	<p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	Management		<p>markets". The lack of flexibility may result in reduced effectiveness of the extension granted.</p> <p>The general comments at the start of this response should be referred to in relation to this section of the consultation paper. It would probably be better for the Member State's supervisory authority to use its discretion and knowledge of the market it supervises (subject to college of supervisors or EU body approval). For example, one undertaking may have only a very small share of the overall EU market but may, at the same time, be systemic to one specific jurisdiction (particularly in smaller member states) or may be dominant for a specific class of insurance business in several EU markets. These scenarios do not seem to have been considered.</p> <p>For the (re)insurance captives sector, the maximum length of time as described in this section – 21 months – seems adequate.</p>	<p>Individual decisions on the extension of the recovery period are taken at the national supervisor's discretion taking into account all relevant factors. Financial stability is not reduced to national financial stability. Refer to comment 10 on the expected consultation between supervisors in case of cross-border operations (branches or subsidiaries (group context) of an undertaking.</p> <p>Noted.</p>
153.	FFSA	3.24.	Refer to 3.11: We consider that in very exceptional or unseen cases, the thirty month maximum extension period could turn to be inadequate. Under these cases, a process could be set up at the level of the CEIOPS and supervisors to revise the maximum period of 30 months, to extend it to 60 months (6+3+51).	The suggestion is incompatible with the Level 1 text. This would require a Commission decision as the maximum time period is set at Level 2.
154.	GDV (German Insurance Association)	3.24.	The proposed maximum extension period seems reasonable to us.	Noted.
155.			Confidential comments deleted.	
156.	Groupe	3.24.	We think that the length of the extension period is reasonable. This	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	Consultatif		is not to rule out a possible need for review in future having regard to financial market circumstances.	
157.	Institut des actuaires (France)	3.24.	We recommend to define the extension of the recovery period according to the amplitude of the fall.	The Level 1 text does not provide for the setting of more than one maximum timeframe on Level 2.
158.	Just Retirement Limited	3.24.	We support the proposal of 21 months but there may be specific (but rare) circumstances where this should be extended in order to achieve the anti-cyclicality objective (in such exceptional circumstances we note that the 21 month period should be sufficient for the necessary legal processes to take place to extend this period).	Noted.
159.	Legal & General Group	3.24.	There is clearly no "right" answer but for most periods of turbulence 21 months (i.e. 30 months in total) would appear reasonable. The regulators may however find that in the extreme tail scenario (say a 1930's) that this is not enough time. It is also not clear if the external events happen over a period of years and results in major market declines, rather than continuously, whether this provides regulators with the right amount of flexibility to ensure market stability. A greater concern is that each regulator can decide on whether to grant an extension which may lead to confusion and difficulties if, in circumstances such as the latest turbulence, each country invoked it at a different time and indeed, as bad, the treatment across firms was to become inconsistent.	<p>Noted.</p> <p>The exceptional fall has to be rather sudden. Undertakings are required to take external factors that affect their business into account through appropriate forward-looking risk and capital management. There is no reason to provide for an extension of the recovery period for undertakings which have failed to do so.</p> <p>CEIOPS shares this concern. Thus the proposal to introduce a consultation process when it comes to establishing an exceptional fall.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				The requirement to take into account all relevant factors and the prescription of these factors on Level2 will ensure consistency of treatment across undertakings.
160.	Lloyd's	3.24.	The proposed maximum extension available of 21 months, which would give a potential maximum period of 30 months to restore capital levels to meet the SCR, is reasonable.	Noted.
161.	Lucida plc	3.24.		
162.	RBS Insurance	3.24.	We support the proposed maximum extension period of 21 months	Noted.
163.	ROAM	3.24.	See 3.11	See comment 114 above.
164.	RSA Insurance Group	3.24.	21 months is a reasonable timeframe for most recessions.	Noted.
165.			Confidential comments deleted.	
166.	XL Capital Ltd	3.24.	CEIOPS proposal to introduce an extended recovery period of 21 months for exceptional circumstances over and above the 9 months currently contemplated for normal circumstances appears reasonable and should provide sufficient time to company to restore their capital base.	Noted.
167.	FFSA	3.25.	The CP raises the following issue: which event can be considered as an exceptional event?	See comment 3 above.
168.	CEA ECO-SLV-09-632	3.26.	We would like Ceiops to explain how an undertaking would ask for an extension, e.g. what information the undertaking should provide to the supervisor.	See comment 84 for some general thoughts. Details will have to be decided on Level 3 at a later stage but the undertaking would have to demonstrate that

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			In 3.41, it is stated that the “undertaking has to submit a realistic recovery plan for supervisory approval” and in 3.30 it is specified that the “undertaking would have to show that and how the “exceptional fall” seriously affected its ability to re-establish coverage of the SCR”.	the normal recovery period is not sufficient on account of the exceptional fall and to justify the specific extension period it asks for. In doing this it should have in mind the relevant factors the supervisor is required to take into account. If it is not already accepted that an exceptional fall is taking place it would also have to present arguments that this precondition for granting an extended recovery period is fulfilled.
169.	Deloitte European Union member firms of Deloitte T	3.26.	We agree that the undertaking should be at the initiative of applying for an extension period.	Noted.
170.	FFSA	3.26.	<p>The CEIOPS describes the process in which the decision to extend the time available for re-establishing compliance with the SCR is given by the supervisors after an explicit request by the undertaking.</p> <p>There is no precision about this request and the information to provide.</p> <p>In the §3.41, it is stated that the “undertaking has to submit a realistic recovery plan for supervisory approval” and in the §3.30 it is specified that the “undertaking would have to show that and how the “exceptional fall” seriously affected its ability to re-establish coverage of the SCR”</p>	See comment 168 above.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>But the paper does not indicate that the undertaking has to provide with the factors needed by the supervisor to take into account the individual situation in order to permit an extension of the recovery period.</p> <p>What is precisely required from the undertaking when it requests an extension of the recovery period?</p>	
171.	GDV (German Insurance Association)	3.26.	<p>We would like CEIOPS to explain how an undertaking would ask for an extension, e.g. what information the undertaking should provide to the supervisor.</p>	See comment 168 above.
172.	ROAM	3.26.	<p>Roam shares the FFSA view. The CEIOPS describes the process in which the decision to extend the time available for re-establishing compliance with the SCR is given by the supervisors after an explicit request by the undertaking.</p> <p>There is no precision about this request and the information to provide.</p> <p>But the paper does not indicate that the undertaking has to provide with the factors needed by the supervisor to take into account the individual situation in order to permit an extension of the recovery period.</p> <p>What is precisely required from the undertaking when it requests an extension of the recovery period?</p>	See comment 168 above.
173.	FFSA	3.27.	<p>It is underlined in the paper that “the decision to permit an extension as well as the duration of any extension is at the discretion of the supervisory authority”.</p> <p>As proposed by the CEIOPS in the §3.41, it should be more efficient to get a first feedback from the undertaking about a short notice</p>	This does not actually reduce supervisory discretion but it would certainly facilitate the

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			before the supervisor takes its decision. It would allow the undertaking to argue its request after supervisor analysis and it would reduce the discretion of the supervisor.	decision-taking of the supervisor.
174.	ROAM	3.27.	As FFSA point of view, ROAM thinks it should be more efficient to get a first feedback from the undertaking about a short notice before the supervisor takes its decision. It would allow the undertaking to argue its request after supervisor analysis and it would reduce the discretionary power of the supervisor.	See comment 173 above.
175.			Confidential comments deleted.	
176.	AMICE	3.28.	1.	
177.	CRO Forum	3.28.	Please see response to 3.24	See comment 151 above.
178.			Confidential comments deleted.	
179.	CRO Forum	3.30.	The supervisory authority should also take into account "clientele" effects when deciding on whether an extension should be granted and its duration. In other words, the fact that there are different types of policyholders and different types of asset allocation or reallocation strategy that would be appropriate for each. For instance, where a firm holds high quality investment grade assets to match annuitant liabilities and the values of those assets are reduced due to an exceptional financial downturn, it may be more practical and theoretically appropriate to grant a large extension, rather than force short-term trading in dislocated conditions. Extension periods should ideally have regard to the asset holding periods that would apply in normal financial conditions and attempt to strike a compromise of minimise trading costs and inopportune trading activities in adverse or exceptional financial conditions.	CEIOPS considers this covered by internal factors d) and e).
180.	FFSA	3.30.	The CEIOPS describes the process in which the decision to extend the time available for re-establishing compliance with the SCR is	See comment 168 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>given by the supervisors after an explicit request by the undertaking.</p> <p>There is no precision about this request and the information to provide.</p> <p>In the §3.41, it is stated that the “undertaking has to submit a realistic recovery plan for supervisory approval” and in the §3.30 it is specified that the “undertaking would have to show that and how the “exceptional fall” seriously affected its ability to re-establish coverage of the SCR”</p> <p>But the paper does not indicate that the undertaking has to provide with the factors needed by the supervisor to take into account the individual situation in order to approve an extension of the recovery period.</p> <p>What is precisely required from the undertaking when it requests an extension of the recovery period?</p>	
181.	ROAM	3.30.	See 3.26	See comment 172 above.
182.	DIMA (Dublin International Insurance & Management	3.32.	This section recommends that requests for extensions need to be made on a case-by-case basis. As captive dynamics can differ from general insurers the ability to make an individual case is positive.	Noted.
183.	CEA ECO-SLV- 09-632	3.34.	See comment to 3.11.	See comment 111 above.
184.	CRO Forum	3.34.	We believe that the emphasis should be on a list of MATERIAL factors. An open list is preferred as an alternative to NO LIST.	Noted.
185.			Confidential comments deleted.	

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

186.	CEA ECO-SLV- 09-632	3.35.	Ceios should make the list of factors at Level 2 more complete. It is important to have an as complete list as possible in order for there to be harmonisation. We would prefer not to move the list to Level 3.	Noted.
187.	CRO Forum	3.35.	We do not consider the list of factors sufficient to ensure harmonisation of supervisory decision making on these issues.	Noted.
188.	FFSA	3.35.	The Level 2 guidance shall be more precise on the list of factors in order to complete the "open list" and thus to harmonize the requirement and the common understanding for determining whether an extension should be granted.	Noted.
189.	GDV (German Insurance Association)	3.35.	CEIOPS should make the list of factors at Level 2 more complete. It is important to have an as complete list as possible in order for there to be harmonisation. We would prefer not to move the list to Level 3.	Noted.
190.	CRO Forum	3.36.	We agree that the appropriate timeframe for an extension cannot be decided by a formula. However, it should be possible for supervisory authorities to demonstrate how they have decided on a specific ruling for the duration of an extension. Broadly speaking, this approach should be consistent across the supervisory authorities of different member states. If requested to do so, supervisory authorities should be able to demonstrate that their methodologies are consistent. We would welcome Level 3 guidance on the process for setting the extension period with the aim of achieving harmonisation.	There are no methodologies. The decisions are analysed case-by-case and based on consideration of the list of relevant factors that will be set in the Level 2 text. Supervisors will however follow due process. Through level 3 guidance CEIOPS will aim for achieving harmonisation across supervisors.
191.	FFSA	3.36.	The Level 2 guidance shall be more precise on the list of factors in order to complete the "open list" and thus to harmonize the requirement and the common understanding for determining whether an extension should be granted.	Noted.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

192.	CRO Forum	3.37.	One facility that should be able to enhance the degree of supervisory harmonisation is the construction and population of a central shared supervisory database.	Noted.
193.	ACA	3.38.	<p>a) We disagree with this article. We think that, when factors other than factors arising from the exceptional fall in financial markets or consequences of this fall, have played a significant role in the non-compliance, there could be nevertheless, reason to extend the recovery period.</p> <p>For example, if a very profitable company faces non-compliance with the SCR because of an unexpected new kind of huge claim, or a reinsurer collapse.</p> <p>If expected benefits from the next 10 month would restore SCR compliance it would be counterproductive to refuse an extension of the recovery period.</p> <p>We think that the profitability of the company must be an internal factor to take into account.</p>	<p>These suggestions are not in line with the Level 1 text which sets out the exceptional fall in financial markets as a precondition for an extension of the recovery period.</p> <p>As the SCR has to be met at any time just waiting for the situation to resolve on its own with no action taken by the undertaking is not an option.</p> <p>Profitability considerations are no excuse for non-compliance with legal requirements.</p>
194.	AMICE	3.38.	<p>In the list of external factors, we miss a reference to the availability of a functioning market (i.e. a market that is liquid and has a functioning price formation mechanism).</p> <p>With regard to the "ability ... to provide extra capital at a reasonable price", we would like to emphasise already here that both, the "objective availability" of capital (addressed in external factor (b)) and the "subjective availability" (addressed indirectly in internal factor (f)) are crucially important for insurers, particularly for those (e.g. mutuals) whose capital raising facilities are restricted.</p> <p>On the internal factors, we would like to comment as follows;</p>	<p>The fact that there is an exceptional fall in financial markets implies that the functioning of the market is impaired.</p> <p>Noted.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>(b) We agree that the supervisor has to regard it more alarming or "serious" when the level of own funds fall towards closer to the MCR threshold and that in such a case there is a higher need for the undertaking to improve its solvency position. Supervisors should however (taking into account the other internal factors) not be obliged to require more "urgent" (= merely faster) recovery.</p> <p>(c) We agree that the tier system may restrict an undertaking's ability to recover quickly. We miss however an indication whether CEIOPS members would see this primarily as an argument for a rather longer or a rather shorter recovery period.</p> <p>(d) CEIOPS writes (and we agree) that an undertaking might be exposed to particular risks via its assets. As mentioned earlier, a lack of availability of a liquid/functioning market in specific assets would be an internal factor considerably influencing the ability of an undertaking to recover from a serious fall in its SCR.</p> <p>(f) We appreciate that CEIOPS proposes to take into account the specific situation of an undertaking when assessing whether possible solutions are effectively available to that undertaking.</p> <p>Mutual and cooperative insurers have "taken the decision in the past" to follow the mutual/cooperative business and company models which restricts their possibilities to quickly raise capital on the capital markets. It is appropriate that a particularity like this one is taken into account.</p>	<p>The closer the level of own funds is to the MCR the more weight will this factor gain, because in case of a breach of the MCR the extension of the recovery period does no longer apply. Moreover, the supervisor shall withdraw the authorisation of the undertaking in case Article 144, second subparagraph applies.</p> <p>A longer period. This will be reflected in the paper in order to make it clearer.</p> <p>See above.</p> <p>Noted.</p> <p>Supporting individual undertakings is not the point here. This is about procyclicality and differences in the procyclical</p>
--	--	--	--	--

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>(h) CEIOPS' argumentation on this internal factor and in footnote 5 is not convincing. The text of the footnote cannot dissipate the impression that a case of moral hazard could be created.</p> <p>Moreover, we suggest revisiting the phrasing of the second part of subpar h:</p> <p>CEIOPS seems to propose that supervisors DO NOT have to grant an extensions if neither policyholders interest nor insurance market stability would be at stake (hence: only in the case of a danger to the overall financial system).</p> <p>How does this align with the claim in the first part of the same sentence that the rationale of Art 136(3a) does include avoiding negative effects for the insurance market</p>	<p>effects undertakings have justify a different treatment.</p> <p>By measure of size larger undertakings will have a potentially bigger impact on procyclicality and thus will be more eligible of getting an extension of the recovery period. However, a smaller specialised reinsurance company could have an impact on procyclicality as well.</p> <p>That is exactly what CEIOPS means to propose. However, if insurance market stability is not at stake there is also no danger to the overall financial system either.</p> <p>The failure of individual insurance undertakings would not necessarily be considered as a negative effect for the insurance market.</p>
195.	Association of British Insurers	3.38.	<p>We have a number of comments on the external and internal factors that supervisors should take into account:</p> <p>External factors</p> <p>It will be difficult to apply factors b), c) and d) in practice. None of the three factors are defined properly.</p> <p>We would suggest to include the "liquidity of the market" and the</p>	<p>CEIOPS does not intend to give "definitions" here. The explanations are just to give an idea how the different factors could play out. Details will need to be specified at Level 3 at a later stage.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

		<p>“availability of an active market” as additional external factors to be considered. These two factors will have a serious impact on the valuation of assets and the ability to sell any assets.</p> <p>Anticipated policyholder behaviour should also be considered as an external factor, as there may be different factors internal vs. external which would affect policyholders.</p> <p>Internal factors</p> <p>(c) We agree that the own funds tier system may in itself restrict the ability to reach a quick solution. This should definitely be taken into account in severely stressed market situations.</p> <p>(d) The paper should be more precise about the impact of the composition of the undertaking’s assets on the extension or reduction of the recovery period. Contrary to other factors, it is not clearly stated how the composition of assets could lead supervisors to refuse or to grant an extension.</p> <p>(f) (Solutions effectively available) If a solution can restore policyholder security, it should be taken into account even if it is not consistent with a level playing field.</p> <p>(h) In footnote 5 it is noted that “this does not mean that systemic undertakings should feel free to take more risk in normal times on the assumption that they are too big to fail”. However, taking into consideration the size and significance of the undertaking relative to the market creates an extra benefit for large undertakings.</p>	<p>See also comment 194 above.</p> <p>Noted. The proposal has been taken into account in the text.</p> <p>Noted.</p> <p>Both ways depending on what the situation is.</p> <p>CEIOPS is aware that this factor has to be applied with care. That a possible remedy “hurts” is not generally a reason not to demand that it be taken. But cost/benefit considerations cannot be totally disregarded.</p> <p>Granted.</p>
--	--	---	--

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>In case of a financial crisis, it might instead be preferable to take into account the size and significance of all distressed undertakings together when considering the extension period. This might help to prevent unfair treatment of large undertakings.</p> <p>(j) New point: We believe the (detrimental) impact on policyholders should also form part of the internal factors to be considered by supervisors to decide whether to grant an extension.</p>	<p>Since avoiding procyclicality is the point here (not helping individual undertakings) treating undertakings differently according to their impact on procyclicality is not unfair but actually required.</p> <p>Noted. The proposal has been taken into account in the text.</p>
196.			Confidential comments deleted.	
197.	CEA ECO-SLV- 09-632	3.38.	<p>We have a number of comments on the external and internal factors that supervisors should take into account.</p> <p>Internal factors</p> <p>(b) In case the level of own funds has decreased below the MCR, the directive gives much more stringent measures to be taken. In this case, the directive does not recognize the “event of an exceptional fall in financial markets”. In exceptional financial conditions, the measures needed to reach the Minimum Capital Requirement can have a pro-cyclical effect. It should be made specific in the CP that an extended period is not considered when</p>	<p>The Level 1 text is perfectly clear in this regard. The extension of the recovery period is only possible in cases of non-compliance with the SCR, not in cases of non-compliance with the</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>an undertaking has a level below the MCR. Or alternatively, to specify what the supervisory authority intends to do in the case the Solvency level falls below the MCR during a financial crisis.</p> <p>(c) We agree that the tier system may in itself restrict the ability to have a quick solution. This should definitely be taken into account in severely stressed market situations.</p> <p>(d) The paper should be more precise about the impact of the composition of the undertaking's assets on the extension or reduction of the recovery period. Contrary to other factors, it is not clearly stated how the composition of assets could lead supervisors to refuse or to grant an extension.</p> <p>(f) (solutions effectively available): We agree with CEIOPS that supervisors should consider solutions effectively available to an undertaking when considering granting an extension in cases where the interests of policyholders are materially affected, even if this affects level playing field.</p> <p>(g) From a business/economic point of view, we wonder if the fact that the parent can cover the subsidiary's need is really a good reason to reduce the recovery period. Indeed, we could also think that because the parent is strong enough, there is not any</p>	<p>MCR.</p> <p>Noted.</p> <p>See comment 195 above.</p> <p>See comment 195 above.</p> <p>Generally if there are remedies available to recompile with the SCR there is no need to extend the recovery period to allow the undertaking to seek other, more time consuming solutions it prefers to take. The exception would be if the benefit is materially disproportionate to the cost engendered.</p> <p>See comment 195 above.</p>
--	--	--	---	--

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>emergency for the subsidiary to recover its SCR and then let it more time do it without asking capital transfer from the mother. In addition, the group support regime was not included in the Solvency II directive. Then, it does not seem logical to pay attention to potential availability of support from other group entities as a factor to decide on an extended recovery period.</p> <p>(h) In footnote 5 it is noted that "this does not mean that systemic undertakings should feel free to take more risk in normal times on the assumption that they are too big to fail". However, taking into consideration the size and significance of the undertaking relative to the market creates an extra benefit for large undertakings.</p> <p>In case of a financial crisis, it might instead be preferable to take into account the size and significance of all distressed undertakings together when considering the extension period. This might help to prevent unfair treatment of large undertakings.</p> <p>(j) new point: Ceiops should add potential detriment to policyholders as an internal factor.</p> <p>External factors</p> <p>It will be difficult to apply factors b), c) and d) in practice. None of the three factors are defined properly.</p>	<p>Granted.</p> <p>See comment 195 above.</p> <p>Noted. The proposal has been taken into account in the text.</p> <p>The factors need to be properly defined on Level 3. As yet CEIOPS has only provided some explanation to help understand the rationale behind the factors put forward.</p>
--	--	--	---	--

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>We would suggest to include the “liquidity of the market” and the “availability of an active market” as additional external factors to be considered. These two factors will have a serious impact on the valuation of assets and the ability to sell any assets.</p> <p>Anticipated policyholder behaviour should also be considered as an external factor.</p>	<p>See comment 196 above.</p> <p>Noted. The proposal has been taken into account in the text.</p>
198.	CFO Forum	3.38.	<p>Paragraph 3.38(i) suggests that the supervisor can force an undertaking to close to new business. The CFO Forum considers this measure to be inappropriate.</p>	<p>The paragraph does not suggest this. But of course this is a measure that may be taken as necessary if an undertaking has failed to remedy a SCR breach within the recovery period that applied.</p>
199.	CRO Forum	3.38.	<p>Please see the response to 3.43</p>	<p>See comment 229 below.</p>
200.	Deloitte European Union member firms of Deloitte T	3.38.	<p>Overall, we would welcome clarity around how CEIOPS is planning to consider the internal and external factors in their assessment of the extension period granted. Specific comments are:</p> <p>- (h) In footnote 5 it is noted that “this does not mean that systemic undertakings should feel free to take more risk in normal times on the assumption that they are too big to fail.” However, taking into consideration the size and significance of the undertaking relative to the market creates an extra benefit for large undertakings.</p> <p>In case of a financial crisis, it might instead be preferable to take into account the size and significance of all distressed undertakings together when considering the extension period. This might help to prevent unfair treatment of large undertakings.</p>	<p>Noted.</p> <p>See comment 195 above.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>- In case of groups, the “individual situation of an undertaking” should be understood as “individual situation of a group”. This is to avoid the risk of contagion of a failing undertakings to other parts of the group. The group supervisor should therefore be involved in the decision on an extension period for a subsidiary.</p>	<p>Actually applying the article <i>mutatis mutandis</i> means to consider the situation of the group in addition to and not instead of the individual situation of the undertaking concerned. CEIOPS changed the text to include this aspect explicitly.</p>
201.	DIMA (Dublin International Insurance & Management	3.38.	<p>3.38 f) The final sentence in this section appears to give discretion to supervisors to extend the recovery period beyond 30 months (6 + 3 + 21 months as recommended).</p> <p>A single undertaking may have a very small share of the overall EU market but may be systemic to one specific jurisdiction or may be dominant for a specific class of insurance business. These scenarios do not seem to have been considered.</p> <p>3.38 h) This may work against smaller companies such as captives, mutuals, etc. Contrary to the footnote it is our opinion that it will provide leniency for systemic entities which are “too big to fail”.</p> <p>Other non-regulatory measures should be considered which could be taken to support undertaking(s), having the benefit of not distorting the playing field.</p> <p>It appears that captive undertakings are unlikely to receive any extension since they are unlikely to impact the insurance market overall. It would appear, to the contrary, that captives, due to their typically smaller size, could find themselves with a foreshortened recovery period.</p>	<p>This is not the intended meaning at all as this would be incompatible with the Level 1 text. “Longer” means “nearer to the maximum possible timeframe” as opposed to the “no extension” end.</p> <p>The explanations are intended to provide some rationale for the factors suggested not to cover all possible scenarios.</p> <p>In a crisis situation systemic undertakings might be more eligible to be granted an extension of the recovery period. The footnote refers to normal times. Undertakings will not get away with not having limits for risk taking and keeping within these limits or not holding a commensurate amount of capital.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				Supervisory decisions on the extension of the recovery period have to take into account all relevant factors not just one.
202.	FFSA	3.38.	<p>Internal Factors:</p> <p>(3.38d)The paper should be more precise about the impact of the composition of the undertaking’s assets on the extension or reduction of the recovery period. Contrary to other factors, it is not clearly stated how the composition of asset could lead supervisors to refuse or to grant an extension.</p> <p>(3.38g) From a business/economic point of view, we wonder if the fact that the mother can cover the subsidiary’s need is really a good reason to reduce the recovery period. Indeed, we could also think that because other mother is strong enough, there is not any emergency for the subsidiary to recover its SCR and then let it more time do it without asking capital transfer from the mother.</p> <p>This point lets think to the “group support” principle which was not finally integrated in the Level1. So we ask CEIOPS to consider and to conclude on it: is this principle acknowledged in SII and taken into account in the SCR requirement or not?</p>	<p>See comment 195 above.</p> <p>See comment 197 above.</p> <p>It is not.</p>
203.			Confidential comments deleted.	
204.	Just Retirement Limited	3.38.	Internal factors (h): The failure of smaller institutions (e.g. Northern Rock) can have far-reaching consequences either through inter-connectedness or because they trigger a loss of confidence which increases rapidly. We would therefore caution against presuming that smaller insurers involve little systemic risk.	CEIOPS is aware that “larger” not necessarily equals systemic risk and that “smaller” does not necessarily mean no systemic risk is involved
205.	Munich Re	3.38.	Who will decide if a “financial market” is able to provide extra capital “at a reasonable price”?	These aspects will be assessed by the supervisor based on the

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>Who will assess the “availability in financial markets of financial mitigation instruments”? Reference is made to 3.7.</p> <p>It is to be questioned if the potential availability of support from other group entities is a factor which should be taken into account.</p>	<p>evidence provided by the undertaking.</p> <p>To assess by the supervisor on evidence provided by the undertaking.</p> <p>See comment 197 above.</p>
206.			Confidential comments deleted.	
207.	XL Capital Ltd	3.38.	See comments at 3.7 above	See comment 96 above.
208.	Association of British Insurers	3.39.	We believe firms should be allowed to take into account when normal conditions are expected to resume. We agree that this should not be used as an excuse for ‘no action’ when the SCR is in breach.	Noted. See also comment 208 below.
209.	CEA ECO-SLV-09-632	3.39.	<p>We strongly disagree with the first factor.</p> <p>We consider that in establishing the recovery plan (and the necessary extension period), the undertaking should have the possibility to take into account in its projections potential recoveries of the market.</p>	The undertaking is not prevented from taking into account expected recoveries of the market in its recovery plan. However, whether the supervisor approves the recovery plan will depend on whether it considers the projections and the potential recoveries as realistic and on whether the undertaking has a realistic contingency plan should the recovery not take place as projected.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

210.	CRO Forum	3.39.	<p>The wider issue is for supervisors to have regard for the stability of the financial systems in non-EU regions as well as EU regions, given the multi-national nature of many insurance groups that are regulated within the EU. Actions that cause pro-cyclicality in the US for instance, may result in correlated pro-cyclical consequences within EU economies.</p> <p>We would also like to emphasis that sufficiently long recovery periods may not completely neutralise negative economic effects as these may be inevitable depending on the extent of the financial downturn.</p>	Noted.
211.	FFSA	3.39.	<p>We strongly disagree with the first factor not to be taken into account in the extension period determination. CP states that the point in time when normal conditions are expected to be re-established should not be taken into account.</p> <p>We consider that in establishing the recovery plan (and the necessary extension period), the undertaking should have the possibility to take into account in its projections potential recoveries of the market.</p>	<p>This only means that the extension is not supposed to be as long as the exceptional fall is expected to be.</p> <p>See also comment 209.above.</p>
212.	Just Retirement Limited	3.39.	<p>To avoid pro-cyclical effects, we consider that insurers should be allowed to have regard to the length of time after which normal conditions are expected to return, although we accept that this needs to be balanced against the risk of inaction during the recovery period.</p>	<p>As the Level 1 text requires that the extension be withdrawn if the undertaking concerned cannot show significant progress in its quarterly progress reports inaction is not an option available to undertakings.</p>
213.			Confidential comments deleted.	
214.	Association of British Insurers	3.40.	<p>We believe that careful consideration should be given to ensure a level playing field across market players through supervisory convergence and regulatory disclosure.</p>	<p>CEIOPS agrees that a level playing field is very important and will seek further convergence on Level 3. With regard to regulatory</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				disclosure CEIOPS intends that aggregated data on the use of the extension period be disclosed by supervisors. However, since national insurance markets can be different and differently affected the reader of the disclosure should be aware that diverging results do not necessarily equal deviating practices.
215.			Confidential comments deleted.	
216.	CEA ECO-SLV- 09-632	3.40.	<p>We are concerned about the lack of harmonisation.</p> <p>“Ceioms will also have to look into some sort of coordination process of the extension periods”. Will the coordination process be specified in level 3 guidance? A clear process helps to have a timely and efficient reaction during the financial turmoil.</p> <p>Although it is clear that differences in the extension periods and the factors to be considered are undesirable and harmonisation between Member States is strived for, a lack of harmonisation can still occur. It is unclear what the consequences of such a situation are. Can extension periods be adjusted as a result of the “coordination process”, even after such period has already been communicated to the undertaking or when recovery plans have been approved?</p>	CEIOPS intends to discuss the details for harmonising supervisory practices with regard to the extension of the recovery period on Level 3. The coordination process referred to in paragraph 3.40 is not about individual cases. So decisions already taken are not affected.
217.	CRO Forum	3.40.	<p>We agree. Please see the responses to 3.36, 3.37 and 3.39.</p> <p>In particular, one facility that should be able to enhance the degree</p>	See comments 190, 192 and 210 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>of supervisory harmonisation is the construction and population of a central shared supervisory database.</p> <p>Also, we would like CEIOPS to note that they should seek co-operation between supervisors on a global basis, to avoid global pro-cyclical effects.</p> <p>We recommend that details of the coordination process of the extension periods provided across different Member States is provided as part of the Level 2 implementing measures.</p>	<p>The scope of the Level 2 Implementing Measures as set out by the Level 1 text does not allow for that.</p>
218.	Deloitte European Union member firms of Deloitte T	3.40.	<p>“CEIOPS will also have to look into some sort of coordination process of the extension periods”. Will the communication process be specified in level 3 guidance? A clear process helps in a timely and efficient reaction during the financial turmoil.</p> <p>Although it is clear that differences in the extension periods and the factors to be considered are undesirable and harmonisation between Member States is strived for, a lack of harmonisation can still occur. It is unclear what the consequences in such a situation are. Can extension periods be adjusted as a result of the “coordination process”, even after such period has already been communicated to the undertaking or when recovery plans have been approved?</p> <p>See also comment on 3.6</p>	<p>See comment 216 above.</p>
219.	XL Capital Ltd	3.40.	<p>See 3.7 above</p>	<p>See comment 96 above.</p>
220.	CEA ECO-SLV-09-632	3.41.	<p>What precisely is required from an undertaking when it requests an extension of the recovery period? It would also be helpful if the process itself was contained in the advice in 3.43 which now only covers the factors.</p>	<p>See comments 7 and 84 above.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

221.	CRO Forum	3.41.	<p>We agree but add the following extra recommendations for consideration:</p> <ol style="list-style-type: none"> 1. Please could CEIOPS provide details of the process that will be followed? We believe that a formalised process needs to be defined. 2. The phraseology, "short-term supervisory decision" is ambiguous and open to misinterpretation. 3. Please could CEIOPS provide high-level details of the sections that would be expected to be included within a "realistic recovery plan"? <p>We would appreciate Level 3 guidance on these issues</p>	All these questions are outside the scope of the Level 2 advice but are expected to be covered by Level 3 guidance eventually.
222.	FFSA	3.41.	<p>The CEIOPS describes the process in which the decision to extend the time available for re-establishing compliance with the SCR is given by the supervisors after an explicit request by the undertaking.</p> <p>There is no precision about this request and the information to provide.</p> <p>In the §3.41, it is stated that the "undertaking has to submit a realistic recovery plan for supervisory approval" and in the §3.30 it is specified that the "undertaking would have to show that and how the "exceptional fall" seriously affected its ability to re-establish coverage of the SCR"</p> <p>But the paper does not indicate that the undertaking has to provide with the factors needed by the supervisor to take into account the individual situation in order to permit an extension of the recovery period.</p> <p>What is precisely required from the undertaking when it requests an extension of the recovery period?</p>	See comments 7 and 84 above.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

223.	Munich Re	3.41.	In order to ensure a due process the undertaking should not only be given the opportunity to give its view before any decision is taken, but it should also be able to make appeal against a negative decision.	As part of due process the undertaking will be given the opportunity to provide its view on the extension of a recovery period. The opportunity to appeal against a decision by the supervisor will be governed by Member State law.
224.	ROAM	3.41.	See 3.26	See comment 172 above.
225.	AMICE	3.43.	See 3.38	See comment 194 above.
226.	Association of British Insurers	3.43.	<p>We agree this is a helpful list of indicative factors to be taken into consideration. However, we would suggest a change of wording and replace "shall include" by "could include" to ensure additional factors could also be added to the proposed list. Please see our comments under 3.38</p> <p>In addition, supervisors should also consider whether more than one undertaking is affected and if so if this would have a negative impact on the market.</p> <p>It is important that the process in arriving at a decision on an extended period also takes into account representations by the insurer and there should be open dialogue during the period of assessment and decision-making. It would be helpful to have further clarification on what is expected from both supervisors and undertakings and what are the timelines for the recovery plan.</p>	<p>"Shall include" ensures that other factors can be taken into account. "Could include" would mean that the factors which are in the list do not necessarily have to be considered.</p> <p>That under the circumstances more than one undertaking will be affected is in a way the underlying assumption on which the article is based.</p> <p>The initiative for proposing the individual recovery period lies with the undertaking which will of course have to state the reasons why the extension requested is justified. However, before the actual recovery plan is submitted the supervisor should give the</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				undertaking an indication as to what recovery time could be acceptable. The potential extension does not change the timeline: A realistic recovery plan has to be submitted within two months of the observance of the breach of the SCR.
227.	CEA ECO-SLV- 09-632	3.43.	<p>We understand that the recovery plan is outside the scope of this CP. However it would be important to have further details on what is expected from both supervisors and undertakings.</p> <p>Otherwise it is difficult to see how a due process can be followed for the decision on extension of recovery period. It would also be helpful to have timelines for both supervisors and undertakings.</p> <p>It is also unclear whether supervisors' considerations on the external and internal factors will be made public in light of article 53(1).</p> <p>See our comments to 3.38 for the comments on factors.</p>	<p>This can only be provided at a later stage through Level 3 guidance.</p> <p>Noted for future consideration. The first question would be whether the granting of an extension is information that requires disclosure.</p> <p>See comment 227 above.</p>
228.	CFO Forum	3.43.	<p>In the event of a solvency breach, a suitable approach should be determined based on a one to one meeting between undertaking and supervisor.</p> <p>It would be preferable for undertakings to have one to one meetings with the local supervisor to determine an approach in the event of a solvency breach rather than waiting for the local supervisor to decide on whether an 'exceptional circumstance' had occurred.</p>	<p>CEIOPS does not suggest that such meetings cannot take place.</p> <p>The supervisor cannot agree to an approach without a timeline which in case of an extension according to Article 138 being sought requires a decision on whether the preconditions for applying the</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>Also, the consultation paper is proposing to state when the recovery period is withdrawn. As stated above, recovery plans should be a matter for discussion between the undertaking and the supervisor and no explicit public disclosure should be required.</p> <p>The CFO Forum believes that the internal and external factors proposed are appropriate.</p>	<p>article are fulfilled.</p> <p>CEIOPS does not propose that the recovery plan itself should be disclosed but considers that the Level 1 text requires the disclosure of the withdrawal if the extension of the recovery period is withdrawn as this withdrawal would have to be deemed a major development affecting significantly the relevance of the information disclosed.</p> <p>Noted.</p>
229.	CRO Forum	3.43.	<p>External Factors:</p> <p>Whilst we agree that many firms should purchase financial mitigation instruments or pursue capital raising activities or reinsurance following significant downturns in financial markets, we feel it should not be assumed that such action will be appropriate for ALL firms.</p> <p>Where such options are considered:</p> <ol style="list-style-type: none"> 1. It should not be a given that investment banks are the natural source for financial mitigation. In the extreme, the financial crisis may have actually been brought on the actions of said banks. If firms are then required to turn to these banks in stressed conditions, then it is difficult to see how the banks can be held accountable for negligent practices. 	<p>The possibility that the solutions set out may not be feasible in practice is already taken into account in the external factors hence they are worded the way they are.</p> <p>If the stressed situation makes the undertaking too high a risk it will not be able to raise capital. However not every stressed situation makes an undertaking an unacceptably high risk.</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>2. The use of reinsurance is a consideration, but this is inopportune if reinsurers themselves are facing financial strain.</p> <p>Internal Factors:</p> <p>Paragraph a) Agreed, although please note that catastrophic non-financial events may have market related impacts.</p> <p>Paragraph c) If the only recourse to restoring compliance with the SCR is tier 3 capital raising, we believe that it would be appropriate for supervisory authorities to grant a temporary waiver to firms to allow short-term deviations from strict tier 1/2/3 limits. We recommend that the waiver should only apply for the length of time that access to tier 1 and 2 instruments is constrained.</p> <p>Paragraph d) The risks associated with asset disposals is exacerbated when market participants are all following similar strategies as would likely be the case for systemic market shocks. So this point has an EXTERNAL factor consideration as well as an INTERNAL factor consideration.</p> <p>Paragraph f) We recommend that LIQUIDITY is considered. De-risking or capital raising activities are only viable if affordable and do not put unnecessary strain on a firm meeting other short-term commitments. If a firm doesn't have a readily available source of funds to finance short-term commitments, it will need to address this alongside any capital preservation or enhancement activities.</p>	<p>This is what is meant by "reasonable price".</p> <p>Factor a) is about the reasons for the individual undertaking to apply for an extension of the recovery period in case of an exceptional fall in financial markets, not about the factors that could trigger the decisions that there is an exceptional fall of the financial markets.</p> <p>The Level 1 text does not allow for supervisors granting such waivers.</p> <p>This is covered by external factor a).</p> <p>Obviously if a remedial measure would result in other requirements not being complied with it is not an appropriate solution. Comparable to "other causes" (see explanation for internal factor a) additional weaknesses are not a good</p>
--	--	--	--	--

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>Paragraph g) We do not agree. Availability of group support has been explicitly excluded from the Solvency II framework. Given this, we feel it is inconsistent for considerations of group support to be included here. The availability of group support, if subsequently included as an internal factor within Level 2 implementing measures or Level 3 guidance, is of course subject to such capital support being fungible and transferrable under stressed conditions.</p> <p>Paragraph h) We do not believe this is a sensible factor. The paragraph seems to imply that small companies will find it hard to obtain long recovery period extensions when in fact they might experience more trouble trying to recover. It also suggests that larger firms could generally be allowed greater recovery period dispensations over that allowed smaller firms and so runs counter to principles of consistency. The overriding principle should be that all policyholders are afforded appropriate and consistent levels of protection regardless of the size of a firm. If size is considered an important determinant of recovery period, then emphasis should ideally be on size / complexity / profile of risks rather than on size of policyholder pools.</p> <p>Also related to paragraph h), we recommend that extension periods granted to solo entities are shorter than an extension period granted to the group to which the solo entities belong.</p> <p>Paragraph i) We do not believe it is appropriate for ALL firm's to discontinue writing new business following an exceptional market downturn or material SCR problems. Such recourse may have additional cost or reputational repercussions in the medium and long-term that may not be in the best interests of the firm and may threaten supervisory objectives of market stability and protection to policyholders. A decision on whether new business should be</p>	<p>reason to extend the recovery period.</p> <p>See comment 197 above.</p> <p>See comments 194 and 197 above.</p> <p>This factor again has to do with market stability, not with proportionality.</p> <p>An undertaking cannot expect to be given an extension with the aim to provide sufficient time to cover additional risks.</p>
--	--	--	---	---

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			restricted should ideally be made by the firm as part of their recovery plan.	
230.	Deloitte European Union member firms of Deloitte T	3.43.	<p>We agree with the proposed list of factors to take into account. The factors not to take into account should also be included in the advice. See also 3.38 comment</p> <p>However, it is unclear in the advice to what extent the supervisory authority needs to communicate its considerations in determining whether and to what length extension will be provided. It is also unclear whether such considerations will be made public in light of article 53(1).</p>	<p>The way the Level 1 text is phrased these factors are not within the scope of the Level 2 Implementing Measures.</p> <p>The extent of the explanation depends on whether the decision is positive or not. Insofar as the supervisor refuses to grant an extension an undertaking asked for or grants a shorter time than requested the supervisor has to provide more explanation of its reasons. Where the supervisor follows the argument of the undertaking a very brief explanation is sufficient.</p> <p>See comment 2 above.</p>
231.	DIMA (Dublin International Insurance & Management	3.43.	The inclusion of external as well as company specific factors in the decision-making process makes a lot of sense.	Noted.
232.	FFSA	3.43.	2. No comment from FFSA on 3.43.	
233.	GDV (German Insurance Association)	3.43.	<p>We have a number of comments on the external and internal factors that supervisors should take into account.</p> <p>Internal factors</p>	

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>We strongly would recommend sticking to the level 1 text whereas any extension should be based on a cause-effect-chain where the SCR breach is caused by an "exceptional fall in financial markets". This means that undertakings where the SCR breach is caused by other reason do not fall under the level 1 text and cannot apply for an extension. Supervisors should make sure that these cause-effect-chain (cause=financial market, effect=breach of SCR) applies adequately.</p> <p>(b) In case the level of own funds has decreased below the MCR, the directive gives much more stringent measures to be taken. In this case, the directive does not recognize the "event of an exceptional fall in financial markets". In exceptional financial conditions, the measures needed to reach the Minimum Capital Requirement can have a pro-cyclical effect. It should be made specific in the CP that an extended period is not considered when an undertaking has a level below the MCR. Or alternatively, to specify what the supervisory authority intends to do in the case the Solvency level falls below the MCR during a financial crisis.</p> <p>(c) We agree that the tier system may in itself restrict the ability to a quick solution. This should definitely be taken into account in severely stressed market situations.</p> <p>(d) The paper should be more precise about the impact of the composition of the undertaking's assets on the extension or reduction of the recovery period. Contrary to other factors, it is not clearly stated how the composition of assets could lead supervisors to refuse or to grant an extension.</p> <p>(f) (solutions effectively available): If a solution can restore policyholder security, it should be taken into account even if it is</p>	<p>Actually the Level 1 text does not clearly require that the breach is an effect of the exceptional fall.</p> <p>See comment 197 above.</p> <p>Noted.</p> <p>See comment 197 above.</p>
--	--	--	--	---

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>not consistent with a level playing field.</p> <p>(g) From a business/economic point of view, we wonder if the fact that the parent can cover the subsidiary's need is really a good reason to reduce the recovery period. Indeed, we could also think that because the parent is strong enough, there is not any emergency for the subsidiary to recover its SCR and then let it more time do it without asking capital transfer from the mother. In addition, the group support regime was not included in the Solvency II directive. Then, it does not seem logical to pay attention to potential availability of support from other group entities as a factor to decide on an extended recovery period.</p> <p>(h) In footnote 5 it is noted that "this does not mean that systemic undertakings should feel free to take more risk in normal times on the assumption that they are too big to fail". However, taking into consideration the size and significance of the undertaking relative to the market creates an extra benefit for large undertakings.</p> <p>In case of a financial crisis, it might instead be preferable to take into account the size and significance of all distressed undertakings together when considering the extension period. This might help to prevent unfair treatment of large undertakings.</p> <p>(j) new point: CEIOPS should add potential detriment to policyholders as an internal factor.</p> <p>External factors</p> <p>It will be difficult to apply factors b), c) and d) in practice. None of the three factors are defined properly.</p>	
--	--	--	---	--

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>We would suggest to include the “liquidity of the market” and the “availability of an active market” as additional external factors to be considered. These two factors will have a serious impact on the valuation of assets and the ability to sell any assets.</p> <p>Anticipated policyholder behaviour should also be considered as an external factor.</p>	
234.	Groupe Consultatif	3.43.	<p>When looking at the criteria that trigger an extension concern should be given to maintain full harmonisation, i.e. things should happen according to the same logic across jurisdictions. This should not mean too rigid rules but we feel that, at a minimum, level 3 guidance should at least include examples of factors that could or could not trigger an extension. These should also be tied to reality by showing in what actual situations in the history an extension would have been triggered (in this way one could also test whether there would have been enough time for the supervisor to extend the recovery period).</p> <p>As regards external factors the difficulty lies in the fact that the power would be exercised in different jurisdictions based on different characteristics of the market. Examples mentioned above should clarify how with these principles a harmonious approach is possible.</p> <p>As regards internal factors we feel that the problems of maintaining full harmonisation would be still more difficult. The power to extend the recovery period should not lead to moral hazard or the “too big to fail” phenomenon. We feel that care should be taken especially</p>	<p>The factors to be taken into account need to be included on Level 2 according to the Level 1 text. Whether there is room for examples on factors that could or could not trigger an extension will depend on whether level 2 lists the relevant factors comprehensively.</p> <p>The factors apply when the supervisor has to decide whether and what length of extension to give. This is very much a case-by-case assessment. It is perfectly okay if different market characteristics produce different results.</p> <p>The power to extend the recovery period is limited by the maximum possible timeframe, so the supervisor cannot help a too large</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>when applying f) or h). This being said it is important to understand that problems of larger players could also create procyclicality to a market.</p> <p>As regards e) we feel that this aspect should be taken into account but also here concrete examples would help to ensure this works as expected.</p>	<p>player no matter what. However, CEIOPS is aware that there is a greater danger of procyclicality from larger players which is why they are generally more likely to be granted a longer extension.</p> <p>The explanations are just to give a general idea of the factors. CEIOPS does not consider them adequate guidance for supervisors and will discuss the issue at a later stage on Level 3.</p>
235.	Just Retirement Limited	3.43.	See comment under 3.38.	See comment 204 above.
236.	Legal & General Group	3.43.	<p>It may have been easier to have different timeframes for external events and internal events – the former being longer than the latter. However, as firms do not have the right to an extension I assume that this can be done by the regulator in its application.</p> <p>The lists are fine as they say shall include rather than “only” in such circumstances.</p>	<p>The final decision on the timeframe of the extension is not based on any one factor but on the consideration of all factors. Neither is the applicability of a factor connected with a certain timeframe.</p> <p>Noted.</p>
237.	Lloyd’s	3.43.	The proposed factors to be taken into account in considering granting an extension for an undertaking are sensible.	Noted.
238.	ROAM	3.43.	1. No comments from ROAM on 3.43.	
239.			Confidential comments deleted.	
240.	Deloitte	3.44.	We would welcome clarity on any restrictions the supervisory	If any restrictions are necessary

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	European Union member firms of Deloitte T		authority could place on an undertaking during this period to compliance e.g. restrictions on capital, new business written, acquisitions	the undertaking would have to place them on itself (as part of the plan) in order to get approval for its recovery plan. In this case there would not be additional restrictions from the supervisor. However, if the undertaking fails to submit a realistic recovery plan the supervisory could take whatever actions are necessary including withdrawal of the license if the undertaking is deemed to be non-saveable.
241.	Groupe Consultatif	3.44.	Also here we feel that at least in level 3 guidance there should be some advice on what progress is expected and what needs to be reported.	The undertaking is expected to make progress as set out in its recovery plan. Refer to comment 7 for how this could be assessed. CEIOPS will develop Level 3 guidance on this assessment process. What needs to be reported will be determined later as well. It could be what actions the undertaking has taken, what effects these actions have produced and what the solvency situation is at the end of the reporting date. Also the undertaking could have to indicate if it thinks the recovery plan needs readjustments owing to unforeseen changes.
242.	XL Capital	3.44.	The concept of quarterly progress reports on how SCR breaches are	Noted. This is a Level 1 text

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	Ltd		being addressed is reasonable.	requirement.
243.	Association of British Insurers	3.45.	We are concerned with the immediate withdrawal of the recovery plan where the progress report shows that no significant progress has been achieved in re-establishing compliance. The process should not be too mechanical in its measurement of the deficit to SCR but rather should focus upon actions in achieving the plan agreed with the supervisor and should form part of ongoing discussions between the firm and its supervisors.	CEIOPS has amended the text in paragraphs 3.47 and 3.48 in order to clarify that significant progress would be judged against the recovery plan and that significance can be shown through the actions according to the recovery plan, as approved by the supervisor, even if proposed actions do not immediately result in a recovery of the solvency situation.
244.	CEA ECO-SLV-09-632	3.45.	<p>In case a progress report shows that no significant progress has been achieved in re-establishing compliance, the extension has to be withdrawn. However, the cause of the lack of progress is not taken into account. We think immediate withdrawal is a too drastic measure to take. The undertaking should be granted two to three months to improve the situation.</p> <p>However, especially during a financial crisis (which is “unforeseen, sharp and steep”), circumstances can change significantly between progress reports. Therefore, the original recovery plan may no longer be appropriate or realistic. In such a situation, it would be more sensible to consider all relevant factors instead of only considering the progress compared to the original plan.</p>	<p>The withdrawal is mandatory according to the Level 1 text and does not allow for the causes of the failure to achieve significant progress to be taken into account.</p> <p>Undertakings will have to take the potential deterioration in circumstances into consideration in their recovery plan. Where the circumstances change significantly in a way not reasonably foreseeable, the undertaking would be expected to seek approval for an amended recovery plan which would again serve as a benchmark for</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				demonstrating significant progress. In any case, the list of relevant factors included in the advice will always have to be considered.
245.	CRO Forum	3.45.	<p>The paragraph proposes that the extension is withdrawn if no significant progress is achieved in reaching the aim of re-establishing compliance.</p> <p>We would like to highlight that there may be extenuating circumstances that warrant nil or negligible progress – particularly when the markets have just entered exceptional down turn. For example, a firm may not be able to unwind exposures if market conditions are overly dislocated, financial mitigating instruments and reinsurance is not available, or terms for such covers are prohibitive, threatening the liquidity of the firm in the short-term. There are other valid examples. Equally it may be the case that other market participants are simultaneously pursuing similar strategies, which collectively lengthen the response times for the financial markets and reinsurers.</p> <p>There is also a clear and present risk of amplifying pro-cyclicality if firms are forced to make “significant” progress between the reporting dates of every three months. We propose that CEIOPS and the regulators should ensure that a measured approach is taken when assessing progress against the SCR in exceptional markets.</p>	See comment 244 above.
246.	Deloitte European Union member firms of Deloitte T	3.45.	<p>We would welcome clarity on how sufficient progress will be judged and what would be deemed as insufficient progress.</p> <p>CEIOPS states that “in the case where a progress report shows that no significant progress has been achieved in reaching re-establishing compliance, the extension has to be withdrawn.” The</p>	The benchmark for judging the significance of the progress is the recovery plan presented by the undertaking and approved by the supervisor. This implies that the undertaking has to set well

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			cause of the lack of progress is not taken into account. However, especially during a financial crisis (which is “unforeseen, sharp and steep”), circumstances can change significantly between progress reports. Therefore, the original recovery plan may no longer be appropriate or realistic. In such a situation, it would be more sensible to consider all factors relevant instead of only considering the progress compared to an original plan.	defined and realistic milestones every three months within the plan. The extent to which the target has to be met for significant progress – whether fully or to a certain extent - will have to be decided on Level 3. See comment 244 above.
247.	FFSA	3.45.	FFSA recommend postponing the withdrawal in case the progress report shows that no significant progress has been achieved. 2/3 months should be granted to the undertaking to improve its situation.	The withdrawal is mandatory in case of no significant progress being shown according to the Level 1 text.
248.	ROAM	3.45.	As FFSA, ROAM recommends to defer the immediate withdrawal of the extension period if the “progress report” shows no significant progress. In this case, the supervisor should alert the undertaking and allow 3 additional months to improve the situation. Dialogue should help to limit the discretionary power of supervisor.	See comment 247 above. The supervisor does not have discretion. The withdrawal is mandatory.
249.			Confidential comments deleted.	
250.	ACA	3.46.	It is not very clear what constitutes “significant progress”	See comment 246 above.
251.	Association of British Insurers	3.46.	No comment to 3.46. from ABI	
252.	CEA ECO-SLV-	3.46.	We agree that it is important for both supervisors and undertakings to know what constitutes significant progress.	See comment 246 above.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

	09-632		This is not explained clearly in the CP.	
253.	Deloitte European Union member firms of Deloitte T	3.46.	See 3.45 comment	See comment 246 above.
254.	FFSA	3.46.	What constitutes a "significant progress"? Once again, it should be defined more precisely to limit the discretionary power of the supervisor.	See comments 244 and 246 above.
255.			Confidential comments deleted.	
256.	GROUPAMA	3.46.	What constitutes "significant progress"? It should be defined more precisely to limit the discretionary power of the supervisor. To assess accomplished progress, the supervisor should compare progress with an action plan which he has previously validated.	See comments 244 and 246 above.
257.	Lloyd's	3.46.	We agree that it is extremely important that the undertaking and the supervisor know what constitutes 'no significant progress'. It would be helpful for the advice to define what is meant by "significant progress".	See comments 244 and 246 above.
258.	ROAM	3.46.	As FFSA point of view, what is a "significant progress"? Once again, it should be defined more precisely to limit the discretionary power of the supervisor	See comments 244 and 246 above.
259.			Confidential comments deleted.	
260.	Association of British Insurers	3.47.	We are concerned that this might be too narrowly focused on the reduction of the SCR breach. Other actions taken by undertakings could also demonstrate progress towards recovery. This would actually be in line with the list of internal factors mentioned in para	See comments 244 and 246 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>3.43 where the perspective is broader than the mere reduction of the SCR gap.</p> <p>Please refer to our comments under 3.45</p> <p>Again, we insist that this process should not be too mechanical. In some cases it might take longer than three months for undertakings to show progress towards the restoration of the SCR. This does not necessarily mean that no significant progress has been made and that the extension of the recovery period should be withdrawn. The undertaking might need to implement longer term remedies and this should also be considered by supervisors. In particular, where the agreed plan included getting appropriate measures in place within a timeframe longer than 3 months, then the criteria should be that work is progressing in line with the milestones in the plan agreed up-front with the supervisor. Therefore, the actual improvement in financial position should occur according to plan and not necessarily bound by the 3 monthly reporting requirement.</p>	
261.			Confidential comments deleted.	
262.	CEA ECO-SLV- 09-632	3.47.	<p>Ceiops should take into account that making progress can take longer than three months.</p> <p>The undertaking is required to report to the supervisor every three months on its progress towards the re-establishment of compliance with the SCR. 3.47 states that it is whether the situation has actually improved according to the objectives of the recovery plan that counts. We would stress that in some cases it will take longer than three months to make progress and that supervisors should not consider that this means that no significant progress has been made and withdraw the extension of the recovery period. Sometimes the actions that the undertaking will undertake for progress are more long term.</p>	See comments 244 and 246 above.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			<p>We are concerned that this might be too narrowly focused on the reduction of the SCR breach.</p> <p>Other actions taken by undertakings could also demonstrate progress towards recovery. This would actually be in line with the list of internal factors mentioned in paragraph 3.43 where the perspective is broader than the mere reduction of the SCR gap.</p>	
263.	CRO Forum	3.47.	<p>We disagree. We do not believe that re-compliance with the SCR should be the ONLY measure considered for demonstrating alignment to a recovery plan. A broader-based set of actions should also be considered - e.g. as outlined within the list of "internal factors" within paragraph 3.43. These wider actions are recommended to strike an appropriate balance between short-term SCR restoration actions (with potentially negative consequences for a firm) and longer-term actions that are more optimal for a firm's ongoing financial health and for ongoing protection to its policyholders.</p>	See comments 244 and 246 above.
264.	Deloitte European Union member firms of Deloitte T	3.47.	See 3.45 comment	See comment 246 above.
265.	IUA	3.47.	<p>We note that "significant progress" needs to be demonstrated in the firm's progress reports, as required by the Level 1 text, and that the CP requires a focus on the outcome, towards the objectives set out in the recovery plan, rather than the remedial actions themselves that will count. However, we would question what would happen in circumstances where there is a further exceptional</p>	See comments 244 and 246 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			fall which negates any "significant progress" that may have been made. We would hope that whilst demonstrating "significant progress" will ultimately be outcomes focussed, due consideration of the remedial actions taken to achieve this should also be considered in the event that a firm is hindered by a further exceptional fall.	
266.	Just Retirement Limited	3.47.	Significant progress can be made with a recovery plan (e.g. administrative arrangements for a rights issue) without actually having raised additional capital. An overly prescriptive approach here is unlikely to be helpful.	See comments 244 and 246 above.
267.	Lucida plc	3.47.	There needs to be flexibility around the assessment of progress achieved since the solvency position may not improve between each progress review even though the insurer is working towards a solution. This comment also applies to 3.48.	See comments 244 and 246 above.
268.	CEA ECO-SLV-09-632	3.48.	We would favour benchmarking individually against the insurer's recovery plan rather than using a prescribed benchmark. See also our comment to 3.46.	See comments 244 and 246 above.
269.	Deloitte European Union member firms of Deloitte T	3.48.	See 3.45 comment	See comments 244 and 246 above.
270.	FFSA	3.48.	What kind of benchmarks would be used?	Noted.

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

			Each situation being unique, we strongly advocate for the 2nd option, i.e comparison of progress vs. recovery plan. To assess accomplished progress, the supervisor will be able to compare it with the action plan which he validated beforehand	
271.	Just Retirement Limited	3.48.	With regard to the recovery plan, it is important that undertakings are able to assume in compiling this plan that the "exceptional fall" will be reversed at some reasonable future point, i.e. they would not be required to plan on the basis that the "exceptional" circumstances will remain in effect permanently.	Correct. However, for the recovery plan to be accepted as realistic the supervisor would have to agree that the assumptions of the undertaking about the extent and timing of the reversal are realistic.
272.	Lloyd's	3.48.	The advice should make clear that 'significant progress' includes the implementation of actions which may not have resulted in a significant change in moving towards compliance with the SCR at that point in time, but which will result in a significant likelihood of that compliance being ultimately achieved within the recovery plan.	See comments 244 and 246 above.
273.	ROAM	3.48.	As FFSA point of view, ROAM strongly advocate for the 2nd option, i.e comparison of progress vs. recovery plan. To assess accomplished progress, the supervisor will be able to compare it with the action plan he validated beforehand	Noted.
274.	Association of British Insurers	3.49.	We agree with this paragraph and would ask CEIOPS to give further details on how supervisors would establish what degree of fulfilment of the recovery plan is required for the progress to be taken as significant. We understand that is not within the scope of this CP but it is impossible for undertakings to make significant progress if this is not defined and if the methods to assess it are not explained.	See comments 244 and 246 above.
275.	CEA ECO-SLV-09-632	3.49.	We agree with this paragraph and would ask Ceiops to give further details on how supervisors would establish what degree of fulfilment of the recovery plan is required for the progress to be	See comments 244 and 246 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			<p>taken as significant.</p> <p>We understand that is not within the scope of this CP but it is impossible for undertakings to make significant progress if this is not defined and if the methods to assess it are not explained.</p>	
276.	Deloitte European Union member firms of Deloitte T	3.49.	See 3.45 comment	See comments 244 and 246 above.
277.	FFSA	3.49.	“In order to make the withdrawal of an extension predictable, supervisors would however still have to establish what degree of fulfilment of the recovery plan is required for the progress to be taken as significant”, we agree with this statement. It should be more precise in order to avoid discretionary decisions of the supervisor.	Noted.
278.	GDV (German Insurance Association)	3.49.	We agree with this paragraph and would ask CEIOPS to give further details on how supervisors would establish what degree of fulfilment of the recovery plan is required for the progress to be taken as significant.	See comments 244 and 246 above.
279.	ROAM	3.49.	As FFSA point of view, ROAM agrees with this statement. It should be more precise in order to avoid discretionary decisions of the supervisor.	Noted.
280.			Confidential comments deleted.	
281.	CEA ECO-SLV-09-632	3.50.	<p>We understand that the supervisory measures to be taken to remedy an SCR breach are not within the scope of this CP but it would be helpful to have more details on these.</p> <p>This would help us to understand the consequences of the</p>	<p>CEIOPS cannot be more specific. The supervisor can take any actions that are necessary.</p> <p>In the final consequence the</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			withdrawal of the extension to the recovery period and also how the gap between the SCR and the level of own funds can be closed.	license could be withdrawn if the undertaking is deemed to be non-saveable.
282.	CRO Forum	3.50.	The definition of proportionality should ideally have a context. If the MCR is breached or likely to be breached, we believe that supervisory actions should reasonably be more vigorous. Where, the impact is a marginal breach of the SCR, we recommend that supervisory actions are scaled-back commensurately.	Proportionality in this context means that where there is more than one option for action that would serve the purpose, the supervisor would be required to choose the one that is least onerous for the undertaking.
283.	Deloitte European Union member firms of Deloitte T	3.50.	We would welcome clarity around the powers and what 'appropriate' methods the supervisory authority could use to close this gap to compliance if an extension period is withdrawn	See comment 281 above.
284.	FFSA	3.50.	What kind of measures would be taken? It sounds like the supervisors will interfere in undertaking management when the situation is linked to an exceptional crisis.	See comment 281 above.
285.	ROAM	3.50.	As FFSA point of view, What kind of measures would be taken? It sounds like the supervisors will interfere in undertaking management when the situation is linked to an exceptional crisis	See comment 281 above.
286.			Confidential comments deleted.	
287.	AMICE	3.51.	Having to disclose a withdrawal of an initially granted recovery period would be dangerous and could seriously deteriorate an undertaking's financial situation and chance of recovery/survival.	This is why it is important for undertakings to avoid such a withdrawal. In CEIOPS view the disclosure is mandatory according to Article 54 of the Level 1 text, as the withdrawal is a major development significantly

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				affecting the information disclosed
288.	Association of British Insurers	3.51.	<p>As Article 53 (1) of the Framework Directive specifies that undertakings shall disclose non compliance with the SCR within two months, it is important that the supervisory decision to extend the recovery period does not take longer than two months as the disclosure on the breach will be depend upon this decision.</p> <p>In addition, we would highlight that the withdrawal of an extension period should not be publicly disclosed as this could have further adverse consequences on the undertaking concerned.</p>	The disclosure requirement is triggered by the undertaking not submitting a realistic recovery plan within two months, i.e. either no plan is submitted or the plan submitted cannot be approved. If the supervisory decision is taken after the two months, no disclosure is required yet as the decision could still be positive which would not trigger the disclosure requirement.
289.			Confidential comments deleted.	
290.	CEA ECO-SLV-09-632	3.51.	<p>We strongly disagree with a public disclosure of a withdrawal, as this would have pro-cyclical effects and negative effect on the undertaking's financial situation.</p> <p>Public disclosure introduces the risk of "insurance runs". That is such publications could not only be detrimental to the financial undertaking, but also to the financial situation of the entire insurance industry. This type of risk becomes even more relevant in times of financial downturns.</p> <p>The supervisory decision on granting an extension should not take longer than two months.</p> <p>As Article 53 (1) of the Framework Directive specifies that undertakings shall disclose non compliance with the SCR within two months, it is important that the supervisory decision to extend the recovery period does not take longer than two months as the</p>	<p>See comment 287 above.</p> <p>See comment 288 above.</p>

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			disclosure on the breach will be depend upon this decision.	
291.	CFO Forum	3.51.	<p>Market perception of insurers could be damaged by inappropriate or unnecessary public disclosures.</p> <p>The level and frequency of public disclosures should be balanced to ensure there are no inappropriate public disclosures that cause unnecessary damage to the market perception of the insurance industry or individual insurers.</p>	<p>See comment 287 above.</p> <p>This suggestion is incompatible with the Level 1 text.</p> <p>The disclosure is annually and includes, according to the Level 1 text, giving information that will show undertakings and could show the insurance industry in a negative light (e.g. breach of the SCR or MCR). Where the Solvency and Financial Condition Report has to be updated in accordance with Article 54 the information has to be disclosed in a timely manner.</p>
292.	CRO Forum	3.51.	<p>As Article 53 (1) of the Framework Directive specifies that undertakings shall disclose non compliance with the SCR within two months, it is important that the supervisory decision to extend the recovery period does not take longer than two months as the disclosure on the breach will be depend upon this decision.</p> <p>We do not believe that revoking of extension should be publicly disclosed. From a timing perspective disclosure should not be made because even after the extension is revoked firms will have between 6 to 9 months to address the breach.</p>	<p>See comment 288 above.</p> <p>This assumption is not correct. Withdrawal of the extension does not trigger the start of a normal recovery period. The normal recovery runs from the moment of the observance of the breach and of course granting the additional three months is no</p>

**Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09
CP No. 64 - L2 Advice on Extension of Recovery Period**

				longer feasible after an exceptional extension had to be withdrawn.
293.	FFSA	3.51.	We strongly disagree with a public disclosure of a withdrawal, it shall have pro-cyclical effects and negative effect on the undertaking's financial situation.	See comment 287 above.
294.	GDV (German Insurance Association)	3.51.	We strongly disagree with a public disclosure of a withdrawal, as this would have pro-cyclical effects and negative effect on the undertaking's financial situation. Public disclosure introduces the risk of "insurance runs". That is such publications could not only be detrimental to the financial undertaking, but also to the financial situation of the entire insurance industry. This type of risk becomes even more relevant in times of financial downturns.	See comment 287 above.
295.	ROAM	3.51.	As FFSA point of view, ROAM strongly disagrees with a public disclosure of a withdrawal, it shall have pro-cyclical effects and negative effect on the undertaking's financial situation	See comment 287 above.
296.	RSA Insurance Group	3.51.	As Article 53 (1) of the Framework Directive specifies that undertakings shall disclose non compliance with the SCR within two months, hence the supervisory decision to extend the recovery period must be made within two months.	See comment 288 above.
297.			Confidential comments deleted.	
298.	AMICE	3.52.	Even if it seems to be the intention that supervisors disclose only consolidated and average data on granted extensions, the protection intended by this aggregation completely fails when there is only a limited number of undertakings (in extremis: only one) affected. Additional measures to uphold confidentiality in such a case are necessary.	The confidentiality issue does not arise if the information is already in the public domain which it would be at least in some cases (see comment 302 below).
299.	Association of British Insurers	3.52.	It is not clear that this disclosure would be helpful in stressed market conditions as it could damage public confidence in insurers and prompt irrational behaviour. There may be technical breaches	Undertakings would be required to disclose the breach of the SCR anyway and at least in some

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			of the SCR, but with no immediate threat to the security of the payment of policyholder benefits.	cases the extension of the recovery period they were granted (see comment 302 below).
300.	CEA ECO-SLV-09-632	3.52.	Ceioms should be very sensitive to the disclosure of individual extensions as this could endanger the ability for a recovery due to issues of confidence of the markets and policyholders.	The paragraph refers to the disclosure of aggregated data.
301.	CFO Forum	3.52.	Comments in 3.51 are also appropriate here.	See comment 291 above.
302.	CRO Forum	3.52.	We request clarification on whether it is suggested that the granting of a recovery period and/or an extension period is subject to public disclosure.	By the undertakings concerned themselves, yes, at least in some cases. If the non-compliance with the SCR is insignificant the breach is not subject to disclosure in the SFCR. However, any significant breach has to be disclosed. This includes information on how long the period of non-compliance was/still is. At least when the normal recovery period of six months is exceeded at the time of disclosure an explanation would be required.
303.	Deloitte European Union member firms of Deloitte T	3.52.	We agree with the proposition and consider it to be important for harmonisation.	Noted.
304.	GDV	3.52.	CEIOPS should be very sensitive to the disclosure of individual	See comment 300 above.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

	(German Insurance Association)		extensions as this could endanger the ability for a recovery due to issues of confidence of the markets and policyholders.	
305.	ROAM	3.52.	As AMICE point of view, even if it seems to be the intention that supervisors disclose only consolidated and average data on granted extensions, the protection intended by this aggregation completely fails when there is only a limited number of undertakings (in extremis : one) affected. Additional measures to uphold confidentiality in such cas are necessary.	See comment 298 above.
306.			Confidential comments deleted.	
307.	CEA ECO-SLV- 09-632	3.53.	This seems to imply that Ceiops has introduced in its final advice changes which have not yet been agreed on CP 64.	Correct. Since the final advice had to be submitted to the EU COM already, it could not have been included after the consultation of this Consultation Paper.
308.	CRO Forum	3.53.	This paragraph appears to suggest that a requirement to publicly disclose extension withdrawals has already been included in the final advice on former CP58. If this is the case we strongly disagree with including a final decision on proposals prior to industry consultation. As stated in paragraph 3.51, we do not agree with the disclosure of extension withdrawal.	See comment 307 above. Owing to the timing of the submissions to the EU COM this could not be avoided.
309.	GDV (German Insurance Association)	3.53.	This seems to imply that CEIOPS has introduced in its final advice changes which have not yet been agreed on CP 64.	See comment 307 above.
310.	CRO Forum	4.7.	We prefer option 3 to ensure that SCR restoration activities can be	Noted.

Summary of Comments on Consultation Paper 64 - CEIOPS-CP-64/09 CEIOPS-SEC-166-09

CP No. 64 - L2 Advice on Extension of Recovery Period

			scheduled and conducted at the most appropriate times.	
311.	CRO Forum	4.12.	On balance, we feel that option 4 should not be ruled out, providing that the extent of SCR non-compliance can be demonstrated as not materially jeopardising protection to policyholders.	Noted.